

Congress of the United States

Washington, DC 20515

November 14, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20850

The Honorable Jonathan Kanter
Assistant Attorney General, Antitrust Division
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Chair Khan and Assistant Attorney General Kanter,

We are writing to urge you to investigate potential anticompetitive practices by RealPage Inc., a multinational company that provides real estate owners and managers with rent-setting software.

RealPage has achieved a position of dominance in the industry through controversial acquisitions. In 2017, RealPage purchased its biggest competitor, Lease Rent Options (LRO).¹ This acquisition made RealPage the nation's most dominant provider of rent-setting software. RealPage clients control over 19 million² of the United States' 48.5 million total rental units, or just under 40 percent of all rental units in the country. The company's clients include Greystar and Equity Residential, two of the country's largest corporate landlords, as well as other large property management firms.

A recent investigation by ProPublica found that RealPage is using its amalgamation of rental data in coordination with its clients—property managers from across the country—in a manner that may violate the antitrust laws.³ According to ProPublica, RealPage collects “its clients’ internal rent data,” plugs that data into its proprietary YieldStar software that “deploys an algorithm—a set of mathematical rules—to analyze a trove of data RealPage gathers from clients, including private information on what nearby competitors charge,” and then “uses data analytics to suggest daily prices for open units.”⁴

Some experts argue that landlords’ knowing sharing of nonpublic data with RealPage for use in its algorithm could rise to the level of coordinated pricing among competitors.⁵ In fact, shortly after the release of the ProPublica investigation, tenants filed a putative class action complaint against RealPage and nine landlords in the Southern District of California, alleging the “Defendants have formed a cartel to artificially inflate the price of and artificially decrease the supply and output of multifamily residential real estate leases from competitive levels.”⁶ If a price-fixing agreement of this nature among competing landlords and coordinated by RealPage is

¹ RealPage News, “RealPage® to Acquire Lease Rent Options, LRO®,” *RealPage*, February 27, 2017, <https://www.realpage.com/news/realpage-to-acquire-lease-rent-options/>.

² “About Us,” *RealPage*, <https://www.realpage.com/company/>.

³ Heather Vogell, “Rent Going Up? One Company’s Algorithm Could Be Why,” *ProPublica*, October 5, 2022, <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent/> [hereinafter *Vogell Oct. 5, 2022 ProPublica Report*].

⁴ *Ibid.*

⁵ *Ibid.*; Heather Vogell, “Company That Makes Rent-Setting Software for Apartments Accused of Collusion, Lawsuit Says,” *ProPublica*, October 21, 2022, <https://www.propublica.org/article/realpage-accused-of-collusion-in-new-lawsuit/>.

⁶ Class Action Complaint ¶ 96, at 22, *Bason v. RealPage, Inc.*, No. 3:22-cv-01611-WQH-MDD (S.D. Cal., filed Oct. 18, 2022), <https://www.hausfeld.com/media/550bhzyr/realpage-complaint-filed.pdf>; see also David Holtzman, “Rental Pricing Co., Landlords Accused Of

proved, it would likely be a per se violation of Section 1 of the Sherman Act and subject to potential criminal prosecution.⁷ And if, as alleged, RealPage and its client landlords are coordinating supracompetitive rental rates, they are responsible for driving up rent in markets across the United States.

The ProPublica investigation found that RealPage clients regularly charge above-market rental rates, and 90 percent of property managers and landlords follow the price increases recommended by the software. This revelation, coupled with the high concentration of rental property ownership in cities across the country, suggest that RealPage and its clients' use of YieldStar could be contributing to skyrocketing rents across the United States.⁸ For example, in one Seattle neighborhood, just ten property managers oversee 70 percent of the apartments in the neighborhood—and all of them use YieldStar.⁹ According to ProPublica, one RealPage client said that its buildings “outperformed their markets by 4.8 percent,” and a RealPage executive bragged that YieldStar “pushes you to go places that you wouldn't have gone if you weren't using it.”¹⁰

As ProPublica noted, “[o]ne of YieldStar's main architects” is Jeffrey Roper, a “business executive who ha[s] personal experience with . . . antitrust prosecution” for his role as “Alaska Airlines' director of revenue management when it and other major airlines began developing price-setting software in the 1980s.”¹¹ As explained by ProPublica, “competing airlines began using common software to share planned routes and prices with each other before they became public,” which the Department of Justice later alleged “helped head off price wars that would have lowered ticket prices,” thereby costing customers “more than a billion dollars between 1988 and 1992.”¹² Ultimately, in 1994, the Department of Justice settled antitrust enforcement actions against the nation's largest airlines for this conduct, identifying over 50 separate price-fixing agreements facilitated by the software.¹³ As then-Assistant Attorney General for the Antitrust Division, Anne K. Bingaman, stated: “The airlines used the [software] to carry on conversations just as direct and detailed as those traditionally conducted, by conspirators over the telephone or in hotel rooms. Although their method was novel, their conduct amounted to price fixing, plain and simple.”¹⁴

Our constituents cannot afford to have anticompetitive—and potentially per se illegal—practices drive up prices for essential goods and services at a time when a full-time, minimum-wage salary does not provide a worker enough money to rent a two-bedroom apartment in any city across this country.¹⁵ In America today, 1 in 5

Cartel Activity,” *Law360*, October 19, 2022, <https://www.law360.com/articles/1541346/rental-pricing-co-landlords-accused-of-cartel-activity/>.

⁷ See 15 U.S.C. § 1.

⁸ Abha Bhattarai, Chris Alcantara & Andrew Van Dam, “Rents are Rising Everywhere. See How Much Prices are Up in Your Area,” *The Washington Post*, April 21, 2022, <https://www.washingtonpost.com/business/interactive/2022/rising-rent-prices/>.

⁹ Heather Vogell, “Rent Going Up? One Company's Algorithm Could Be Why,” *ProPublica*, October 5, 2022, <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent/>.

¹⁰ [Vogell Oct. 5, 2022 ProPublica Report](#).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ “Justice Department Settles Airlines Price Fixing Suit, May Save Consumers Hundreds of Millions of Dollars,” *Department of Justice*, March 17, 1994, https://www.justice.gov/archive/atr/public/press_releases/1994/211786.htm.

¹⁴ *Ibid.*

¹⁵ Andrew Aurand, Dan Emmanuel, Ikra Rafi, Dan Threet, & Diane Yentel, “Out of Reach: The High Cost of Housing,” *National Low Income Housing Coalition*, 2021, https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf.

renters pay over half of their income on housing,¹⁶ and the share of Americans who rent is on the rise.¹⁷ Rent inflation is also a major driver of overall inflation, with the September Consumer Price Index (CPI) report revealing that rent rose 7.2 percent year-over-year—the highest rate in 40 years.¹⁸

The situation is even worse for new leases. In March 2022, the median rent for a new lease was up 18 percent over the previous year nationally.¹⁹ Some areas of the country are seeing even higher rental increases. Chicago and Boston are seeing over 20 percent rent price increases year-over-year,²⁰ and some cities have seen rents rise as high as 43 percent since March 2020.²¹

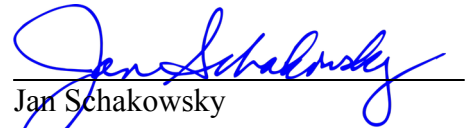
Meanwhile, corporate landlords are raking in profits. The ten largest publicly traded apartment companies reported profits soaring by 57 percent to nearly \$5 billion in 2021.²²

The rental affordability crisis in the United States is increasingly dire for Americans. The Federal Trade Commission and the Department of Justice have a responsibility to ensure anticompetitive practices are not contributing to already exorbitant rent costs for everyday people, and we respectfully ask that you open an investigation into RealPage.

Sincerely,



Jesús G. "Chuy" García
Member of Congress



Jan Schakowsky
Member of Congress

¹⁶ Will Fischer, Sonya Acosta, & Erik Gartland, “More Housing Vouchers: Most Important Step to Help More People Afford Stable Homes,” *Center on Budget Policy Priorities*, May 13, 2021, <https://www.cbpp.org/research/housing/more-housing-vouchers-most-important-step-to-help-more-people-afford-stable-homes/>.

¹⁷ Julie Yixia Cai & Shawn Fremstad, “Housing Affordability and Insecurity Before and During the Pandemic,” *Center for Economic and Policy Research*, September 29, 2020, <https://cepr.net/housing-affordability-and-insecurity-before-and-during-the-pandemic/>.

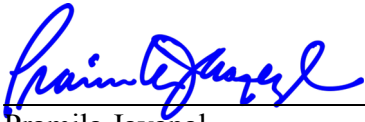
¹⁸ CPI’s measure of rent inflation does not factor in new rentals and leases, and does not account for regional variation.

¹⁹ Lily Katz, “Rental Market Tracker: Rents Are Growing Half as Fast as They Were Six Months Ago,” *Redfin News*, October, 13, 2022, <https://www.redfin.com/news/redfin-rental-report-september-2022/>.

²⁰ Jiayi Xu & Danielle Hale, “August Rental Report: Affordability Continues to Worsen,” *Realtor.com*, September 22, 2022, <https://www.realtor.com/research/august-2022-rent/>.

²¹ Apartment List Research Team, “Apartment List National Rent Report,” *Apartment List*, September 26, 2022, <https://www.apartmentlist.com/research/national-rent-data/>.

²² Irina Ivanova, “Corporate landlords' profits have surged despite eviction ban fears,” *CBS News*, June 7, 2022, <https://www.cbsnews.com/news/rent-apartment-housing-price-landlords-profits-eviction/>.



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Member of Congress



Cori Bush
Member of Congress



David N. Cicilline
Member of Congress



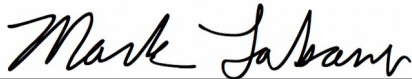
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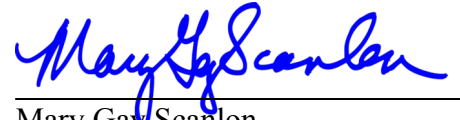
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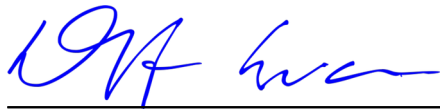
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Member of Congress



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