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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **(Southern Division)**

12 LAUREN ASHLEY MORGAN and  
13 ERIK BARNES, Individually and on  
14 Behalf of All Others Similarly Situated,  
15 Plaintiffs,

16 vs.

17 THE IRVINE COMPANY, LLC;  
18 REALPAGE, INC.; GREYSTAR REAL  
19 ESTATE PARTNERS, LLC; LINCOLN  
20 PROPERTY CO.; CUSHMAN &  
21 WAKEFIELD, INC.; FPI  
22 MANAGEMENT, INC.; RPM LIVING,  
23 LLC; BH MANAGEMENT SERVICES,  
24 LLC; MID-AMERICA APARTMENT  
25 COMMUNITIES, INC.; MORGAN  
26 PROPERTIES, LLC; AVENUE5  
27 RESIDENTIAL, LLC; BOZZUTO  
28 MANAGEMENT COMPANY;  
AVALONBAY COMMUNITIES, INC.;  
HIGHMARK RESIDENTIAL, LLC;  
EQUITY RESIDENTIAL; ESSEX  
PROPERTY TRUST, INC; ZRS  
MANAGEMENT, LLC; CAMDEN

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 PROPERTY TRUST; UDR, INC.;  
2 CONAM MANAGEMENT  
3 CORPORATION; CORTLAND  
4 PARTNERS, LLC; THRIVE  
5 COMMUNITIES MANAGEMENT,  
6 LLC; SECURITY PROPERTIES INC.;  
7 CWS APARTMENT HOMES, LLC;  
8 PROMETHEUS REAL ESTATE  
9 GROUP; SARES REGIS GROUP  
10 OPERATING, INC.; MISSION ROCK  
11 RESIDENTIAL, LLC; and MORGAN  
12 GROUP, INC.,

Defendants.

1 **NATURE OF THE ACTION**

2 1. Plaintiffs Lauren Ashley Morgan and Erik Barnes (“Plaintiffs”) challenge a  
3 cartel among lessors of multifamily residential real estate leases (“Lessors”) to  
4 artificially inflate the prices of multifamily residential real estate in the United States  
5 above competitive levels.

6 2. Until approximately 2016, and potentially earlier, many of the nation’s largest  
7 Lessors priced their leases based upon their own assessments of how to best compete  
8 against other Lessors. Prior to 2016, Lessors generally priced their units  
9 competitively to maximize output by maximizing physical occupancy (that is,  
10 maximizing the percentage of multifamily residential leaseholds that were occupied  
11 by paying tenants). Lessors had an incentive to lower their prices to attract lessees  
12 away from their competitors, until all available leases were sold. In this way,  
13 competition drove rent levels to reflect available supply of rental units and lessee  
14 demand. Lessors also independently determined when to put their leases on the  
15 market, resulting in unpredictable supply levels—a natural phenomenon in a  
16 competitive market. When supply exceeded demand, Lessors cut prices.

17 3. As explained by a former industry executive and a primary developer of  
18 software at issue in this case, Donald Davidoff, Lessors face “a classic prisoners’  
19 dilemma.” Since residential real estate is a perishable resource (if a unit sits vacant  
20 for a month, a Lessor can never monetize that lost month of rent), Lessors favored a  
21 strategy of keeping “heads in the beds,” a term for offering sufficiently attractive  
22 lease pricing to maximize physical occupancy levels in multifamily residential real  
23 estate properties. Thus, Davidoff opined, while all Lessors collectively “would be  
24 better off limiting their rent [price] reductions,” if any Lessor individually “lower[ed]  
25 their rents while the others don’t, then that [individual Lessor] would outperform”  
26 vis-à-vis their competitors. In the absence of assurances that all Lessors would  
27 collectively be limiting their rental price reductions, then, the prisoner’s dilemma  
28 dictated that the prudent course was to reduce price and compete for market share.

1 4. However, beginning in approximately 2016, and potentially earlier, Lessors  
2 replaced their independent pricing and supply decisions with collusion. Lessors  
3 agreed to use a common third party that collected competitively sensitive real-time  
4 pricing and supply levels from them, and then used that data to make unit-specific  
5 pricing and supply decisions for Lessors. Lessors also agreed to adhere to these  
6 decisions, on the understanding that competing Lessors would do the same.

7 5. That third party is RealPage, Inc. (“RealPage”). RealPage provides software  
8 and data analytics to Lessors. RealPage also serves as the mechanism by which  
9 Lessors collude and avoid competition, increasing lease prices to Plaintiff and other  
10 members of the proposed Class. RealPage openly boasts that its services “balance  
11 supply and demand to maximize [Lessors’] revenue growth.” And that is precisely  
12 what RealPage has done, facilitating an agreement among participating Lessors not  
13 to compete on price, and allowing Lessors to coordinate both pricing and supply  
14 through at least two mutually reinforcing mechanisms in furtherance of their agreed  
15 aim of suppressing price competition for multifamily residential real estate leases.

16 6. First, Lessors “outsource daily pricing and ongoing revenue oversight” to  
17 RealPage, replacing separate centers of independent decision-making with one.  
18 RealPage collects up-to-the-minute data on the historical and contemporaneous  
19 pricing from participating Lessors, data that, according to RealPage, is updated  
20 “every time [Lessors] make or change a [lease] renewal offer,” spanning over “16  
21 million units,” which is a “very large chunk of the total inventory in the country.” It  
22 standardizes this data to account for differences in the characteristics or “class” of the  
23 property in question. RealPage then runs this massive dataset through its pricing  
24 algorithm, whereby RealPage and its “Pricing Advisors” set prices for participating  
25 Lessors through application of a common formula. RealPage touts that it sets pricing  
26 for Lessors’ “properties as though we own them ourselves”—i.e., the participating  
27 Lessors’ cartel replicates the market outcomes one would observe if they were a  
28 single seller or monopolist of residential leases.

1 7. RealPage Pricing Advisors are central to RealPage and the Lessors' ability to  
2 achieve centralized, coordinated prices among Lessors. RealPage directly employs  
3 Pricing Advisors who are assigned to particular Lessors and integrated into their price  
4 setting process. These Pricing Advisors are involved in setting the baseline rules for  
5 how the common algorithm functions, viewing the outputs of the algorithm,  
6 finalizing pricing decisions for the Lessors, and providing guidance on adhering to  
7 RealPage's price-setting system. The Pricing Advisors are assigned to groups of  
8 competing Lessors operating in a particular geographic area or city; put another way,  
9 multiple competing Lessors in a given area or city are outsourcing their pricing  
10 functions to the same common algorithm, with the algorithm's output interpreted by  
11 the same individual human being, mimicking a monopoly outcome.

12 8. While these Pricing Advisors are assigned to oversee pricing for a particular  
13 group of competing Lessors in a particular geographic area or city, RealPage ensures  
14 that their focus and goals remain raising rents across that area or city as a whole as  
15 opposed to for Lessors on an individualized basis. Indeed, RealPage directly ties  
16 compensation for its Pricing Advisors to whether they have been successful in raising  
17 rents across their assigned area or city *overall*—not to their ability to meet revenue  
18 goals for their assigned competing Lessors. Pricing Advisors accordingly aim to raise  
19 prices across their assigned group of competing Lessors *as well as* the prices of other  
20 competing Lessors, assigned to other Pricing Advisors, but located in the same area  
21 or city. To accomplish this goal Pricing Advisors routinely coordinate with one  
22 another and share forward-looking pricing plans, ultimately inflating prices for all  
23 competing Lessors within a given region or city and establishing “an artificial floor”  
24 for RealPage provided rental prices.

25 9. While Lessors are able to reject the RealPage pricing through an onerous  
26 process, RealPage emphasizes the need for “discipline” among participating Lessors.  
27 To encourage adherence to its common scheme, RealPage explains that for its  
28 services to be most effective in increasing rents, Lessors must accept the pricing at

1 least eighty percent of the time. RealPage also directly incentivizes each Pricing  
2 Advisor, through its compensation structure, to push Lessors to follow RealPage  
3 pricing and maintain higher prices across their assigned submarket. These efforts are  
4 successful, with Ryan Kimura, a former RealPage executive, explaining that as many  
5 as 90 percent (and at least 80 percent) of prices are adopted by participating Lessors.

6 10. A former executive of one of the companies that originally developed the  
7 revenue management software (“CI 1”)<sup>1</sup> explained that RealPage’s pricing decisions  
8 were “rarely overwritten.” Put simply, and as a representative of Lessor ECI Group,  
9 Emily Mask, explains, while “we [Lessors] are all technically competitors,” RealPage  
10 “helps us [Lessors] work together,” “to work with a community in pricing strategies,  
11 not to work separately.”

12 11. Second, RealPage allows participating Lessors to coordinate supply levels to  
13 avoid price competition. In a competitive market, there are periods where supply  
14 exceeds demand, and that in turn puts downward pressure on market prices as firms  
15 compete to attract lessees. To avoid the consequences of lawful competition,  
16 RealPage provides Lessors with information sufficient to “stagger” lease renewals to  
17 avoid oversupply. Lessors thus held vacant rental units unoccupied for periods of  
18 time (rejecting the historical adage to keep the “heads in the beds”) to ensure that,  
19 collectively, there is not one period in which the market faces an oversupply of  
20 residential real estate properties for lease, keeping prices higher.

21 12. By staggering lease renewals to artificially smooth out natural imbalances of  
22 supply and demand, RealPage and participating Lessors also eliminate any incentive  
23 to undercut or cheat on the cartel (avoiding a race to the bottom, or “prisoner’s  
24 dilemma”). This is a central mantra of RealPage, to sacrifice “physical” occupancy  
25 (i.e., to decrease output) in exchange for “economic” occupancy, a manufactured  
26 term RealPage uses to refer to increasing prices and decreasing physical occupancy  
27

28 <sup>1</sup> CI 1 Interview (Nov. 4, 2022).

1 levels (output) in the market.

2 13. RealPage’s and participating Lessors’ coordinated efforts have been effective  
3 at driving anticompetitive outcomes: higher prices and lower physical occupancy  
4 levels (output). RealPage brags that participating Lessors experience “[r]ental rate  
5 improvements, year over year, between 5% and 12% in every market.” The CEO of  
6 Defendant Lessor Camden, Ric Campo, has touted that the net effect of raising rents  
7 and “pushing people out” of the residential real estate leases they could no longer  
8 afford, was “\$10 million in income.” As discussed below, RealPage and participating  
9 Lessors have accomplished their goals of ratcheting up prices even under  
10 unprecedented market downturns such as the Covid-19 pandemic.

11 14. RealPage is proud of its role in the exploding increase in the prices of  
12 residential leases. In a marketing video used to attract additional Lessors to the cartel,  
13 a RealPage Vice President, Jay Parsons discussed the recent and never-before seen  
14 price increases for residential real estate leases, as high as 14.5% in some markets.  
15 When he went on to ask another RealPage executive: “What role has the [RealPage]  
16 software played” in those unprecedented rental price increases, that RealPage  
17 executive, Andrew Bowen, Vice President of Investor Markets, responded: “I think  
18 it’s driving it, quite honestly.”

19 15. In a confidential interview, however, a former RealPage employee who was  
20 directly involved in creation of the original software has expressed dismay with the  
21 way RealPage has enabled Lessors to collectively raise rents at this breakneck pace.  
22 This collusion in turn has placed massive pressure on renters’ efforts to keep roofs  
23 over their heads. CI 1, an early developer of RealPage’s pricing software reflected  
24 that “these optimization systems are really efficient at extracting value and they will  
25 push things [as far as they can] until they start to break.”

26 16. If left unchecked, RealPage and its participating Lessors’ cartel stand to break  
27 the multifamily residential real estate lease market and continue to exacerbate the  
28 affordable housing crisis facing this Nation. The cartel Plaintiff challenges is

1 unlawful under Section 1 of the Sherman Act. Plaintiff brings this action to recover  
2 their damages, trebled, as well as injunctive and other appropriate relief, detailed  
3 *infra*, on behalf of all others similarly situated.

4 **PARTIES AND UNNAMED CO-CONSPIRATORS**

5 17. Plaintiff Lauren Ashley Morgan is a citizen and resident of the State of  
6 California. Ms. Morgan rented a multifamily residential unit in a property managed  
7 by Lessor Defendant Greystar in Huntington Beach, California beginning in  
8 approximately February 2020 through the present. Ms. Morgan has paid higher rental  
9 prices directly to a co-conspirator by reason of the violation alleged herein.

10 18. Plaintiff Erik Barnes is a citizen and resident of the State of California. Mr.  
11 Barnes rented a multifamily residential unit in a property managed by Lessor  
12 Defendant Greystar in Long Beach, California beginning in approximately June 2022  
13 through the present. Mr. Barnes has paid higher rental prices directly to a co-  
14 conspirator by reason of the violation alleged herein.

15 19. Defendant RealPage, Inc. is a Delaware corporation headquartered in  
16 Richardson, Texas. RealPage was a public company from 2010 until December  
17 2020, when it was purchased by private equity firm Thoma Bravo in a transaction  
18 that valued RealPage at approximately \$10.2 billion. RealPage provides software  
19 and services to the residential real estate industry, including the RMS described  
20 herein. RealPage has thousands of employees and earns over a billion dollars per  
21 year in revenue. As of December 31, 2019, RealPage had over 29,800 clients,  
22 including each of the ten largest multifamily property management companies.

23 20. Lessor Defendant Greystar Real Estate Partners, LLC (“Greystar”) is a  
24 Delaware limited liability corporation headquartered in Charleston, South Carolina.  
25 It is the largest manager of multifamily rental real estate in the United States, with  
26 more than 782,900 multifamily units and student beds under management nationally.  
27 On information and belief, Greystar earns billions of dollars per year in revenue,  
28 controls \$35.5 billion dollars in assets, and employs over 20,000 people.



1 21. Lessor Defendant Lincoln Property Co. (“Lincoln”) is a Texas corporation  
2 headquartered in Dallas, Texas. Lincoln is the second largest manager of multifamily  
3 rental real estate in the United States, with over 210,000 multifamily units under  
4 management nationally. On information and belief, Lincoln earns billions of dollars  
5 per year in revenue and employs thousands of people.

6 22. Lessor Defendant Cushman & Wakefield, Inc. (“C&W”) is a Delaware  
7 corporation headquartered in New York, New York. It is the third largest manager of  
8 multifamily rental real estate in the United States, with over 172,000 multifamily  
9 units under management nationally. On information and belief, C&W earns billions  
10 of dollars per year in revenue and employs over ten thousand people.

11 23. Lessor Defendant FPI Management, Inc. (“FPI”) is a California corporation  
12 headquartered in Folsom, California. FPI is the fifth largest manager of multifamily  
13 rental real estate in the United States, with over 150,000 multifamily units under  
14 management in 17 states. On information and belief, FPI earns billions of dollars per  
15 year in revenue and employs thousands of people.

16 24. Lessor Defendant RPM Living LLC (“RPM”) is a Texas limited liability  
17 company headquartered in Austin, Texas. RPM is the seventh largest manager of  
18 multifamily rental real estate in the United States, with over 112,000 units under  
19 management in 21 states. On information and belief, RPM earns hundreds of millions  
20 of dollars per year and employs hundreds of people.

21 25. Lessor Defendant BH Management Services, LLC (“BH”) is an Iowa limited  
22 liability company with its headquarters in Des Moines, Iowa. BH is the eighth largest  
23 manager of multifamily rental real estate in the United States, with over 100,000  
24 multifamily units under management in 28 states. On information and belief, BH  
25 earns over one billion dollars per year in revenue and employs over 2,000 people.

26 26. Lessor Defendant Mid-America Apartment Communities, Inc. (“MAA”) is a  
27 Tennessee corporation headquartered in Germantown, Tennessee. MAA is the tenth  
28 largest manager of multifamily rental real estate in the United States, with over

1 100,000 multifamily units under management in 16 states. On information and belief,  
2 MAA earns over one billion dollars per year in revenue and employs over 2,400  
3 people.

4 27. Lessor Defendant Morgan Properties, LLC (“Morgan Properties”) is a  
5 Pennsylvania limited liability company headquartered in King of Prussia,  
6 Pennsylvania. Morgan is the eleventh largest manager of multifamily rental real  
7 estate in the United States, with over 96,000 multifamily units under management in  
8 20 states. On information and belief, Morgan earns hundreds of millions of dollars  
9 per year in revenue and employs hundreds of employees.

10 28. Lessor Defendant Avenue5 Residential, LLC (“Avenue5”) is a Delaware  
11 limited liability company headquartered in Seattle, Washington. Avenue5 is the  
12 twelfth largest manager of multifamily rental real estate in the United States, with  
13 over 96,900 multifamily units under management in 12 states. On information and  
14 belief, Avenue5 earns over \$500 million dollars per year in revenue and employs over  
15 1,000 people.

16 29. Lessor Defendant Bozzuto Management Company (“Bozzuto”) is a Maryland  
17 company headquartered in Greenbelt, Maryland. Bozzuto is the thirteenth largest  
18 manager of multifamily rental real estate in the United States with over 80,000  
19 multifamily units under management in 12 states. On information and belief, Bozzuto  
20 earns over two billion dollars per year in revenue and employs over 3,000 people.

21 30. Lessor Defendant AvalonBay Communities, Inc. (“AvalonBay”) is a Maryland  
22 corporation headquartered in Arlington, Virginia. AvalonBay is the fourteenth largest  
23 manager of multifamily rental real estate in the United States, with over 88,000 units  
24 under management in twelve states. On information and belief, AvalonBay earns  
25 billions of dollars per year in revenue and employs thousands of people.

26 31. Lessor Defendant Highmark Residential, LLC (“Highmark”) is a Delaware  
27 limited liability company headquartered in Dallas, Texas. Highmark is the fifteenth  
28 largest manager of multifamily rental real estate in the United States, with over

1 79,000 units in 15 states. On information and belief, Highmark earns hundreds of  
2 millions of dollars per year in revenue and employs over 1,500 people.

3 32. Lessor Defendant Equity Residential (“Equity”) is a Maryland real estate  
4 investment trust headquartered in Chicago, Illinois. Equity is the sixteenth largest  
5 manager of multifamily rental real estate in the United States, with over 80,000 units  
6 under management in 8 states. On information and belief, Equity earns over 2 billion  
7 dollars per year in revenue and employs over 2,000 people.

8 33. Lessor Defendant The Irvine Company, LLC (“Irvine”) is a Delaware limited  
9 liability corporation headquartered in Newport Beach, California. Irvine is the  
10 twenty-third largest manager of multifamily real estate in the United States, with over  
11 63,000 units under management in 5 states. On information and belief, Irvine earns  
12 millions of dollars per year in revenue and employs over 1,000 people.

13 34. Lessor Defendant Essex Property Trust, Inc (“Essex”) is a Maryland  
14 corporation headquartered in San Mateo, California. Equity is the twenty-fourth  
15 largest manager of multifamily rental real estate in the United States, with over  
16 61,000 units under management in California and Washington. On information and  
17 belief, Essex earns over 1.4 billion dollars per year in revenue and employs over 1,700  
18 people.

19 35. Lessor Defendant ZRS Management, LLC (“ZRS”) is a Florida limited  
20 liability company headquartered in Orlando, Florida. ZRS is the twenty-seventh  
21 largest manager of multifamily rental real estate in the United States, with over  
22 60,000 units under management in 6 states. On information and belief, ZRS earns  
23 millions of dollars per year in revenue and employs hundreds of people.

24 36. Lessor Defendant Camden Property Trust (“Camden”) (“Camden”) is a Texas  
25 real estate trust headquartered in Houston, Texas. Camden is the twenty-ninth largest  
26 manager of multifamily rental real estate in the United States, with over 58,000 units  
27 under management. On information and belief, Camden earns over one billion dollars  
28 per year in revenue and employs over 1,000 people.

1 37. Lessor Defendant UDR, Inc. (“UDR”) is a Maryland corporation  
2 headquartered in Highlands Ranch, Colorado. UDR is the thirtieth largest manager  
3 of multifamily rental real estate in the United States, with over 55,000 units under  
4 management. On information and belief, UDR earns over one billion dollars per year  
5 in revenue and employs over 1,000 people.

6 38. Lessor Defendant CONAM Management Corporation (“CONAM”) is a  
7 California corporation headquartered in San Diego, California. CONAM is the thirty-  
8 third largest manager of multifamily rental real estate in the United States, with over  
9 51,000 units under management. On information and belief, CONAM earns hundreds  
10 of millions of dollars per year in revenue and employs over 1,000 people.

11 39. Lessor Defendant Cortland Partners, LLC (“Cortland”) is a Georgia limited  
12 liability company headquartered in Atlanta, Georgia. Cortland has over 85,000 units  
13 under management in 13 states. On information and belief, Cortland earns hundreds  
14 of millions of dollars in revenues per year and over 1,000 people.

15 40. Lessor Defendant Thrive Communities Management, LLC (“Thrive”) is a  
16 Washington Limited Liability Company headquartered in Seattle, Washington.  
17 Thrive has over 18,000 units under management in the greater Pacific Northwest. On  
18 information and belief, Thrive earns millions of dollars per year in revenue and  
19 employs over 500 people.

20 41. Lessor Defendant Security Properties Inc. (“Security Properties”) is a  
21 Washington corporation headquartered in Seattle, Washington. Security Properties  
22 has over 22,000 units under management in 18 states. On information and belief,  
23 Security Properties earns millions of dollars per year in revenue.

24 42. Lessor Defendant CWS Apartment Homes Lessor Defendant CWS Apartment  
25 Homes, LLC (“CWS”) is a Delaware limited liability company headquartered in  
26 Austin, Texas. CWS has over 29,000 units under management. On information and  
27 belief, CWS earns millions of dollars per year in revenue and employs over 500  
28 people.

1 43. Lessor Defendant Prometheus Real Estate Group (“Prometheus”) is a  
2 California corporation headquartered in San Mateo, California. Prometheus has over  
3 12,000 multifamily units under management in California, Oregon, and Washington.  
4 On information and belief, Prometheus earns millions of dollars per year in revenue  
5 and employs hundreds of people.

6 44. Lessor Defendant Sares Regis Group Operating, Inc. (“Sares Regis”) is a  
7 California corporation headquartered in Newport Beach, California. Sares Regis has  
8 over 29,000 units under management. On information and belief, Sares Regis earns  
9 millions of dollars in revenue per year and employs hundreds of people.

10 45. Lessor Defendant Mission Rock Residential, LLC (“Mission Rock”) is a  
11 Delaware limited liability company headquartered in Denver, Colorado. Mission  
12 Rock has over 29,000 units under management in 17 states. On information and  
13 belief, Mission Rock earns tens of millions of dollars per year in revenue and employs  
14 over 700 people.

15 46. Lessor Defendant Morgan Group Inc. (“Morgan Group”) is a Delaware  
16 corporation headquartered in Houston, Texas. Morgan Group has over 15,000 units  
17 under management in 5 states. On information and belief, Morgan earns millions of  
18 dollars per year in revenue and employs hundreds of employees.

19 47. The Lessor Co-Conspirators are various persons and entities, including Lessors  
20 and other industry participants, known and unknown to Plaintiff and not named as  
21 defendants in this action, who have participated as co-conspirators with RealPage and  
22 the Lessor Defendants in the offenses alleged and have performed acts and made  
23 statements in furtherance of the cartel.

#### 24 **JURISDICTION AND VENUE**

25 48. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
26 1337, as this action arises out of Section 1 of the Sherman Antitrust Act (15 U.S.C. §  
27 1) and Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15 and 26).

28 49. This Court has personal jurisdiction over Defendants under Section 12 of the

1 Clayton Act (15 U.S.C. § 22), Federal Rule of Civil Procedure 4(h)(1)(A), and  
2 California’s long-arm statute, Cal. Code Civ. Proc. § 410.10.

3 50. Defendants, directly or through their divisions, subsidiaries, predecessors,  
4 agents, or affiliates, may be found in and transact business in the forum state,  
5 including the sale of multifamily residential real estate leases.

6 51. Defendants, directly or through their divisions, subsidiaries, predecessors,  
7 agents, or affiliates, engage in interstate commerce in the sale of multifamily  
8 residential real estate leases.

9 52. Venue is proper in this District pursuant to Section 12 of the Clayton Act (15  
10 U.S.C. § 22) and the federal venue statute (28 U.S.C. § 1391), because one or more  
11 Defendants maintain business facilities, have agents, transact business, and are  
12 otherwise found within this District and certain unlawful acts alleged herein were  
13 performed and had effects within this District.

14 **FACTUAL BACKGROUND**

15 **The Market for Multifamily Residential Real Estate Leases**

16 53. The relevant product market is the market for the lease of multifamily  
17 residential real estate and the relevant geographic market is the United States.

18 54. From the perspective of the consumer, multifamily rental apartment units are  
19 not an economic substitute with apartments, condominiums, or homes for purchase  
20 because, among other reasons, purchase of real estate requires the ability to make a  
21 substantial down payment and to obtain financing.

22 55. Additionally, from the perspective of the consumer, single-family real estate is  
23 not an economic substitute for multifamily residential real estate. For example,  
24 single-family properties typically do not offer amenities and security. Indeed,  
25 industry participants in the multifamily residential real estate market typically  
26 distinguish between multifamily and single-family real estate when discussing  
27 customer preferences and market trends, including concerning their disparate  
28 respective pricing.

1 56. The multifamily residential real estate lease market satisfies the test for market  
2 definition used by federal antitrust enforcement agencies, widely known as the  
3 “SSNIP test.” The test asks whether a hypothetical monopolist in a proffered market  
4 could profitably impose a small but significant (typically 5%), non-transitory increase  
5 in price (a “SSNIP”), without causing a sufficient number of customers to switch to  
6 other products or services such that the SSNIP would be unprofitable to the  
7 monopolist. If the SSNIP is profitable, the market is properly defined. If the SSNIP  
8 is not profitable, the market is too narrowly defined, and does not encompass  
9 sufficient economic substitutes.

10 57. Here, the SSNIP test is satisfied, and the market is properly defined. As  
11 described above and below, pursuant to the Lessors’ agreement not to compete on  
12 price, Lessors are able to increase “year over year, between 5% and 12% in every  
13 market,” yet those increases have not driven enough renters out of the market such  
14 that the SSNIP has become unprofitable to Lessors.

### 15 **Historical Pricing in the Market for Multifamily Residential Real Estate Leases**

16 58. Before RealPage facilitated collusion among Lessors, Lessors acting  
17 independently followed a policy to keep “heads in the beds.” In simplest terms, this  
18 meant the market was functioning competitively. Lessors, concerned that every day  
19 a property remained unrented was a lost opportunity to earn revenue for that day,  
20 offered sufficiently attractive pricing to maintain maximum “physical occupancy”  
21 across their units. This could come in the form of reduced rental prices and  
22 sometimes other price concessions, such as “first month free” offers.

23 59. The “heads in the beds” strategy also minimized turnover expenses, as there  
24 were hard costs associated with finding and evaluating a replacement tenant as well  
25 as lost revenue opportunities if the unit sat vacant between tenants.

26 60. The senior vice president of property management at Defendant Lessor the  
27 Morgan Group, David Hannan, described the market before RealPage’s arrival,  
28 stating that a “generation” of Lessors “grew up worshipping the occupancy gods.



1 We learned that if you were not 95 percent-plus occupied, the asset was failing.”  
2 Prior to 2016, Lessors accomplished their goals of “worshipping the occupancy  
3 gods” and “keeping heads in the beds” through “manual pricing,” a term Lessors use  
4 to refer to uncoordinated, independent pricing. This led Lessors to maximize  
5 physical occupancy levels (output) by offering sufficiently low pricing to attract  
6 tenants to sign new, or renew existing, leases. In economics, this is referred to as a  
7 market share over price strategy, and it is a common defining characteristic of a  
8 market that is functioning competitively.

9 **The Lessor Defendants Outsource Price and Supply Decisions to a Common**  
10 **Decision Maker—RealPage—Which Eliminated Competition**

11 61. Following RealPage’s entry, RealPage’s participating Lessors swiftly, and  
12 concertedly, shifted from the previous competitive market share over price strategy  
13 to a new collusive price over volume strategy. A price over volume strategy is a  
14 hallmark of pricing in a cartelized market.

15 62. RealPage and participating Lessors have adopted a philosophy of maximizing  
16 economic occupancy, that is, increasing prices notwithstanding market conditions  
17 and tolerating any reduced physical occupancy levels that might engender. Since  
18 Lessors of residential multifamily real estate properties (a finite resource) face a  
19 natural prisoner’s dilemma, maximizing economic occupancy is only in a firm’s  
20 economic self-interest if many Lessors collectively follow suit. As Davidoff—a  
21 primary developer of what is now RealPage’s revenue management software—  
22 stated, while all Lessors “would be better off limiting their rent [price] reductions,”  
23 if any Lessor “lower[ed] their rents while the others don’t, than that [Lessor] would  
24 outperform.” The easiest way to solve the prisoner’s dilemma, such that it would be  
25 profit maximizing to maintain high prices, would be if Lessors had mutual  
26 assurances that other Lessors would not compete with them on price.

27 63. RealPage and participating Lessors have provided one another with such  
28 mutual assurances, agreeing among themselves not to compete on price for the sale



1 of multifamily residential real estate leases. They have effectuated their agreement  
2 through two mutually reinforcing mechanisms. First, participating Lessors have  
3 agreed to set prices using RealPage’s coordinated algorithmic pricing. Second,  
4 participating Lessors have agreed to stagger their lease renewal dates through  
5 RealPage, to avoid (otherwise natural) oversupplies in rental properties.

6 64. RealPage’s coordinated algorithmic pricing allows participating Lessors, in  
7 RealPage’s words, to “outsource [their] daily pricing and ongoing revenue  
8 oversight” to RealPage, with RealPage pricing for participating Lessors’ “properties  
9 as if we [RealPage] own them ourselves”—that is, as if RealPage and its  
10 participating Lessors were operating as a single seller or a monopolist.

11 65. Participating Lessors agree to adhere to RealPage’s coordinated algorithmic  
12 pricing, often referring to such adherence as pricing “courage,” or, more frequently,  
13 as pricing “discipline.”

14 66. Participating Lessors also agree to provide RealPage with real-time access to  
15 their competitively sensitive and nonpublic data on their multifamily residential real  
16 estate leases.

17 67. This data, according to RealPage, spans over “16 million units,” which is a  
18 “very large chunk of the total inventory in the country.” RealPage standardizes this  
19 data to account for differences in the characteristics or “class” of the property in  
20 question. RealPage then runs this massive dataset through its pricing algorithm,  
21 whereby RealPage and its Pricing Advisors set prices for participating Lessors  
22 through application of a common formula to a common dataset.

23 68. RealPage Pricing Advisors ensure and advance coordination in price setting  
24 between Lessors. RealPage assigns each Pricing Advisor to a group of competing  
25 Lessors in a given geographic area or city, and tasks them with integrating  
26 themselves into each of their assigned competing Lessor’s price setting processes. It  
27 is problematic enough that groups of competing Lessors in a given area or city are  
28 outsourcing their price-setting functions to the same algorithm and same individual

1 Pricing Advisor. But each Pricing Advisor also coordinates price increases with  
2 other Pricing Advisors that are assigned to different groups of competing Lessors in  
3 the same region or city, and they are incentivized to do so because a percentage of  
4 each Pricing Advisor’s compensation is linked to the amount that prices increase  
5 across their assigned geographic area or city—not to their ability to meet revenue  
6 goals for the individual Lessors they advise. Pricing Advisors accordingly aim to  
7 raise prices across their assigned group of competing Lessors as well as coordinate  
8 with other Pricing Advisors assigned to different groups of competing Lessors in the  
9 same area or city on a forward-looking basis, inflating prices across an area or city.

10 69. CI 1, a former industry executive closely involved in development of  
11 RealPage’s pricing software explained that, once there are centralized Pricing  
12 Advisors at the helm, the software acts as “a deterministic tool” wherein “if you put  
13 in the same values you get the same results” across Lessors.

14 70. Every morning, each Pricing Advisor reviews the results of the pricing  
15 algorithm, as well as information from fellow Pricing Advisors, in order to direct  
16 prices for each of their assigned competing Lessors, increasing rental prices across  
17 Lessors in an area or city, and establishing “an artificial floor” for rental prices in  
18 that area or city. The Pricing Advisors then provide their assigned competing Lessors  
19 with pricing for the day.

20 71. Lessors typically must communicate to their assigned Pricing Advisor that  
21 they have “accept[ed]” or “confirm[ed]” the “approved pricing” within a specified  
22 time frame. If Lessors wish to diverge from the “approved pricing” they must submit  
23 detailed reasoning (for example, the rental unit in question had structural or flood  
24 damage that the algorithm was unaware of) for doing so; one former RealPage  
25 employee who provided Lessors training on its software and systems (“CI 2”)<sup>2</sup>  
26 explained that in her experience, those overrides had to be approved by RealPage,  
27 \_\_\_\_\_

28 <sup>2</sup> CI 2 Interview (Jan. 12, 2022).

1 while another former RealPage Pricing Advisor explained, “there’s got to be a good  
2 reason indicated” for the override to be approved, such as “circumstances outside  
3 what the model is aware of.”

4 72. RealPage encourages participating Lessors to have daily calls between the  
5 Lessors’ employees with pricing responsibility and the RealPage Pricing Advisor.  
6 RealPage also directly incentivizes each Pricing Advisor, through its compensation  
7 structure, to push Lessors to follow RealPage pricing and maintain higher prices  
8 across their assigned area or city. One former RealPage Director (“CI 3”)<sup>3</sup> explained  
9 that RealPage monitored and strongly discouraged overrides, and endeavored “to  
10 make sure they’re [Lessors] following what the model is asking them to do.” And  
11 according to RealPage trainer CI 2, at least some Pricing Advisors informed their  
12 assigned competing Lessors that they were *without discretion* to override pricing  
13 determined by RealPage and Lessors *had to* adhere to those pricing decisions.

14 73. If there is a disagreement between the participating Lessor and the RealPage  
15 Pricing Advisor, the dispute is often elevated to the Lessor’s management for  
16 resolution to evaluate the specific reasons a Lessor provided for departing from  
17 RealPage’s pricing decisions. Importantly, this very same Pricing Advisor that is  
18 resolving the dispute about the recommended pricing is also setting pricing for  
19 competitors of the Lessor in question *as well as* communicating with other Pricing  
20 Advisors setting pricing for still more competing Lessors in a given area or city, with  
21 the aim of increasing pricing across the area or city as a whole (because the Pricing  
22 Advisors compensation is determined by how a particular area or city performs as a  
23 whole, rather than how well individual Lessors to which it is assigned perform).

24 74. RealPage emphasizes the need for discipline among participating Lessors and  
25 urges them that for its coordinated algorithmic pricing to be the most successful in  
26 increasing rents, participating Lessors must adopt RealPage’s pricing at least 80%

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28 <sup>3</sup> CI 3 Interview (Dec. 3, 2021).

1 of the time. CI 1 described the pricing as “rarely overwritten.” As one example of  
2 such encouragement, Jeffrey Roper, RealPage’s main architect, publicly described  
3 the problem as: “If you have idiots undervaluing [setting prices independently], it  
4 costs the whole system.” And an Executive Vice Chairman for Defendant Lessor  
5 Camden, Keith Oden, explained that “it’s not like we sit around and do what we  
6 think we feel like we should be doing for rental increases. It’s all driven by the  
7 metrics within [the algorithm] and we take those recommendations.”

8 75. Ryan Kimura, a former RealPage executive, reported that these instructions  
9 are successful, with as many as 90% (and at least 80%) of RealPage pricing being  
10 adopted. As one Lessor explained to media outlet ProPublica, RealPage’s  
11 coordinated algorithmic pricing required counterintuitive changes in their business  
12 practices “because[, upon adopting RealPage’s coordination of pricing,] we weren’t  
13 offering concessions nor were we able to negotiate pricing” like they previously had.  
14 That Lessor went on to explain that RealPage “maximize[s] rents but you have to be  
15 willing to strictly follow it,” and, as a result, “we rarely make any overrides to the  
16 recommendations” provided by RealPage. Davidoff, a primary developer of the  
17 software, described RealPage as bringing “discipline” and “courage to pricing.”

18 76. And a former RealPage Senior Operations Analyst (“CI 4”)<sup>4</sup> explained that  
19 RealPage “definitely discouraged” overrides and “essentially encourage[d] you to  
20 take the offering that the system projected and use that.” CI 4 explained that “[t]he  
21 goal is and was to maximize the returns of the property management companies.  
22 And how do you do that? You do that by raising rents. It was very clear that that’s  
23 the way things were structured. That was the name of the game.” For that reason, CI  
24 4 explained “we don’t recommend overrides.”

25 77. Participating Lessors are also able to stagger their lease renewals to avoid  
26 natural periods of oversupply that would persist absent concerted action by would-

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28 <sup>4</sup> CI 4 Interview (Dec. 16, 2021).

1 be rival Lessors, with RealPage providing guidance on such staggering.

2 78. A representative of Lessor ECI Group, Emily Mask, explained that, using  
3 RealPage, Lessors are “now able to stagger lease expirations throughout the month,  
4 effectively cutting down on frictional vacancy loss as well as concessions” on price.  
5 Mask continued that by staggering lease renewals, Lessors have “leveled the lease  
6 expirations throughout the year to better match the historical demand for each  
7 community, thus positioning us [Lessors] for even higher rent growth.”

8 79. A former Business Manager for Lessor Pinnacle Property Management  
9 Services LLC (“Pinnacle”), subsidiary of Lessor Defendant C&W, (“CI 5”)<sup>5</sup>  
10 explained that RealPage helped Pinnacle avoid a situation where there were a  
11 significant number of units renewing at the same time. RealPage “would recommend  
12 a 10-month lease instead of a 12-month lease on certain people [to avoid  
13 simultaneous renewals],” he said. “Or a 13-month lease – to try to get it to that next  
14 month [so that] instead of having 15 renewals, you would end up with 10 renewals.”  
15 RealPage trainer CI 2 explained that once lease expiration limits for a certain time  
16 period were reached, the RealPage “system will not allow you to create another lease  
17 to expire during that time unless you override” the system.

18 80. Lessors have publicly admitted that RealPage has allowed them to maintain  
19 higher prices in concert, with confidence that they can avoid price cutting and the  
20 prisoner’s dilemma.

21 81. One representative of Lessor ECI Group, Mask, commented that while “we  
22 [Lessors] are all technically competitors,” that Lessors’ common adoption of and  
23 adherence to RealPage’s software “helps us [Lessors] work together,” “to work with  
24 a community in pricing strategies, not to work separately.”

25 82. Other Lessors’ comments echo the potency and efficacy of their concerted  
26 action.

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28 <sup>5</sup> CI 5 Interview (Nov. 5, 2021).

1 83. In promotional materials, Defendant Lessor BH reported that RealPage “has  
2 given a substantial boost to economic occupancy” (the proportion of gross potential  
3 rent actually realized) as compared to physical occupancy (the proportion of units  
4 occupied by tenants), which is to say it caused higher rental prices and less physical  
5 occupancy (or output).

6 84. Another representative from a Lessor, Senior Vice President of Asset  
7 Management at LaSalle Investment Management, Stephen Adams, explained that by  
8 “outsourcing” pricing functions to RealPage, prices are set by RealPage’s  
9 “multifamily experts,” “who essentially act like an extension of our team.”

10 85. And Campo, CEO of Defendant Lessor Camden, explained that in following  
11 the price over volume, or maximizing economic capacity, strategy, they found “that  
12 driving our turnover rate up actually captured additional revenue.” Campo  
13 continued: “The net effect of driving revenue and pushing people out was \$10  
14 million in income.” He concluded, “I think that shows that keeping the heads in the  
15 beds above all else is not always the best strategy.” But given the prisoner’s dilemma  
16 faced by Lessors, rejecting that competitive strategy is only in a Lessor’s economic  
17 self-interest if they have assurances that they will not be significantly undercut by  
18 rival Lessors. RealPage provides a mechanism through which Lessors coordinate  
19 their prices and effectuate that common understanding.

20 86. RealPage also encourages direct coordination among competing Lessors to  
21 increase the cartel’s efficacy and Lessors’ adherence to the scheme. Specifically,  
22 RealPage directs Lessors to call up competing Lessors directly and discuss and  
23 confirm one another’s current prices. This revelation is particularly stark, not just  
24 because it allows the Lessors to monitor and ensure compliance with the coordinated  
25 algorithmic pricing, but because RealPage itself has admitted that such a practice is  
26 tantamount to collusion.

27 87. For example, one former Leasing Manager from Defendant Lessor CONAM  
28

1 (“CI 6”)<sup>6</sup> explained that, in following RealPage’s instructions to routinely collect  
2 current, non-public rental prices from their competitors, several Lessors, including  
3 Defendant Lessor Irvine, participated in an email chain in which Leasing Managers  
4 shared non-public information about rental unit pricing on a regular basis. And, one  
5 former Leasing Consultant from Defendant Lessor MAA (“CI 7”)<sup>7</sup> described that,  
6 to assist in collecting competitors’ pricing data, RealPage even provided a form  
7 containing the names of competitors to call and the information to obtain. According  
8 to CI 7, she called competing properties every Tuesday to obtain updated pricing  
9 information, or “the price for that day,” and would use the RealPage form to guide  
10 those calls: “You kind of just go down the list and fill out the blanks.”

11 88. RealPage, in response to this lawsuit, has defended its conduct by claiming  
12 that “typically” Lessors engaged in “manual pricing” (a term of art RealPage uses  
13 for any pricing that is not recommended by revenue management systems) by  
14 conducting phone surveys to check competitors’ rents, which RealPage has claimed  
15 publicly could result in anticompetitive behavior. RealPage claims that its offerings  
16 thus “help eliminate the risk of collusion that could occur with manual pricing” and  
17 the Lessor-to-Lessor communication RealPage claims would occur. But that Lessor-  
18 to-Lessor communication on pricing is not proscribed by RealPage, it is encouraged  
19 by RealPage, despite RealPage itself recognizing its collusive nature.

20 **The Lessor Defendants and RealPage Have Inflated the Prices and Reduced**  
21 **the Occupancy (i.e., Output) of Residential Real Estate Leases**

22 89. As industry participants including RealPage’s own executives admit,  
23 RealPage’s coordinated algorithmic pricing has caused anticompetitive effects in the  
24 form of higher prices and reduced output. As just one such example, RealPage’s Vice  
25 President of Investor Markets, Andrew Bowen, has publicly conceded that: “I think  
26

27 <sup>6</sup> CI 6 Interview (Oct. 26, 2022).

28 <sup>7</sup> CI 7 Interview (Nov. 18, 2021).



1 it's [RealPage's coordinated algorithmic pricing] driving it [higher prices for  
2 residential real estate leases], quite honestly."

3 90. RealPage advertises that the Lessors that participate in this cartel experience  
4 "[r]ental rate improvements, year over year, between 5% to 12% in every market,"  
5 the ability to "outperform the market by up to 5%," and "drive up to an additional  
6 150-200 basis points of hidden yield" that would not otherwise be attainable to a  
7 Lessor utilizing independent pricing, rather than coordinated pricing. RealPage refers  
8 to independent, competitive pricing as "manual pricing." RealPage claims to  
9 "outperform manual pricing" by 7 percent each year. That is, the Lessors' collusion  
10 succeeds in increasing prices above competitive levels by 7 percent each year.

11 91. To conclude that these price increases would be economically irrational and  
12 against each Lessors' independent economic self-interest if acting alone (that is,  
13 absent assurances that other Lessors would also be exercising pricing "discipline"),  
14 or that price increases would be unachievable absent the implementation of  
15 coordinated algorithmic pricing by RealPage's participating Lessors, one need look  
16 no further than the admissions of RealPage and its participating Lessors, who openly  
17 extol the value of cartelization (higher prices, lower output) to each other.

18 92. In a testimonial video on RealPage's website, the Director of Revenue  
19 Management at Lessor JVM Realty, Kortney Balas, explained that "the beauty of  
20 using [RealPage's pricing] is that it pushes [Lessors] to go places that you wouldn't  
21 have gone on your own if you weren't using it."

22 93. The CEO of Defendant Equity, David Neithercut, told panelists at an industry  
23 conference that it "raised rents hundreds of dollars," following RealPage's pricing,  
24 and noted that Equity would not have had "the courage to push [rents] as aggressively  
25 as [the RealPage pricing] program has."

26 94. President and COO of Camden, Keith Oden, admitted that, in the natural state  
27 of play, it simply is "not in [a Lessor's] DNA to raise pricing \$150 to \$200 per unit  
28 on a lease turn," but following RealPage's coordinated algorithmic pricing allowed



1 Camden and other Lessors to do what, independently, they would not.

2 95. And Kip Zacharias who worked at Camden as a consultant observed that the  
3 Lessor was able to raise rents in situations where market conditions dictated  
4 otherwise, with a consultant for that Lessor conceding that “[i]f you’d listened to your  
5 gut,” and not RealPage’s pricing, then “you would have lowered your price.”

6 96. And yet another Lessor representative—Jamie Teabo, Senior Vice President  
7 for Management at Post Properties—noted that, “[i]n our Florida markets, we let the  
8 system push as hard as it would go, and we saw increases as high as 20 percent. . . .  
9 Left to our own devices, I can assure you we would have never pushed rents that  
10 hard. That was a big number.”

11 97. RealPage itself concedes that these price levels could not be obtained  
12 independently, stating: “We believe in overseeing properties as though we own them  
13 ourselves. We believe we can deliver better results for you than you would otherwise  
14 be able to achieve.” In plain terms, RealPage concedes that its coordinated  
15 algorithmic pricing allows Lessors to obtain the same results as a single seller or  
16 monopolist—an outcome Lessors “would not otherwise be able to achieve” without  
17 RealPage’s pricing and assurances of Lessors’ discipline to that pricing.

18 98. The Covid-19 pandemic is a prime illustration of Lessors’ ability to coordinate  
19 pricing through RealPage and achieve market outcomes untethered to what one  
20 would expect if Lessors were acting independently of one another. A RealPage Vice  
21 President of Revenue Management, Amy Dreyfus, explained that “at the start of  
22 Covid, I think a lot of our [Lessors’] initial reaction, was, ‘oh I need to start dropping  
23 rent, I need to start giving [price] concessions’” to account for the exodus of renters  
24 from major metropolitan areas. But “our [RealPage’s] advisory team and the product  
25 did a great job” of resisting that natural competitive outcome. RealPage’s Vice  
26 President of Asset Optimization and Deputy Chief Economist, Jay Parsons, agreed  
27 with that assessment, noting “we just saw unbelievable resilience and I would say  
28 discipline in pricing through the worst of the downturns . . . a lot of people thought

1 we'd see severe rent cuts; that just didn't happen." That "resilience" and "discipline"  
2 is "unbelievable" precisely because absent assurances that competitor Lessors are not  
3 going to undercut a given Lessor on price, such discipline is against the Lessor's  
4 individual economic self-interest.

5 99. While RealPage insiders dubbed this pricing discipline "a great job," some of  
6 the Lessors' employees actually enforcing RealPage's price recommendations  
7 considered this "unbelievable resilience" to be "a nightmare." Explaining that  
8 Pinnacle used RealPage to raise monthly rents on some units by several hundreds of  
9 dollars during the beginning and middle of the Covid-19 pandemic, CI 5 said,  
10 RealPage "was recommending that I raise rents \$400 to \$500 a month per unit[.] It  
11 was a nightmare. It was embarrassing. It was absolutely ridiculous."

12 100. RealPage has undertaken this conduct with full and complete knowledge of its  
13 illegality. One of RealPage's pricing software's main architects, Jeffery Roper, is  
14 acutely familiar with the anticompetitive nature of coordinated algorithmic pricing  
15 within an industry. Before pioneering RealPage's software, Roper was Alaska  
16 Airlines' Director of Revenue Management when it and other airlines began using  
17 common software to share nonpublic planned routes and prices with each other, with  
18 the aim of heading off price wars. The Department of Justice's Antitrust Division  
19 ("DOJ") reached settlements or consent decrees for price fixing violations with eight  
20 airlines, including Alaska Airlines. Roper—who had his computer and documents  
21 seized by federal agents—relayed about that experience that, "We all got called up  
22 before the Department of Justice in the early 1980s because we were colluding." He  
23 adds that at the time, "we had no idea" that conduct was unlawful. Having now  
24 brought analogous coordinated algorithmic pricing to multifamily residential real  
25 estate leasing after the DOJ's airline settlements, however, Roper can no longer claim  
26 ignorance of the unlawful nature of this conduct.

27 101. Other former RealPage employees and individuals who were directly involved  
28 in creation of the original software—including CI 1—have expressed dismay with

1 the way RealPage has enabled Lessors to collectively raise rents at this breakneck  
2 pace. This collusion in turn has placed massive pressure on renters' efforts to keep  
3 roofs over their heads. CI 1, an early developer of RealPage's pricing software  
4 reflected that "these optimization systems are really efficient at extracting value and  
5 they will push things [as far as they can] until they start to break."

6 **"Plus Factors" Render the Market for Multifamily Residential Real Estate**  
7 **Leases Susceptible to the Formation, Maintenance, and Efficacy of a Cartel**

8 102. The market for the sale of multifamily residential real estate leases from  
9 Lessors to lessees is characterized by numerous features, referred to as "plus factors,"  
10 that render the industry susceptible to collusion, such that the formation,  
11 maintenance, and efficacy of a cartel is more likely. These include (1) high barriers  
12 to entry, (2) high barriers to exit, (3) market concentration, (4) inelastic consumer  
13 demand, (5) relative fungibility of residential real estate leases, (6) exchanges of  
14 competitively sensitive information among horizontal competitors, and (7) numerous  
15 opportunities to collude at trade associations and RealPage functions.

16 103. First, multifamily residential real estate properties owners and operators face  
17 significant entry barriers. These include the high cost of acquiring property,  
18 establishing a property management infrastructure, and ongoing costs of building  
19 maintenance and regulatory compliance. Even small multifamily rental properties  
20 cost millions of dollars to acquire. Large properties, such as those operated by  
21 Greystar, run into the hundreds of millions of dollars to own and manage and take  
22 several years and significant experience to build or acquire. Thus, new entrants into  
23 the residential real estate leasing market are unlikely to discipline cartel pricing.

24 104. Second, lessees of multifamily residential real estate properties face high exit  
25 barriers. Renters typically incur substantial cost and inconvenience when moving,  
26 and where price escalation is occurring in broad geographic areas, they might not  
27 have a lower priced option in reasonable proximity to where they currently live or  
28 work. As such, lessees cannot easily turn to alternative Lessors of multifamily

1 residential real estate properties to discipline cartel pricing.

2 105. Third, the demand for multifamily residential real estate property leases is  
3 relatively inelastic. The only realistic alternative to renting is buying, and for most  
4 renters, that is not an option financially or logistically. Thus, no reasonable substitutes  
5 exist to discipline cartel pricing.

6 106. Fourth, the market for residential real estate property leases is highly  
7 concentrated. Most major metropolitan areas are denominated by relatively few  
8 sellers, with many large corporations like Greystar having substantial presences in  
9 metropolitan areas throughout the United States.

10 107. Fifth, multifamily residential real estate properties are relatively fungible,  
11 particularly within classes of properties. That is, when controlling for certain high-  
12 level characteristics of properties—such as the number of bedrooms and bathrooms,  
13 amenities, location, or the age of the building—properties within those classes are  
14 relatively fungible. Lessors have explained that RealPage’s pricing software “is  
15 correctly looking at ‘like’ competitor properties and ‘truly comparing apples to  
16 apples’ as it relates to competitor apartment pricing.”

17 108. Sixth, RealPage’s participating Lessors, directly and using RealPage as a  
18 conduit, share competitively sensitive information with one another. In addition to its  
19 price-setting and lease renewal-staggering services, RealPage collects non-public  
20 data on multifamily residential real estate properties and creates benchmarking  
21 reports that allow for quick comparisons of a Lessor’s performance on occupancy  
22 and price for similar property classes vis-à-vis the industry. This function could not  
23 be recreated using any public, non-competitively sensitive sources as the advertised  
24 rates for residential real estate leases typically diverge from the actual rates.

25 109. Seventh, RealPage and participating Lessors have ample opportunities to  
26 collude.

27 110. Lessors have been involved in the development of RealPage’s pricing software  
28 from its inception. The original forms of this software were initially developed by

1 companies that were partially owned and controlled by Lessors, including Defendant  
2 Lessors Camden and Equity. CI 1, a former executive of one of the companies that  
3 developed the original software, confidentially explained that the company included  
4 Lessors in a “strategic customer council” that was “very involved in setting the  
5 strategic functionality” of the software. For example, the strategic customer council  
6 “advocated” for the inclusion of “lease expiration management” – a component of  
7 the software that adjusts pricing to increase prices for leases that would expire in  
8 times of higher overall supply, thereby allowing Lessors to coordinate supply levels  
9 and avoid competition.

10 111. Following RealPage’s acquisition of the software, RealPage and participating  
11 Lessors continue to routinely interact with one another, share information, and  
12 collaborate on the development of RealPage’s price setting mechanisms behind  
13 closed doors.

14 112. As just one example, RealPage operates a private RealPage User Group Forum,  
15 an association of some thousand participating Lessors, which, according to RealPage,  
16 aims “to improve communications between RealPage and the user [Lessor]  
17 community,” while “promot[ing] communication between users [Lessors]”  
18 themselves. Within that Forum is an “Idea Exchange,” where Lessors submit their  
19 own recommendations for changes or improvements to RealPage’s offerings, as well  
20 as provide comments on proposed changes that RealPage is considering  
21 implementing to its software offerings.

22 113. As another example, RealPage organizes certain in-person events and  
23 collaboration among participating Lessors. It invites some to serve on a “Steering  
24 Committee,” which liaises with certain subcommittees of the RealPage User Group  
25 Forum to ascertain Lessors’ suggestions for RealPage’s software offerings and with  
26 the explicit instruction to consider “the mutual benefit of all users.” RealPage also  
27 organizes a marquee annual, multi-day event called “RealWorld,” where Lessors  
28 gather along with approved partners and executives from RealPage to network,

1 exchange insights into key initiatives in the industry, and learn best practices for using  
2 RealPage tools. Over the past five years, those conferences have been held in Las  
3 Vegas, NV, Nashville, TN, Orlando, FL, and virtually during the Covid-19 pandemic.

4 114. RealPage has also invited Lessors to attend periodic “summits” to discuss  
5 RealPage’s pricing software with RealPage and with one another, covering topics  
6 including (1) “Competitive Rent Analysis” or “[m]ethods of establishing and  
7 maintaining amenity-based prices for each unit and floor plan, factoring in  
8 comparable peer pricing,” (2) “Supply Forecasts” and “Demand Forecasts,” as well  
9 as (3) RealPage’s “Pricing Engine,” or “[m]ethods to price units in real time based  
10 on statistically validated price elasticity models.”

11 115. Finally, industry trade associations offer RealPage and participating Lessors  
12 additional opportunities to conspire. As an illustrative example, the National  
13 Multifamily Housing Council (“NMHC”), which advertises itself as “the place where  
14 the leaders of the apartment industry come together to guide their future success,”  
15 holds several events every year, including in person “Apartment Strategy  
16 Conference,” an “Annual Meeting,” a “Fall Meeting,” hosted in cities including San  
17 Diego, CA, Las Vegas, NV, and Washington, DC. NMHC counts among its “Chair’s  
18 Circle Sponsors” RealPage, Greystar, and more participating Lessors. NMHC  
19 “tracks market conditions through NMHC member surveys as well as data from data  
20 provider partners,” to provide “industry benchmarks” on topics like “In Place Rent  
21 Per Square Foot,” “Rent Change – New Leases,” and “Rent Change – Renewals.”

22 116. Nearly fifty additional national and regional trade associations (or their local  
23 chapters) serve as conduits of the cartel, in the same way as NMHC by providing  
24 venues for RealPage and its participating Lessors to further their cartel’s goals.

25 117. National industry trade associations include: (1) Institute of Real Estate  
26 Management, (2) National Apartment Association, (3) National Association of  
27 Residential Property Managers, (4) Pension and Real Estate Association, and (5)  
28 Urban Land Institute.

1 118. Regional associations and chapters include: (1) Apartment Association of  
2 Greater Dallas, (2) Apartment Association of Greater Orlando, (3) Apartment  
3 Association of Greater Los Angeles, (4) Apartment Association of Metro Denver, (5)  
4 Apartment Association of Orange County, (6) Apartment Association of Southeast  
5 Texas, (7) Apartment Owners Association of California, Inc., (8) Arizona  
6 Multihousing Association, (9) Atlanta Apartment Association, (10) Austin  
7 Apartment Association, (11) Bay Area Apartment Association, (12) Berkeley  
8 Property Owners Association, (13) California Apartment Association, (14) California  
9 Business Properties Association, (15) California Landlord Association, (16)  
10 California Rental Housing Association, (17) Chicagoland Apartment Association,  
11 (18) Colorado Apartment Association, (19) East Bay Rental Housing Association,  
12 (20) Florida Apartment Association, (21) Georgia Apartment Association, (22)  
13 Houston Apartment Association, (23) Illinois Rental Property Owners Association,  
14 (24) Maryland Multi-Housing Association, (25) Massachusetts Apartment  
15 Association, (26) Miami Dade Real Estate Investors Association, (27) Mid-Atlantic  
16 Real Estate Investors Association, (28) Nevada State Apartment Association, (29)  
17 Nor Cal Rental Property Association, (30) North Central Florida Apartment  
18 Association, (31) Northwest Florida Apartment Association, (32) Oregon Apartment  
19 Association, (33) Oregon Rental Housing Association, (34) Portland Area Rental  
20 Owners Association, (35) Rental Housing Association of Washington, (36) San  
21 Antonio Apartment Association, (37) San Francisco Apartment Association, (38)  
22 South Coast Apartment Association, (39) South East Florida Apartment Association,  
23 (40) Southern California Rental Housing Association, (41) Southwest Florida  
24 Apartment Association, (42) Texas Apartment Association, (43) Washington Multi-  
25 Family Housing Association, and (44) Washington Landlord Association.

26 **CLASS ACTION ALLEGATIONS**

27 119. Plaintiffs bring this action on behalf of themselves and all others similarly  
28 situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) as



1 representatives of the Class, which is defined as follows:

2 All persons and entities in the United States and its territories that are  
3 direct purchasers of multifamily residential real estate leases from a  
4 Lessor participating in RealPage's pricing software and/or lease  
5 renewal staggering software programs, or from a division, subsidiary,  
6 predecessor, agent, or affiliate of such Lessor, at any time during the  
period of October 18, 2018 until the Defendants' unlawful conduct and  
its anticompetitive effects cease to persist.

7 120. The Class is so numerous that joinder of all members in this action is  
8 impracticable. There are tens of thousands if not hundreds of thousands of members  
9 in the proposed Class.

10 121. Plaintiffs' claims are typical of those of the Class.

11 122. Plaintiffs and all members of the Class were all injured by the same unlawful  
12 conduct, which resulted in all of them paying more for multifamily residential leases  
13 than they otherwise would have in a competitive market.

14 123. Plaintiffs will fairly and adequately protect and represent the interests of the  
15 Class. The interests of the Plaintiffs are not antagonistic to the Class.

16 124. Questions of law and fact common to the members of the Class will  
17 predominate over questions, if any, that may be individual to individual class  
18 members, since the Defendants have acted and refused to act on grounds generally  
19 applicable to the Class.

20 125. Questions of law and fact common to the Class include:

- 21 a. Whether Defendants have entered into a formal or informal  
22 contract, combination, conspiracy, or common understanding to  
23 artificially inflate price and/or artificially suppress supply of  
24 multifamily residential real estate leases from competitive levels;
- 25 b. If Defendants entered into such a formal or informal contract,  
26 combination, conspiracy, or common understanding, whether that  
27 conduct violates Section 1 of the Sherman Act under the *per se*, quick  
look, or rule of reason modes of analysis;
- 28 c. If Defendants entered into such a formal or informal contract,



1 combination, conspiracy, or common understanding, whether that  
2 conduct has in fact artificially inflated price and/or artificially  
3 suppressed supply of multifamily residential real estate leases from  
competitive levels;

4 d. The proper measure of damages; and

5 e. The contours of appropriate injunctive relief to remediate the  
6 anticompetitive effects of the challenged conduct in the future.

7 126. Plaintiffs are represented by counsel who are experienced in the prosecution  
8 of complex antitrust and unfair competition class actions.

9 127. Class action treatment is the superior method for the fair and efficient  
10 adjudication of the controversy in that, among other things, such treatment will permit  
11 a large number of similarly situated persons or entities to prosecute their common  
12 claims in a single forum simultaneously, efficiently, and without the unnecessary  
13 duplication of effort and expense that numerous individual actions would engender.  
14 The benefits of proceeding through the class mechanism, including providing injured  
15 persons or entities with a method of obtaining redress for claims that might not be  
16 practicable for them to pursue individually, substantially outweigh any difficulties  
17 that may arise in the management of this class action.

18 **COUNT ONE**

19 **Agreement in Restraint of Trade in Violation of Section 1 of the Sherman Act**

20 128. Plaintiffs repeat and reallege all previous allegations as if fully set forth herein.

21 129. Defendants have formed a cartel to artificially inflate the price of and  
22 artificially decrease the supply and output of multifamily residential real estate leases  
23 from competitive levels.

24 130. The Defendants' cartel has caused the Class to suffer overcharge damages.

25 131. There are no procompetitive justifications for the Defendants' cartel, and any  
26 proffered justifications, to the extent legitimate, could be achieved through less  
27 restrictive means.

28 132. The Defendants' cartel is unlawful under a per se mode of analysis. In the

1 alternative, the Defendants’ cartel is unlawful under either a quick look or rule of  
2 reason mode of analysis.

3 **PETITION FOR RELIEF**

4 Plaintiffs petition for the following relief:

5 A. A determination that this action may be maintained as a class action  
6 pursuant to Federal Rule of Civil Procedure 23, that Plaintiffs be appointed class  
7 representative, and that Plaintiff’s counsel be appointed as class counsel.

8 B. A determination that the conduct set forth herein is unlawful under  
9 Section 1 of the Sherman Act under either a *per se*, quick look, or rule of reason mode  
10 of analysis.

11 C. A judgment enjoining Defendants from engaging in further unlawful  
12 conduct.

13 D. An award of attorneys’ fees and costs.

14 E. An award of pre- and post-judgment interest on all amounts awarded;  
15 and

16 F. Such other relief as the Court deems just and equitable.

17 **REQUEST FOR A JURY TRIAL**

18 Plaintiffs request a trial by jury of all issues so triable.

19  
20 Dated: November 23, 2022

Respectfully submitted,

21 /s/ Gary I. Smith, Jr.

22 Gary I. Smith, Jr. (Bar No. 344865)

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\*motion for admission *pro hac vice*  
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