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

GABRIEL NAVARRO, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

REALPAGE, INC.; GREYSTAR REAL
ESTATE PARTNERS, LLC; CUSHMAN &
WAKEFIELD, INC.; PINNACLE
PROPERTY MANAGEMENT SERVICES,
LLC; BH MANAGEMENT SERVICES,
LLC; CAMPUS ADVANTAGE, INC.;
CARDINAL GROUP HOLDINGS LLC; CA
VENTURES GLOBAL SERVICES, LLC;
D.P. PREISS COMPANY, INC.; THE
MICHAELS ORGANIZATION, LLC and
INTERSTATE REALTY MANAGEMENT
COMPANY,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 Plaintiff brings this action on behalf of himself individually and on behalf of a plaintiff
 2 class consisting of all persons who leased student housing properties directly from any Lessor
 3 Defendant or Co-Conspirator from January 1, 2010 through the present. Plaintiff brings this
 4 action for treble damages and injunctive relief under Section 1 of the Sherman Act. Plaintiff
 5 demands a trial by jury.

6 I. NATURE OF THE ACTION

7 1. Plaintiff David Navarro challenges an unlawful agreement among lessors of
 8 student housing properties (“Lessors”) to artificially inflate the prices of student housing across
 9 the United States, including specifically in college towns such as Seattle, Washington; Eugene,
 10 Oregon; Tucson, Arizona; Salt Lake City, Utah; Ann Arbor, Michigan; Columbus, Ohio; and
 11 Gainesville, Florida.

12 2. In the real estate community, there is a recognized market for student housing. In
 13 the normal course, the market for student housing real estate leases is “challenging”¹ and “super
 14 competitive,”² and Lessors of student housing would compete according to their independent
 15 assessment of supply and demand. According to one Defendant Lessor’s executive, “There’s a
 16 lot of different firms out there for a small subset of the population . . . you only have basically
 17 the university population of your specific area.”³ Lessors have a natural incentive to lower their
 18 prices to attract renters from their competitors and maximize occupancy of their properties. Prior
 19 to the onset of the conspiracy at issue, this came in the form of rental concessions (“one month
 20 free”) or giveaways (raffle prizes or gift cards)⁴, to the benefit of student renters.

21 3. However, in approximately 2009,⁵ more and more Lessors replaced their
 22 independent pricing and supply decisions with collusion as Defendant RealPage, Inc.

24 ¹ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022)..

25 ² <https://www.realpage.com/videos/student-leasing-helps-preiss-compete/> (video) (last visited Nov. 2, 2022).

26 ³ <https://www.realpage.com/videos/student-leasing-helps-preiss-compete/> (video) (last visited Nov. 2, 2022).

27 ⁴ <https://www.realpage.com/analytics/breakdown-student-housing-giveaways/> (last visited Nov. 2, 2022).

28 ⁵ *Driving Outperformance: Ensuring Success with Revenue Management*, Presentation by Keith Dunkin of Yieldstar, at the 2014 NAA Student Housing Conference & Exposition, <https://www.naa.org/sites/default/files/naa-documents/meetings/student-housing/D1-Ensuring-your-success.pdf> (last visited Nov. 2, 2022).

1 (“RealPage”) introduced its “Revenue Management” program specifically within the context of
 2 student housing. Lessors agreed to use RealPage software that collects real-time pricing and
 3 supply levels, and then received forward-looking, unit-specific pricing and supply
 4 recommendations from that third party, based on a common algorithm using shared data. Lessors
 5 also agreed to follow these recommendations, on the expectation that competing Lessors would
 6 do the same. As the same industry executive stated, because the industry is so competitive, “we
 7 absolutely have to have a software and technology provider that allow us to be above and beyond
 8 the rest of the market and specific to students.”⁶

9 4. RealPage provided the platform and the algorithm for collusion, which granted
 10 Lessors the unprecedented ability to “[f]acilitate collaboration among operations”⁷ and “track
 11 your competition’s rent with precision.”⁸ Lessors submitted to RealPage data that is “as fine and
 12 granular as bits of sand,”⁹ including rents charged *for each unit and each floor plan*, lease terms,
 13 amenities, move-in and move-out dates. RealPage takes this data—“literally hundreds of
 14 variables,” according to founder and former CEO Steve Winn¹⁰—and recommends a price for
 15 each unit that a Lessor owns, giving the Lessor the courage to charge an inflated price by the
 16 implicit assurance that all of their competitors were doing the same.

17 5. In a presentation at the 2014 National Apartment Association Student Housing
 18 Conference & Exposition, RealPage explained that their revenue management tool “utilizes the
 19 competitive data” by “[c]omparing the effective rent you achieve to the top and bottom of the
 20
 21
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 23

24 ⁶ <https://www.realpage.com/videos/student-leasing-helps-preiss-compete/> (video) (last visited Nov. 2, 2022).

25 ⁷ *Driving Outperformance: Ensuring Success with Revenue Management*, Presentation by Keith Dunkin of
 26 Yieldstar, at the 2014 NAA Student Housing Conference & Exposition, <https://www.naahq.org/sites/default/files/naa-documents/meetings/student-housing/D1-Ensuring-your-success.pdf> (last visited Nov. 2, 2022).

27 ⁸ <https://www.realpage.com/videos/revenue-management-software-oveview-sop/> (video) (last visited Nov. 2,
 2022).

28 ⁹ <https://www.realpage.com/videos/yieldstar-helps-top-nmhc-companies/> (video) (last visited Nov. 2, 2022).

¹⁰ 2020 Q2 Earnings Call Transcript.

competitive range for your selected competitors.”¹¹ RealPage even gave a sneak peek of the dashboard that property managers have access to, which included a view by competitor:¹²

Operational Insight

The screenshot shows a dashboard for 'Nationwide Vista' with various filters and a data table. The table includes columns for Property Information, Property Statistics, In Place, Forecast, Recent Avg Eff, and Yesterday. Two rows are visible: '1B1B-A2A3*' and '1B1B-Cabernet*'. The '1B1B-A2A3*' row shows 45 total units, 44 occupied, 98% occupancy, 96% leased, 94% sustainable capacity, 36% rate type cap, 16 capacity units, 2 available units, 1 vacant, 1 ON, 8 TBD, 12 units, 75% of capacity, 0 MTM, 4 leases needed, 0 yesterday shortfall, 0% of capacity, 0 shortfall at rec, 0% of capacity, 0 lease change, \$1,196 rent, 02/28/2013 last lease date, 90% mkt pos, -1% 28 day change, \$1,189 rent, 88% mkt pos, and 03/02/2013 date of last change. The '1B1B-Cabernet*' row shows 10 total units, 9 occupied, 90% occupancy, 80% leased, 94% sustainable capacity, 60% rate type cap, 6 capacity units, 2 available units, 1 vacant, 1 ON, 1 TBD, 4 units, 67% of capacity, 0 MTM, 2 leases needed, 0 yesterday shortfall, 0% of capacity, 0 shortfall at rec, 0% of capacity, 0 lease change, \$1,278 rent, 10/02/2012 last lease date, 92% mkt pos, 0% 28 day change, \$1,240 rent, 85% mkt pos, and 03/02/2013 date of last change.

Property Information		Property Statistics										In Place			Forecast				Recent Avg Eff				Yesterday				
Floor Plan	Total Units	Occ Units	% Occup	% Leased	Sustainable Capacity	Rate Type Cap	Capacity Units	Available Units	Vacant	ON	TBD	Units	% of Capacity	MTM	Leases Needed	Yesterday Shortfall	% of Capacity	Shortfall at Rec	% of Capacity	Lease Change	Rent	Last Lease Date	Mkt Pos	28 Day % Change	Rent	Mkt Pos	Date of Last Change
1B1B-A2A3*	45	44	98%	96%	94%	36%	16	2	1	1	8	12	75%	0	4	0	0%	0	0%	0	\$1,196	02/28/2013	90%	-1%	\$1,189	88%	03/02/2013
1B1B-Cabernet*	10	9	90%	80%	94%	60%	6	2	1	1	1	4	67%	0	2	0	0%	0	0%	0	\$1,278	10/02/2012	92%	0%	\$1,240	85%	03/02/2013

6. RealPage emphasized in presentations that it had designed specific revenue management tools customized for the student housing market:¹³

Revenue Management For Student

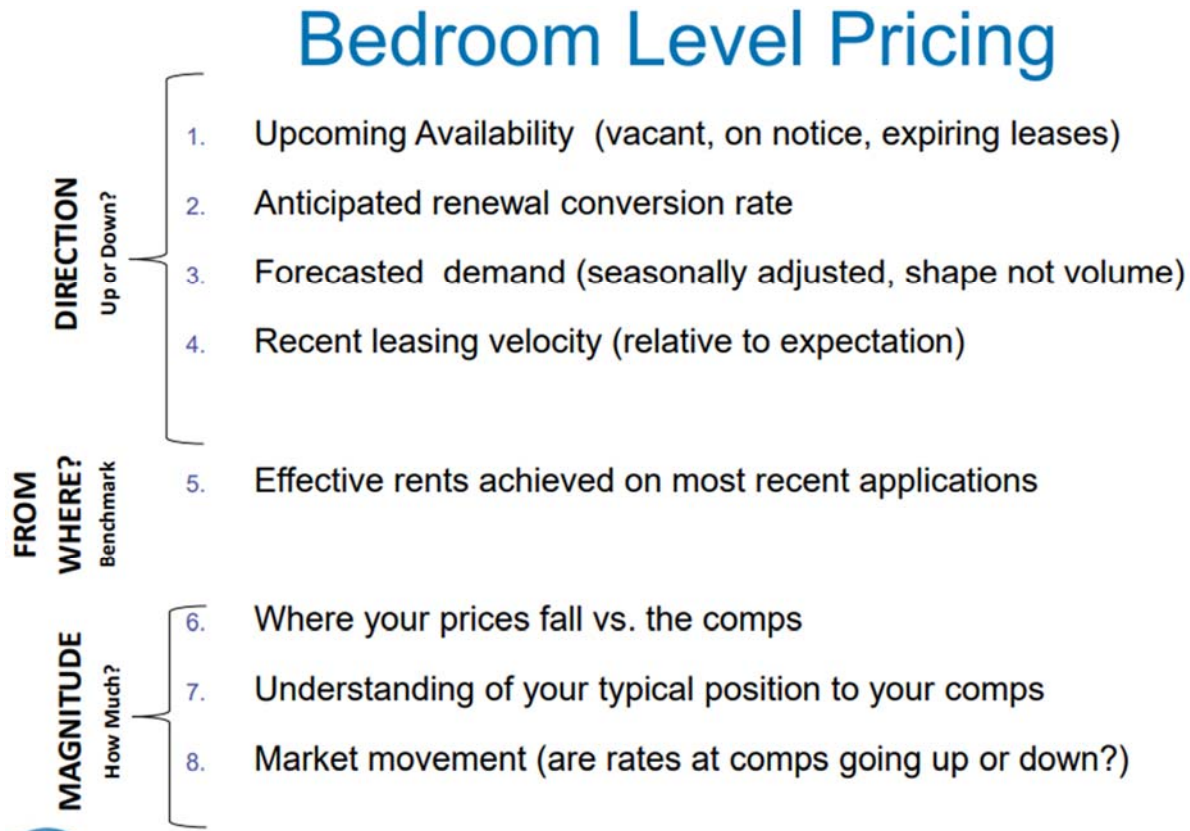
- Designed specifically for Student Living
- Provides by the bed or unit pricing
- Recognizes the annual lease up
- Price centrally but leverage on site expertise
- Deployed in partnership with leading institutional investors, management providers and owner operators

¹¹ *Driving Outperformance: Ensuring Success with Revenue Management*, Presentation by Keith Dunkin of Yieldstar, at the 2014 NAA Student Housing Conference & Exposition, <https://www.naahq.org/sites/default/files/naa-documents/meetings/student-housing/D1-Ensuring-your-success.pdf> (last visited Nov. 2, 2022).

¹² *Id.*

¹³ <https://www.naahq.org/sites/default/files/naa-documents/meetings/student-housing/D1-Ensuring-your-success.pdf> (last visited Nov. 2, 2022).

7. Consistent with the specific needs of the student housing market, RealPage provided pricing information for student housing providers that allowed them to closely analyze their pricing in comparison to their competitors at a bedroom-by-bedroom level:



8. Similarly, a company named Rainmaker Group launched in 2014 a revenue management program called “LRO Student” that was specifically designed for the student housing market.¹⁴ LRO Student took into account the unique aspects of the student housing market in projecting prices, including that individual units are often leased by bed and that tenants are limited in the number of times they will renew before they graduate. Competitors would input property data and their competitive environments. The application’s pricing engine would use the data input by multiple users to calculate the best price for the market, and would

¹⁴ <https://studenthousingbusiness.com/the-price-is-right/> (last visited Nov. 2, 2022).

1 provide users with updated prices on a daily basis. The LRO assets of Rainmaker Group were
2 subsequently acquired by RealPage for \$300 million in 2017.¹⁵

3 9. Together, RealPage and Lessors have successfully driven rents higher for students
4 across the country. In a press release, RealPage stated its revenue management software yielded
5 a 2% to 7% revenue outperformance in the market.¹⁶ One Lessor Defendant stated in a video
6 testimonial on RealPage’s website that “over the last 10 years, spanning about 150 projects, the
7 services that [RealPage] provided have equated to a return on investment of about 300% on
8 about 90% of those projects.”¹⁷

9 10. The conspiracy Plaintiff and members of the Class challenge is unlawful under
10 Section 1 of the Sherman Act. Plaintiff brings this action to recover damages, trebled, as well as
11 injunctive and other appropriate relief, detailed infra, on behalf of all others similarly situated.

12 II. PARTIES

13 11. Plaintiff Gabriel Navarro is a resident of the State of Washington and a student at
14 the University of Washington. Plaintiff Navarro rented a multifamily residential unit at 4126 12th
15 Ave NE, Seattle, Washington beginning in September 2022 through the present. The property is
16 operated by Lessor Conspirator GEDR LakeView LLC in Seattle, Washington. Plaintiff Navarro
17 has paid higher rental prices by reason of the violation alleged herein.

18 12. Defendant RealPage, Inc. is a Delaware corporation headquartered in Richardson,
19 Texas. RealPage provides software and services to the residential real estate industry, including
20 the revenue management software described herein.

21 13. Lessor Defendant Greystar Real Estate Partners, LLC (“Greystar”) is a Delaware
22 limited liability corporation headquartered in Charleston, South Carolina. It is the largest
23 manager of multifamily rental real estate in the United States, and the fourth largest student
24

25
26 ¹⁵ <https://seekingalpha.com/article/4053859-realpage-to-acquire-rainmaker-group-multifamily-lro-assets> (last
visited Nov. 2, 2022).

27 ¹⁶ RealPage Press Release, *RealPage Hosts Executive Student Summit*, (May 8, 2019), [https://www.real
page.com/news/realpage-hosts-executive-student-summit/](https://www.realpage.com/news/realpage-hosts-executive-student-summit/) (last visited Nov. 2, 2022).

28 ¹⁷ <https://www.realpage.com/videos/student-housing-software-review-greystar/> (video) (last visited Nov. 2,
2022).

1 housing manager in the United States.¹⁸ It manages over 120,600 student beds globally, serves
 2 more than 80 universities, and manages \$12.4 billion in student housing assets.¹⁹ Greystar is one
 3 of RealPage’s clients and uses its revenue management software.

4 14. Lessor Defendant Cushman & Wakefield Inc. (“Cushman & Wakefield”) is a
 5 Delaware corporation headquartered in New York, New York. It is the third largest commercial
 6 real estate services firm in the world²⁰ with a dedicated Student Housing Team.²¹ Its subsidiary,
 7 Pinnacle Property Management Services, LLC (“Pinnacle”) is a Delaware limited liability
 8 corporation headquartered in Addison, Texas. As of 2020, Pinnacle managed more than 169,000
 9 units across 839 properties.²² Pinnacle is one of RealPage’s clients and uses its revenue
 10 management software.

11 15. Lessor Defendant BH Management Services, LLC is a Florida limited liability
 12 corporation headquartered in Des Moines, Iowa. BH Management Services was combined with
 13 another student housing property management company, Campus Evolution Villages (which
 14 included the Campus Evolution Villages and Pinnacle Campus Living brands), in 2020 to form
 15 B.Hom Student Living. B.Hom Student Living is the fourteenth largest student housing manager
 16 in the United States²³ and manages over 30,000 beds across 40+ universities.²⁴ Pinnacle Campus
 17 Living was one of RealPage’s clients and uses its revenue management software. B.Hom Student
 18 Living was also one of RealPage’s clients and uses its revenue management software.

19 16. Lessor Defendant Campus Advantage, Inc. (“Campus Advantage”) is a Delaware
 20 corporation headquartered in Austin, Texas. It is the nation’s fifteenth largest student housing
 21

22 ¹⁸ <https://editions.mydigitalpublication.com/publication/?m=58489&i=733087&p=92&ver=html5> (last visited
 23 Nov. 2, 2022).

¹⁹ <https://www.greystar.com/product-specialties/student-housing> (last visited Nov. 2, 2022).

²⁰ <https://sec.report/Ticker/CWK> (last visited Nov. 2, 2022).

²¹ <https://multifamily.cushwake.com/Specialties/Student%20Housing> (last visited Nov. 2, 2022).

²² <https://ir.cushmanwakefield.com/news/press-release-details/2020/Cushman--Wakefield-to-Acquire-Multifamily-Property-Management-Leader-Pinnacle-Property-Management-Services/default.aspx> (last visited
 26 Nov. 2, 2022).

²³ <https://editions.mydigitalpublication.com/publication/?m=58489&i=733087&p=92&ver=html5> (last visited
 27 Nov. 2, 2022).

²⁴ <https://rew-online.com/timberline-acquires-new-columbia-university-dorm-for-84m/> (last visited Nov. 2,
 28 2022).

1 manager.²⁵ It specializes in property management for student housing communities and has over
2 240 communities in 22 states.²⁶ Campus Advantage is one of RealPage’s clients and uses its
3 revenue management software.

4 17. Lessor Defendant Cardinal Group Holdings, LLC (“Cardinal Group”) is a
5 Delaware limited liability corporation headquartered in Denver, Colorado. It provides property
6 management services to on-and-off campus student housing as well as conventional commercial
7 real estate and affordable housing units in 38 states, and employs over 2,000 people.²⁷ Cardinal
8 Group is one of RealPage’s clients and uses its revenue management software.

9 18. Lessor Defendant CA Ventures Global Services, LLC (“CA Ventures”) is a
10 Delaware limited liability corporation headquartered in Chicago, Illinois. It was founded in 2004
11 as a niche investor and operator of student apartments, and has since delivered 42,658 beds in
12 over 48 university markets. It employs over 527 people.²⁸ CA Ventures is one of RealPage’s
13 clients and uses its revenue management software.

14 19. Lessor Defendant D.P. Preiss Company, Inc. (“Preiss Company”) is a North
15 Carolina corporation headquartered in Raleigh, North Carolina. It is the ninth largest manager of
16 student housing assets in the United States.²⁹ In 2021, it had \$1.75 billion in transaction
17 volume.³⁰ Preiss Company is one of RealPage’s clients and uses its revenue management
18 software.

19 20. Lessor Defendant The Michaels Organization, LLC is a Delaware limited liability
20 corporation headquartered in New Jersey. Interstate Realty Management Company (“Interstate
21 Realty”) is one of the six operating companies that comprise The Michaels Organization and as
22
23

24 ²⁵ <https://editions.mydigitalpublication.com/publication/?m=58489&i=733087&p=92&ver=html5> (last visited
Nov. 2, 2022).

25 ²⁶ <https://campusadv.com/portfolio/> (last visited Nov. 2, 2022).

26 ²⁷ <https://cardinalgroupp.com/> (last visited Nov. 2, 2022).

27 ²⁸ <https://www.ca-ventures.com/real-estate/student> (last visited Nov. 2, 2022).

28 ²⁹ <https://editions.mydigitalpublication.com/publication/?m=58489&i=733087&p=92&ver=html5> (last visited
Nov. 2, 2022).

³⁰ [https://studenthousingbusiness.com/shb-interview-preiss-co-founder-and-ceo-donna-preiss-discusses-
strategy-and-goals-moving-forward/](https://studenthousingbusiness.com/shb-interview-preiss-co-founder-and-ceo-donna-preiss-discusses-strategy-and-goals-moving-forward/) (last visited Nov. 2, 2022).

1 of 2019, does business under the Michaels' name brand.³¹ Interstate Realty is a New Jersey
2 corporation headquartered in Marlton, New Jersey. Interstate Realty is one of RealPage's clients
3 and uses its revenue management software.

4 21. Lessor Conspirator GEDR LakeView LLC is a Delaware limited liability
5 corporation headquartered in Charleston, SC. GEDR Lakeview LLC is affiliated with Defendant
6 Greystar, who is one of RealPage's clients and uses its revenue management software.

7 III. JURISDICTION AND VENUE

8 22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
9 1337, as this action arises out of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and
10 Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15 and 26).

11 23. This Court has personal jurisdiction over Defendants under Section 12 of the
12 Clayton Act (15 U.S.C. § 22), Federal Rule of Civil Procedure 4(h)(1)(A), and Washington's
13 long-arm statute, the Revised Code of Washington § 4.28.185.

14 24. Defendants, directly or through their divisions, subsidiaries, predecessors, agents,
15 or affiliates, engage in interstate commerce in the sale of student housing real estate leases.

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

21 IV. FACTUAL BACKGROUND

22 A. The Market For Student Housing Real Estate Leases Is "Highly Competitive" In 23 The Normal Course

24 26. The relevant product market is the market for the lease of student housing real
25 estate and the relevant geographic market is the United States, including discrete geographic
26

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28

³¹ <https://www.newswire.com/news/the-michaels-organization-announces-new-corporate-branding-20849890>
(last visited Nov. 2, 2022).

1 submarkets in college towns including Seattle, Washington; Eugene, Oregon; Tucson, Arizona;
2 Salt Lake City, Utah; Ann Arbor, Michigan; Columbus, Ohio; and Gainesville, Florida.

3 27. From the perspective of the consumer, student housing rental apartment units are
4 not economic substitutes for multifamily rental apartment units because, among other reasons,
5 student housing properties often grant student tenants a more flexible leasing cycle that aligns
6 with the school year, the ability to lease by the bed rather than the unit, and are often more
7 affordable than multifamily units since many students do not work full time. Student housing
8 units are also not an economic substitute for apartments, condominiums, or homes for purchase
9 because, among other reasons, purchase of real estate requires the ability to make a substantial
10 down payment and to obtain financing.

11 28. Industry participants recognize student housing as a unique market with unique
12 challenges; indeed, all Defendants named in this action have personnel, webpages, and services
13 specific and unique to student housing. Mike Peter, President and CEO of Campus Advantage,
14 said in a video testimonial about RealPage's services, "Student is a specialty niche. And while
15 there are many similarities obviously between accounting needs between what's going on with
16 the multifamily and student housing, we do have some unique and often time-sensitive needs that
17 maybe they don't experience in the multi-family world."³²

18 29. Researchers also recognize student housing as a separate market. "Student
19 housing has several unique characteristics that separate it from market-rate traditional
20 multifamily."³³

21 Student housing has several unique characteristics that separate it
22 from market-rate traditional multifamily. Student housing real
23 estate is located around or on college campuses and is targeted
24 towards undergraduate or graduate students. It is primarily rent per
25 bed although some rents are conducted on a rent per square foot
26 basis for graduate-level targeted properties. Due to the tenants
being students, leases typically require a guarantor and leases are
between nine and twelve months. The leasing cycle is focused
around the academic year with all leases beginning before the start

27 ³² <https://www.realpage.com/videos/realpage-student-delivers-outstanding-quality/> (video) (last visited Nov. 2,
2022).

28 ³³ Student Housing: An Attractive Alternative to Multifamily, ORG Research Team: March 28, 2022.

1 of the academic year and expiring at the end of the academic year
 2 or after the summer term and with very small periods of downtime.
 3 Turnover costs at student housing properties are generally more
 4 expensive due to the wear that students put on the units. The
 industry rule of thumb is that turnover costs are \$150 per bed
 however this can differ based on the market or tenant base.³⁴

5 30. Revenue management services also regard student housing differently than other
 6 forms of rental housing. RealPage states on its website, “Student housing management has its
 7 own set of unique challenges. From the constant turn to planning shared rent payment
 8 responsibilities, student housing is about as different as it gets in rental housing.”³⁵ Dave
 9 McKenna, vice president of Student Living at RealPage, stated, “Student housing has some of
 10 the most demanding operational needs in the multifamily industry.”³⁶ Competing providers of
 11 revenue management software often specialize their software for student housing by having a
 12 different leasing cycle, leasing by the bed rather than by the unit, accounting for limited renewals
 13 of the same tenant, and a smaller customer base that is “limited to the student populations of
 14 nearby schools and can be even further limited by on-campus housing requirements and
 15 enrollment changes.”³⁷

16 31. The Rainmaker Group, another revenue management firm that once competed
 17 with RealPage, also recognized the student housing market as distinct. In 2013, The Rainmaker
 18 Group’s VP of Strategic Initiatives Steve Tappert likened the difference between leasing a
 19 conventional multifamily property and a student housing property to “the difference between
 20 waiting for a train and waiting for a cruise ship. If you miss your train, you may wait a couple of
 21 minutes for the next one. If you miss your ship, you will be waiting at the dock for quite a
 22 while.”³⁸ When Tappert saw his multifamily clients trying to use conventional multifamily
 23

24 ³⁴ <http://www.orgpm.com/Student%20Housing%20Thought%20Piece%20Final.pdf> (last visited Nov. 2, 2022).

25 ³⁵ <https://www.realpage.com/videos/student-housing-management-renting-to-college-students/> (last visited Nov.
 2, 2022).

26 ³⁶ <https://www.realpage.com/news/realpage-announces-launch-of-prelease-management-for-student-living/> (last
 visited Nov. 2, 2022).

27 ³⁷ *The Price Is Right*, STUDENT HOUSING BUS. (Feb. 22, 2013), [https://studenthousingbusiness.com/the-price-is-
 right/](https://studenthousingbusiness.com/the-price-is-right/) (last visited Nov. 2, 2022).

28 ³⁸ *The Price Is Right*, STUDENT HOUSING BUS. (Feb. 22, 2013), [https://studenthousingbusiness.com/the-price-is-
 right/](https://studenthousingbusiness.com/the-price-is-right/) (last visited Nov. 2, 2022).

1 revenue management software on their student housing platforms, he stated, “You can’t just
2 shoehorn a multifamily solution onto a student housing asset—it won’t work.”³⁹

3 32. In fact, The Rainmaker Group was among the first in the industry to offer a
4 revenue management product engineered specifically for student housing in 2012, called LRO
5 Student.⁴⁰ One client, Wood River Properties, LLC, stated “LRO essentially revolutionized a key
6 part of our business: pricing units.”⁴¹ In 2017, RealPage made a bid to acquire LRO and its
7 revenue pricing capabilities. The DOJ scrutinized the deal, as RealPage would be acquiring its
8 only significant competitor. However, to the surprise of even the architect of RealPage’s revenue
9 management software, it was eventually permitted to proceed for \$300 million.⁴² Before the
10 acquisition, RealPage was pricing 1.5 million units. Adding LRO’s data would add another 1.5
11 million, doubling RealPage’s reach, according to founder and then-CEO Steve Winn.⁴³

12 33. The student housing real estate lease market satisfies the test for market definition
13 used by federal antitrust enforcement agencies, widely known as the “SSNIP test.” The test asks
14 whether a hypothetical monopolist in a proffered market could profitably impose a small but
15 significant (typically 5%), non-transitory increase in price (a “SSNIP”), without causing a
16 sufficient number of customers to switch to other products or services such that the SSNIP would
17 be unprofitable to the monopolist. If the SSNIP is profitable, the market is properly defined. If
18 the SSNIP is not profitable, the market is too narrowly defined, and does not encompass
19 sufficient economic substitutes.

20 34. Here, the SSNIP test is satisfied, and the market is properly defined. As described
21 above and below, pursuant to the Lessors’ agreement not to compete on price, Lessors are able to
22

23
24 ³⁹ *The Price Is Right*, STUDENT HOUSING BUS. (Feb. 22, 2013), <https://studenthousingbusiness.com/the-price-is-right/> (last visited Nov. 2, 2022).

25 ⁴⁰ <https://www.multihousingnews.com/the-rainmaker-group-launches-industrys-first-revenue-management-product-engineered-specifically-for-student-housing/> (last visited Nov. 2, 2022).

26 ⁴¹ <https://seekingalpha.com/article/4053859-realpage-to-acquire-rainmaker-group-multifamily-lro-assets> (video, at 4:31) (last visited Nov. 2, 2022).

27 ⁴² ProPublica article (Jeffrey Roper stated, “I was surprised the DOJ let that go through.”), <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent> (last visited Nov. 2, 2022).

28 ⁴³ ProPublica article; <https://www.realpage.com/news/realpage-to-acquire-lease-rent-options/> (last visited Nov. 2, 2022).

1 increase “2% to 7% revenue outperformance” in the student housing market”⁴⁴ yet those
 2 increases have not driven enough renters out of the market such that the SSNIP has become
 3 unprofitable to Lessors. One Lessor Defendant, Campus Advantage, states on their website that
 4 they saw an average rental rate increase of 8.3% across over 240 communities managed since
 5 2003.⁴⁵ Another Lessor Defendant stated in a video testimonial on RealPage’s website that “over
 6 the last 10 years, spanning about 150 projects, the services that [RealPage] provided have
 7 equated to a return on investment of about 300% on about 90% of those projects.”⁴⁶

8 **B. Before RealPage, Lessors Of Student Housing Real Estate Leases Set Prices**
 9 **Independently**

10 35. Before RealPage facilitated collusion among Lessors, Lessors acting
 11 independently tried to maximize occupancy. Lessors had only a short time period to set rent
 12 prices and ensure “heads in beds” at the beginning of a new school term. Every day a unit was
 13 left empty was a lost opportunity to earn revenue for that day, so Lessors offered sufficiently
 14 attractive pricing to maintain maximum occupancy. This could come in the form of reduced
 15 prices or promotional offers. Promotions included rental concessions (offering the first month
 16 free if the customers signed a one-year lease) and giveaways (gift cards, raffles, Apple products,
 17 free parking, or sometimes even cruise tickets). In one blog post, RealPage described the pre-
 18 RealPage status quo: “A property may set the rate at \$400 by renting early for the fall semester,
 19 \$420 when half the beds have been booked, and \$450 when there aren’t many left,” and
 20 conceded this seemed “like a logical approach to pricing.”⁴⁷ RealPage continued, “in fear of
 21 empty beds, some properties offer concessions or discounts for early rental decisions.”⁴⁸

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 23
 24 ⁴⁴ RealPage Press Release, *RealPage Hosts Executive Student Summit*, (May 8, 2019), <https://www.realpage.com/news/realpage-hosts-executive-student-summit/> (last visited Nov. 2, 2022).

25 ⁴⁵ <https://campusadv.com/property-management/> (last visited Nov. 2, 2022).

26 ⁴⁶ <https://www.realpage.com/videos/student-housing-software-review-greystar/> (video) (last visited Nov. 2, 2022).

27 ⁴⁷ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited Nov. 2, 2022).

28 ⁴⁸ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited Nov. 2, 2022).

1 36. RealPage is describing a competitive situation, where Lessors maximize
2 occupancy by setting their own prices based on their independent observations of the market
3 This type of pricing strategy is characteristic of a competitive market.

4 **C. The Lessor Defendants Eliminate Competition By Outsourcing Price And Supply**
5 **Decisions To A Common Decision Maker, RealPage**

6 37. RealPage called the status quo, in which competitors actually competed,
7 “leav[ing] money on the table.”⁴⁹ Instead of offering price reductions and discounts to entice
8 customers, RealPage enabled property managers to set “top tier price[s],” and participation in the
9 cartel allowed property managers to “feel confident that it won’t end up with empty beds at the
10 time the semester starts.”⁵⁰ Following widespread adoption of RealPage, Lessors swiftly and
11 concertedly shifted from the previous competitive “market share over price” strategy to a new
12 collusive “price over volume” strategy. As RealPage put it, “High Occupancy \neq Optimum
13 Revenue Performance,”⁵¹ and “[r]ather than lease to a target occupancy . . . you’re leasing to
14 achieve maximum revenue.”⁵² Price over volume is characteristic of a cartelized market.
15 RealPage offers a product that creates one unified platform “specifically designed to streamline
16 the unique day-to-day challenges of Student Housing,” utilizing market data that covers 1 million
17 student beds.⁵³ RealPage offers revenue management software as part of that platform, which
18 assists property managers in setting rent prices.⁵⁴

19 38. RealPage and participating Lessors adopted a new strategy: increasing prices
20 notwithstanding market conditions and tolerating the lost revenue resulting from any unrented
21 and empty housing units. In a competitive market, this strategy would quickly fail—any units

22 _____
23 ⁴⁹ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited
Nov. 2, 2022).

24 ⁵⁰ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited
Nov. 2, 2022).

25 ⁵¹ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022).

26 ⁵² <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited
Nov. 2, 2022).

27 ⁵³ <https://www.realpage.com/student/> (last visited Nov. 2, 2022).

28 ⁵⁴ <https://www.realpage.com/news/realpage-announces-launch-of-prelease-management-for-student-living/> (last
visited Nov. 2, 2022).

1 listed at prices exceeding the market price would stay empty, and the property manager would
 2 eventually go out of business. In the market RealPage and Lessors created, each Lessor had
 3 mutual assurances that other Lessors would also keep prices high, leaving students with no
 4 choice but to pay what Lessors demanded.

5 39. In a joint case study between RealPage and Lessor Defendant Campus Advantage,
 6 Campus Advantage reported outperforming the market by 14.1% “with a negative YoY
 7 occupancy change.”⁵⁵ RealPage advised property owners and potential clients, “If you want to
 8 outperform the market term after term, focus less on occupancy and more on strategic lease
 9 pricing.” Campus Advantage had “below average occupancy rates,” yet still outperformed the
 10 market by double digits. Each of Campus Advantages’ properties “implemented a premium
 11 revenue management solution with exclusive student housing market research and reporting . . .
 12 The real-time accessibility of this data was critical to widening the margins for above market
 13 performance.”⁵⁶

14 40. RealPage and participating Lessors have effectuated their anticompetitive
 15 agreement to hike prices by agreeing generally to set prices using RealPage’s coordinated
 16 algorithmic pricing. Lessors often referred to such adherence as pricing “courage” or
 17 “discipline.” Participating Lessors also agree to provide RealPage with real-time access to their
 18 competitively sensitive and nonpublic data on their student housing real estate leases.

19 41. RealPage boasts the “Industry’s most comprehensive historical data set from
 20 2013,”⁵⁷ which today includes “over 1 million Student beds of in-depth market data”⁵⁸ and key
 21 performance indicators for nearly 1,000 universities.⁵⁹ For each property manager, RealPage
 22 “[d]ynamically calibrates elasticity for each bedroom type” by incorporating data from “each
 23

24 ⁵⁵ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022).

25 ⁵⁶ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022).

26 ⁵⁷ <https://www.realpage.com/student/asset-optimization/#revenue-management-section> (last visited Nov. 2, 2022).

27 ⁵⁸ <https://www.realpage.com/student/> (last visited Nov. 2, 2022).

28 ⁵⁹ <https://www.realpage.com/student/asset-optimization/#revenue-management-section> (last visited Nov. 2, 2022).

1 lease and lease application.” In the Campus Advantage case study, RealPage stated that such
 2 metrics included “Perpetual lease-up by applicable year, semester, or quarter,” “Actual lease
 3 transactions and pricing data,” “Waitlist factors,” “Distinct leasing patterns for student renters,”
 4 and “Monitoring renewal conversions.”⁶⁰ RealPage then compares that property manager’s rent
 5 “to the top and bottom of the competitive range for [their] selected competitors” and finally
 6 “assign[s] a price position for each lease.”⁶¹ By applying a single, common pricing algorithm to a
 7 shared dataset of competitors in a given market, RealPage provided the conduit through which
 8 Lessors colluded to raise student rents.

9 42. On information and belief, RealPage regularly provides participating Lessors with
 10 recommended price levels that are tailored for the student housing market through their
 11 YieldStar Student algorithm. RealPage regularly engages in communications with Lessors
 12 regarding their pricing strategies.

13 43. RealPage strongly emphasizes the importance of participating lessors in focusing
 14 on maximizing profitability and total revenue, rather than the procompetitive focus on occupancy
 15 rates that would occur in a competitive market, and did occur among lessors before the rise of
 16 revenue management programs.⁶² Jeffrey Roper, RealPage’s main architect, publicly described
 17 the problem as: “If you have idiots undervaluing, it costs the whole system.” For example,
 18 RealPage’s custom marketing materials for its RealPage Student Revenue Management product
 19 states that “occupancy isn’t always the answer” and that “RealPage Student Revenue
 20 Management” is a “surgical tool” that “replac[es] traditional occupancy rates with intelligent
 21 pricing based on hard data, resulting in the best rates for every bed.

22 44. Lessor Defendant Campus Advantage, stated in a customer testimonial on the
 23 RealPage website, “Our peers are all focused on achieving occupancy the quickest they can . . .
 24

25 ⁶⁰ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022).

26 ⁶¹ *Driving Outperformance: Ensuring Success with Revenue Management*, Presentation by Keith Dunkin of
 27 Yieldstar, at the 2014 NAA Student Housing Conference & Exposition, <https://www.naaHQ.org/sites/default/files/naa-documents/meetings/student-housing/D1-Ensuring-your-success.pdf> (last visited Nov. 2, 2022).

28 ⁶² <https://www.realpage.com/storage/files/pages/pdfs/2020/02/vst-18-014-016-student-revenue-management-flyer.pdf> (last visited Nov. 2, 2022).

1 we're more so focused on achieving a revenue goal instead of being focused on occupancy . . .
 2 the results really speak for themselves.”⁶³



Empower Your Pricing

Get Metrics That Matter with RealPage Student Revenue Management.

With a short sales cycle and one big yearly leasing window, pricing for student housing can be a challenge, but occupancy isn't always the answer. Empower yourself with real data. RealPage Student Revenue Management engages all of the tough metrics that student housing presents, and responds with bigger returns. It's a powerful solution that becomes a surgical tool in your property manager's hands, replacing traditional occupancy rates with intelligent pricing based on hard data, resulting in the best rate for every bed, and biggest ROI from every

student property in your portfolio. The most empowering aspect of RealPage Student Revenue Management is that it becomes smarter with every lease it tracks, year to year, leasing season to leasing season, so that your student pricing strategy is constantly growing with your business. Over time, you'll build a carefully constructed pricing strategy, based on data, that never stops evolving. Demand more from your properties and more for your business. Get RealPage Student Revenue Management and experience the returns for yourself.

14 45. Lessors are squeezing an already-tight housing market. In economic terms, the
 15 student housing market in any given college town faces an inelastic demand that, at most points,
 16 outpaces supply. One exception is when the student body arrives in the weeks before the fall
 17 term, looking for housing within a small radius around their campus. At this point, the student
 18 housing market is as competitive as it gets—Lessors fight to attract a sudden influx of a large
 19 customer base. But in a matter of weeks, this customer base dwindles: students settle in, classes
 20 start, and Lessors again have market power. This is evident by RealPage’s own assessment that
 21 “A property may set the rate at \$400 by renting early for the fall semester, \$420 when half the
 22 beds have been booked, and \$450 when there aren’t many left.”⁶⁴ The collusion between Lessors
 23 and RealPage eliminate this short, early competitive stage of the student housing cycle. Whereas
 24 without RealPage, “in fear of empty beds, some properties offer concessions or discounts for
 25

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 27 ⁶³ <https://www.realpage.com/videos/yieldstar-customer-review-campus-advantage/> (video) (last visited Nov. 2, 2022).

28 ⁶⁴ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited Nov. 2, 2022).

1 early rental decisions,”⁶⁵ RealPage allowed Lessors the confidence to start the semester with
 2 prices at \$450 and stay there. What RealPage refers to as “fear,” most would understand as a
 3 natural market force disciplining suppliers to compete fairly. Even if some beds remained empty,
 4 the monopoly rents RealPage helped extract from the rented units justified the unrented units.

5 **D. The Lessor Defendants And RealPage Inflated Prices And Reduced Occupancy (i.e.,**
 6 **Output) Of Student Housing Leases**

7 46. According to a press release, RealPage launched YieldStar Student, a revenue
 8 management software that was “tailor made for Student Housing operators” and as of 2019,
 9 served “more than 50 clients.” RealPage touted YieldStar’s results: a 2% to 7% revenue
 10 outperformance of the market, with a 95% client satisfaction rate.⁶⁶

11 47. In a case study about Lessor Defendant Campus Advantage, Campus Advantage
 12 reported outperforming the market by 14.1% in the 2017 leasing season, “even with below
 13 average occupancy rates.”⁶⁷ RealPage’s website also relayed Campus Advantage’s testimonial:
 14 “Jennifer Cassidy, Senior Vice President of Asset Management for Campus Advantage, was able
 15 to see 5.4% effective rental rate growth when using YieldStar . . . because YieldStar gives her
 16 staff the ability to better understand supply and demand in their markets and to price things
 17 accordingly.”⁶⁸ Madison Meier, Vice President of Business Development for Campus
 18 Advantage, stated in a customer testimonial on the RealPage website: “Our peers are all focused
 19 on achieving occupancy the quickest they can, whether that be in concession or raised rates and
 20 we’re more so focused on achieving a revenue goal instead of being focused on occupancy . . .
 21 the results really speak for themselves . . . instead of just trying to lease their properties as quick
 22
 23
 24

25 ⁶⁵ <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited
 Nov. 2, 2022).

26 ⁶⁶ RealPage Press Release, *RealPage Hosts Executive Student Summit*, (May 8, 2019), <https://www.realpage.com/news/realpage-hosts-executive-student-summit/> (last visited Nov. 2, 2022).

27 ⁶⁷ https://www.realpage.com/case-studies/campus-advantage-revenue-management-case-study/?utm_source=campus-advantage&utm_medium=bp&utm_campaign=pmi&utm_term=20181003 (last visited Nov. 2, 2022).

28 ⁶⁸ <https://www.realpage.com/videos/yieldstar-customer-review-campus-advantage/> (video) (last visited Nov. 2, 2022).

1 as they can to a 100%, they're focused on really maximizing rates and really leasing each bed at
2 its maximum potential."⁶⁹

3 48. Michael Greene, Sr. Director Business Operations at Lessor Greystar
4 Management, stated in a video testimonial: "The statistics that we have as far as return on
5 investment over the last 10 years, spanning about 150 projects, the services that [RealPage's
6 team] have provided have equated to a return on investment of about 300% on about 90% of
7 those projects."⁷⁰

8 49. RealPage's own executives admit that RealPage's coordinated algorithmic pricing
9 "is driving" anticompetitive effects in the form of higher prices and reduced output.⁷¹ RealPage
10 advertises that its revenue management algorithm "calculates exactly what you should pay on
11 that particular day, based on availability, class and amenities, competitor pricing, season,
12 historical data and other criteria." Through the algorithm, business managers can "generate the
13 highest possible revenues in a way no human (or even team of humans) could ever do on a daily
14 basis."⁷²

15 50. RealPage's customer testimonials reveal that the price increases on student
16 housing were only made possible through the pricing courage afforded by RealPage's
17 competitively sensitive data.

18 51. Jennifer Cassidy, Senior Vice President of Asset Management for Campus
19 Advantage, stated in a video testimonial on RealPage's site that "Prior to using this product, a lot
20 of our pricing decisions were reactionary. So if we were seeing concessions as a trend in the
21 market, we were at the mercy of that trend whereas now we're more of a trend setter in that we
22 understand the supply and demand that's happening at our property and we're able to make
23
24

25 ⁶⁹ <https://www.realpage.com/videos/yieldstar-customer-review-campus-advantage/> (video) (last visited Nov. 2,
2022).

26 ⁷⁰ <https://www.realpage.com/videos/student-housing-software-review-greystar/> (video) (last visited Nov. 2,
2022).

27 ⁷¹ ProPublica article, <https://www.propublica.org/article/why-rent-is-so-high> (last visited Nov. 2, 2022).

28 ⁷² <https://www.realpage.com/blog/price-units-right-in-student-housing-with-revenue-management/> (last visited
Nov. 2, 2022).

1 decisions based on that—despite what’s happening in our markets.” The site boasts that Campus
2 Advantage “was able to see 5.4% effective rental rate growth when using YieldStar.”⁷³

3 52. Madison Meier, Vice President of Business Development for Campus Advantage,
4 stated, “Our peers are all focused on achieving occupancy the quickest they can, whether that be
5 in concession or raised rates and we’re more so focused on achieving a revenue goal instead of
6 being focused on occupancy . . . the results really speak for themselves . . . instead of just trying
7 to lease their properties as quick as they can to a 100%, they’re focused on really maximizing
8 rates and really leasing each bed at its maximum potential.”⁷⁴

9 53. RealPage’s pricing software was built by individuals who previously had been
10 involved in anticompetitive coordinated pricing efforts. Jeffrey Roper, one of the main architects
11 of RealPage’s software, is the former Director of Revenue Management at Alaska Airlines when
12 it and other airlines began using common software to share nonpublic planned routes and prices
13 with each other in the 1980s. The Department of Justice estimated that the agreement cost
14 customers over a billion dollars, and reached settlements or consent decrees for price-fixing
15 violations with eight airlines, including Alaska Airlines. Roper said, “We all got called up before
16 the Department of Justice in the early 1980s because we were colluding . . . We had no idea.”
17 But Roper evidently did not learn his lesson: less than a decade later, he had turned to the
18 apartment rental industry to begin building a “master data warehouse” of client data.⁷⁵

19 **E. “Plus Factors” Indicate The Market For Student Housing Real Estate Leases Is**
20 **Susceptible To The Formation, Maintenance, And Efficacy Of A Cartel**

21 54. The market for the sale of student housing residential real estate leases from
22 Lessors to lessees is characterized by numerous “plus factors” that render the industry
23 susceptible to collusion, such that the formation, maintenance, and efficacy of a cartel is more
24 likely. These include (1) high barriers to entry, (2) high barriers to exit, (3) market concentration,

25 _____
26 ⁷³ <https://www.realpage.com/videos/yieldstar-customer-review-campus-advantage/> (video) (last visited Nov. 2,
2022).

27 ⁷⁴ <https://www.realpage.com/videos/yieldstar-customer-review-campus-advantage/> (video) (last visited Nov. 2,
2022).

28 ⁷⁵ ProPublica article, <https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent> (last visited Nov.
2, 2022).

1 (4) inelastic consumer demand, (5) relative fungibility of residential real estate leases,
2 (6) exchanges of competitively sensitive information among horizontal competitors, and
3 (7) numerous opportunities to collude at trade associations and RealPage functions.

4 55. First, student housing property owners and operators face significant entry
5 barriers. These include the high cost of acquiring property, establishing a property management
6 infrastructure, and ongoing costs of building maintenance and regulatory compliance. Even small
7 rental properties cost millions of dollars to acquire. Large properties, such as those operated by
8 Greystar, run into the hundreds of millions of dollars to own and manage and take several years
9 and significant experience to build or acquire. For example, Greystar recently raised a \$600
10 million fund in order to build three student housing complexes.⁷⁶ Thus, new entrants into the
11 student housing real estate leasing market are unlikely to discipline cartel pricing.

12 56. Second, renters face high exit barriers. Renters typically incur substantial cost and
13 inconvenience when moving, and student renters in particular cannot move too far from campus,
14 forcing them to rent where Lessors are. As such, renters cannot easily turn to alternative Lessors
15 to discipline cartel pricing.

16 57. Third, the demand for student housing real estate property leases is relatively
17 inelastic. Except for an anomalous period during the height of the Covid pandemic, students
18 needed to live near their school to attend it. There are few, if any, realistic alternatives to renting
19 as a student. Buying is financially prohibitive and would make little sense for a tenant who is
20 likely to graduate and move elsewhere in four years. Thus, no reasonable substitutes exist to
21 discipline cartel pricing.

22 58. Fourth, the market for student housing real estate property leases is highly
23 concentrated. Many college towns are dominated by relatively few sellers.

24 59. Fifth, student housing residential real estate properties are relatively fungible,
25 particularly within classes of properties. That is, when controlling for certain high-level
26

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28 ⁷⁶ <https://www.multihousingnews.com/greystar-secures-600m-for-student-housing-projects/> (last visited Nov. 2, 2022).

1 characteristics of properties—such as the number of bedrooms and bathrooms, amenities,
2 location, or the age of the building—properties within those classes are relatively fungible.

3 60. Sixth, RealPage’s participating Lessors, directly and using RealPage as a conduit,
4 share competitively sensitive information with one another. Founder and former CEO Steve
5 Winn has noted in earnings calls that RealPage’s numbers “give a much more accurate view of
6 what’s happening in the market compared to merely looking at rents reported by Internet listing
7 services or other sources.”⁷⁷ It is even less likely that this function could be recreated using any
8 public, non-competitively sensitive sources as the advertised rates for student housing real estate
9 leases typically diverge from the actual rates. Furthermore, RealPage provides specific, non-
10 public pricing information on important factors such as concessions that are given at the time of
11 lease that are individually negotiated and not otherwise publicly available.

12 61. Seventh, RealPage and participating Lessors have ample opportunities to collude.

13 62. RealPage operates a private RealPage User Group Forum, an association of over a
14 thousand participating Lessors, which, according to RealPage, aims “to improve communications
15 between RealPage and the user community,” while “promot[ing] communication between users”
16 themselves. Within that Forum is an “Idea Exchange,” where Lessors submit their own
17 recommendations for changes or improvements to RealPage’s offerings, as well as provide
18 comments on proposed changes that RealPage is considering implementing to its software
19 offerings.⁷⁸

20 63. RealPage also encourages clients to serve on subcommittees, which requires that
21 client “[a]ttend one annual meeting to be held during the RealWorld conference” and
22 “[p]articipate in one conference call per quarter.”⁷⁹

23 64. RealPage has hosted in-person, annual, multi-day RealWorld summits. The
24 summits gather Lessors with RealPage executives to network, exchange insights and ideas, and
25

26 ⁷⁷ 2020 Q2 Earnings Call Transcript.

27 ⁷⁸ <https://web.archive.org/web/20220128195118/https://www.realpage.com/user-group/overview/> (last visited
28 Nov. 2, 2022).

⁷⁹ <https://web.archive.org/web/20220128185904/https://www.realpage.com/user-group/membership/> (last
visited Nov. 2, 2022).

1 discuss revenue management tools. Over the past five years, those conferences have been held in
2 Las Vegas, NV, Nashville, TN, Orlando, FL, and virtually during the Covid-19 pandemic.

3 65. RealPage has also hosted “Student Summits,” specific to the student housing
4 market, since 2014. According to a RealPage press release, “The summit features in-depth
5 presentations and discussions on revenue management . . . A highlight of the Student Summit is
6 gaining an understanding of the critical role revenue management now plays in profitability.
7 RealPage is a leader in this arena with YieldStar®, the first revenue management solution
8 purpose built for multifamily. RealPage specifically launched YieldStar Student, tailor made for
9 Student Housing operators that now serves more than 50 clients.”⁸⁰

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

23 67. Finally, RealPage advisors have regular contact with Lessors to keep them up to
24 date on their competitors. Advisors help Lessors “Review pricing daily or weekly in
25 collaboration with on-site and regional operations management,” “Monitor and report on weekly
26 rents, occupancy and revenue trends,” and “Adjust configurations and pricing to align with your

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28 ⁸⁰ RealPage Press Release, *RealPage Hosts Executive Student Summit*, (May 8, 2019), <https://www.realpage.com/news/realpage-hosts-executive-student-summit/> (last visited Nov. 2, 2022).

1 asset objectives as market conditions and business strategies change.”⁸¹ In an earnings call, CFO
 2 Tom Ernst stated that they were “actively ramping” efforts to have RealPage’s sales team discuss
 3 their revenue management products with their clients.⁸²

4 **F. Fraudulent Concealment**

5 68. Defendants actively concealed their conduct, including the extent of their
 6 information exchange, and Plaintiff and members of the Class did not and could not have
 7 discovered Defendants’ anticompetitive conduct.

8 69. Plaintiff and members of the Class had neither actual nor constructive knowledge
 9 of the facts constituting their claim for relief. Plaintiff and members of the Class did not
 10 discover, and could not have discovered through the exercise of reasonable diligence, the
 11 existence of the conspiracy alleged herein until shortly before filing this complaint. Defendants
 12 engaged in anticompetitive conduct, including secret information exchange and other
 13 communications, that did not reveal facts that would put Plaintiff or members of the Class on
 14 inquiry notice that there was an anticompetitive agreement related to the market for student
 15 housing. Throughout the Class Period, Defendants effectively, affirmatively, and fraudulently
 16 concealed their anticompetitive agreement from Plaintiff and class members.

17 70. Not until recently was the conduct of Defendants, including the actions of
 18 RealPage, widely known or reported. Only after the recent publication in October 2022 of an
 19 article in ProPublica was there a comprehensive presentation of the full scope of the confidential
 20 services that RealPage provides to its clients in the real estate industry.

21 71. Defendants concealed their relationships with RealPage. Indeed, to this day, it is
 22 not publicly known the number of companies that participate in RealPage’s Yieldstar Student
 23 algorithm. Accordingly, a reasonable person under the circumstances would not have been
 24 alerted to begin to investigate the legitimacy of Defendants’ prices on student leases.

27 ⁸¹ [https://web.archive.org/web/20220923051511/https://www.realpage.com/asset-optimization/revenue-
 management/](https://web.archive.org/web/20220923051511/https://www.realpage.com/asset-optimization/revenue-management/) (last visited Nov. 2, 2022).

28 ⁸² 2020 Q2 Earnings Call Transcript.

V. CLASS ACTION ALLEGATIONS

72. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) as representatives of the Class, which is defined as follows:

73. All persons and entities in, that are direct purchasers of student housing real estate leases in the United States from a Lessor participating in RealPage’s pricing software programs, or from a division, subsidiary, predecessor, agent, or affiliate of such Lessor, at any time during the period of January 1, 2010 until the Defendants’ unlawful conduct and its anticompetitive effects cease to persist.

74. The Class is so numerous that joinder of all members in this action is impracticable. There are thousands of members in the proposed Class.

75. Plaintiff’s claims are typical of those of the Class.

76. Plaintiff and members of the Class were all injured by the same unlawful conduct, which resulted in all of them paying more for leases than they otherwise would have in a competitive market.

77. Plaintiff will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiff are not antagonistic to the Class.

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

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

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

- c. If Defendants entered into such a formal or informal contract, combination, conspiracy, or common understanding, whether that conduct has in fact artificially inflated price and/or artificially suppressed supply of student housing real estate leases from competitive levels;
- d. The proper measure of damages; and
- e. The contours of appropriate injunctive relief to remediate the anticompetitive effects of the challenged conduct in the future.

80. Plaintiff and members of the Class are represented by counsel who are experienced and competent in the prosecution of complex antitrust and unfair competition class actions.

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

**VI. CAUSE OF ACTION
VIOLATION OF THE SHERMAN ACT**

FIRST CLAIM FOR RELIEF

**VIOLATION OF SECTION 1 OF THE SHERMAN ACT
FOR AGREEMENT IN RESTRAINT OF TRADE
15 U.S.C. § 1**

(On behalf of nationwide class for injunctive and equitable relief and compensatory damages)

82. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

1 83. Beginning at a time currently unknown to Plaintiff and members of the Class,
2 Defendants and their Co-Conspirators formed a cartel to artificially inflate the price of and
3 artificially decrease the supply and output of student housing leases.

4 84. Defendants' cartel has caused the Plaintiff and members of the Class to suffer
5 overcharge damages.

6 85. There are no procompetitive justifications for the Defendants' cartel, and any
7 proffered justifications, to the extent legitimate, could have been achieved through less restrictive
8 means.

9 86. The Defendants' cartel is unlawful under a per se mode of analysis. In the
10 alternative, the Defendants' cartel is unlawful under either a quick look or rule of reason mode of
11 analysis.

12 **SECOND CLAIM FOR RELIEF**

13 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT FOR**
14 **CONSPIRACY TO EXCHANGE COMPETITIVE INFORMATION**
15 **15 U.S.C. § 1**

16 **(On behalf of nationwide class for injunctive and**
17 **equitable relief and compensatory damages)**

18 87. Plaintiff incorporates and realleges, as though fully set forth herein, each and
19 every allegation set forth in the preceding paragraphs of this Complaint.

20 88. Beginning at a time currently unknown to Plaintiff and members of the Class,
21 Defendants and their co-conspirators entered into a continuing agreement to regularly exchange
22 detailed, timely, competitively sensitive and non-public information about their operations. This
23 agreement is an unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15
24 U.S.C. § 1.

25 89. Defendants' acts in furtherance of their combination or conspiracy were
26 authorized, ordered, or done by their officers, agents, employees, or representatives while
27 actively engaged in the management of Defendants' affairs.

28 90. Defendants' anticompetitive acts involved United States domestic commerce and
import commerce, and had a direct, substantial, and foreseeable effect on interstate commerce by

1 raising and fixing prices for student housing leases throughout the United States, including
2 discrete geographic submarkets in college towns.

3 91. The relevant product market is the market for the lease of student housing real
4 estate and the relevant geographic market is the United States, including discrete geographic
5 submarkets in college towns including Seattle, Washington; Eugene, Oregon; Tucson, Arizona;
6 Salt Lake City, Utah; Ann Arbor, Michigan; Columbus, Ohio; and Gainesville, Florida.

7 92. Defendants could impose an increase in the price of student housing they
8 controlled collectively without causing many consumers to switch their purchases to another
9 lease. Student leases constitute a unique product market.

10 93. The information regularly exchanged by Defendants pursuant to the agreement
11 has consisted of detailed, competitively sensitive and non-public information about current and
12 future pricing plans regarding leasing.

13 94. Defendants' regular information exchanges through RealPage reflected concerted
14 action between horizontal competitors in the market for leases for student housing.

15 95. When Defendants that are competing for the same consumers exchange
16 competitive information, it reduces the incentives to compete on price. Furthermore, the
17 RealPage YieldStar Student algorithmic pricing specifically encouraged Defendants to adhere to
18 a common pricing system that kept prices artificially high while artificially suppressing output.
19 This strategic information exchange, as well as the RealPage YieldStar pricing recommendations
20 based off the information exchange, was a material factor in Defendants' decisions to inflate the
21 prices that Plaintiff and members of the Class paid during the Class Period.

22 96. Defendants' unlawful agreements to exchange, and the actual exchanges of
23 nonpublic, timely, and detailed data were not reasonably necessary to further any procompetitive
24 purpose.

25 97. The information-exchange agreement has had the effect of (1) reducing and
26 suppressing competition among Defendants in the market for leases for student housing, and (2)
27 inflating the prices for leases during the Class Period.

28

1 effect, and from adopting or following any practice, plan, program, or device having a similar
2 purpose or effect;

3 E. Defendants, their affiliates, successors, transferees, assignees and other officers,
4 directors, partners, agents and employees thereof, and all other persons acting or claiming to act
5 on their behalf or in concert with them, be permanently enjoined and restrained from in any
6 manner continuing, maintaining, or renewing the sharing of highly sensitive competitive
7 information that permits individual identification of company's information;
8

9 F. Plaintiff and members of the Class be awarded pre- and post- judgment interest as
10 provided by law, and that such interest be awarded at the highest legal rate from and after the
11 date of service of this Complaint;

12 G. Plaintiff and members of the Class recover their costs of suit, including
13 reasonable attorneys' fees, as provided by law; and
14

15 H. Plaintiff and members of the Class have such other and further relief as the case
16 may require and the Court may deem just and proper.

17 **JURY TRIAL DEMANDED**

18 Plaintiff demands a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil
19 Procedure, of all issues so triable.

20 Dated: November 2, 2022

21 Respectfully submitted,

22 HAGENS BERMAN SOBOL SHAPIRO LLP

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