From: T Flandrich
To: Melgar, Myrna (BOS); Preston, Dean (BOS); Peskin, Aaron (BOS); Fieber, Jennifer (BOS); Horrell, Nate (BOS)
Cc: Carroll, John (BOS)
Subject: Item #3 240766 [Administrative Code - Ban on Automated Rent-Setting] IN SUPPORT
Date: Monday, July 29, 2024 12:20:29 PM

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29.July 2024

Dear Chair Melgar, Vise Chair Preston and President Peskin,

I am writing today in support of this ordinance to ban the sale and use of algorithmic devices that create price-fixing on rental units and control occupancy rates.

This ordinance will deal directly with one of the sets of invisible-hands manipulating the market, one which hugely impacts tenants and our affordable housing crisis in San Francisco today.

Let's not wait. Please vote to pass this legislation today, send to the full board with a positive, urgent, recommendation.

I sincerely thank you!
Theresa Flandrich
North Beach Tenants Committee

From:	Theo Ellington
To:	Carroll, John (BOS)
Cc:	Melgar, Myrna (BOS); Preston, Dean (BOS); Peskin, Aaron (BOS); Horrell, Nate (BOS); Low, Jen (BOS); Kilgore, Preston (BOS)
Subject:	RE: Land Use and Transportation [item no. 240766]
Date:	Friday, July 26, 2024 3:04:03 PM
Attachments:	image001[40].png RealPage Statement.pdf

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To: John Carroll, Clerk

We would like to provide additional information for the file and record regarding RealPage's revenue management software.

RealPage is a key stakeholder in this matter and is even listed in the findings. We are hoping this additional information provides context about the product in question and provides more detailed analysis based on some of the assumptions made in the proposed ordinance.

cc: Supervisors Melgar, Preston, and Peskin

S360

THEO ELLINGTON

Senior Vice President,
Northern California

C **415.691.9121**

STRATEGIES360.COM

REALPAGE

THE REAL STORY

REALPAGE'S RESPONSE TO FALSE ALLEGATIONS CONCERNING ITS REVENUE MANAGEMENT SOFTWARE

REALPAGE'S RESPONSE TO FALSE ALLEGATIONS CONCERNING ITS REVENUE MANAGEMENT SOFTWARE

Summary - The Truth

- Attacks on the industry's use of revenue management are based on demonstrably false information.
- RealPage revenue management software benefits both housing providers and residents.
- RealPage customers:
  - decide their own rent prices,
  - always have 100% discretion to accept or reject software price recommendations,
  - are never punished for declining recommendations, and
  - accept recommendations at widely varying rates that are far lower than has been falsely alleged.
- RealPage revenue management software makes price recommendations in all directions – up, down, or no change – to align with property-specific objectives.
- RealPage revenue management software never recommends that a customer withhold vacant units from the market. In fact, properties using our revenue management products consistently achieve vacancy rates below the national average.
- RealPage uses data responsibly, including limited aggregated and anonymized nonpublic data where accuracy aids pro-competitive uses.
- RealPage revenue management software serves a much smaller portion of the rental market than has been falsely alleged.
- The truth shows the distorted narratives and lawsuits have no merit.

Starting in October 2022, media reports and legal filings have asserted false and misleading claims about RealPage and our revenue management software. This has perpetuated an inaccurate and distorted narrative about RealPage, our revenue management solutions, and the many benefits we bring for renters and housing providers, including a healthier and more efficient rental housing ecosystem.

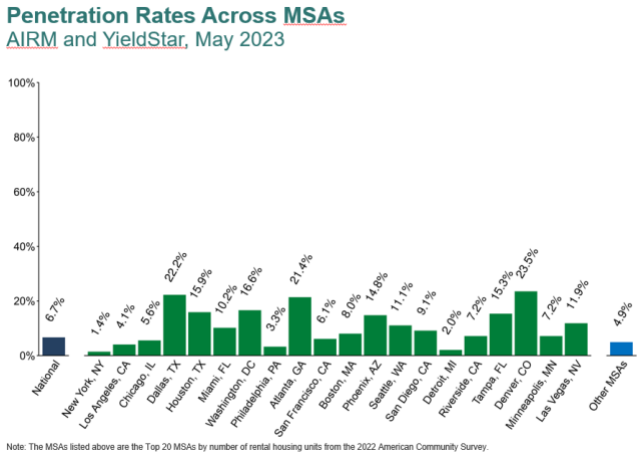
RealPage revenue management software offers prospective residents and housing providers more options and flexibility in lease terms, aids compliance with Fair Housing laws, does not use any personal or demographic data to generate rent price recommendations, and helps ensure that prospective residents have access to the best pricing available to everyone.

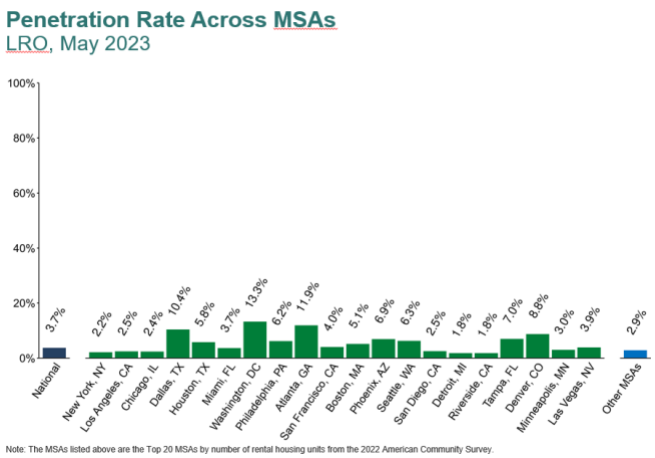
To ensure the public narrative accounts for the true nature of RealPage's products, we want to address some frequently repeated misrepresentations about the prevalence of properties using RealPage revenue management software, our customers' discretion to accept or reject pricing recommendations, and the lawful use of nonpublic information in our revenue management products.

Please visit https://www.realpagepublicpolicy.com/ to learn the real story.

1. ***RealPage revenue management software serves a much smaller portion of the rental market than has been falsely alleged.***

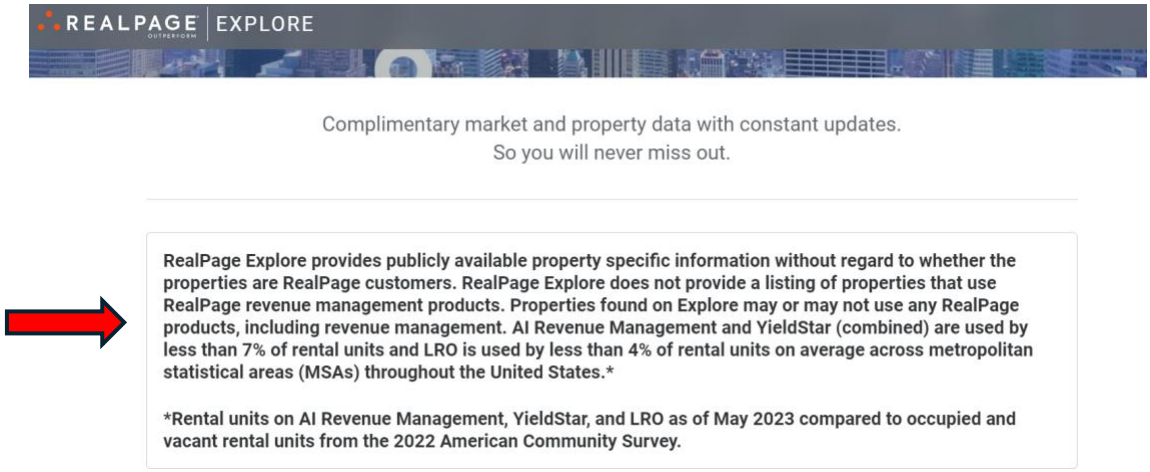
Contrary to the implausible allegations about RealPage's purported market power, the actual data shows that RealPage revenue management software has low penetration rates that cannot possibly support a conspiracy to fix prices or collude through the software. ***As of May 2023, less than 7% of rental units used AI Revenue Management (AIRM) or YieldStar (combined) across metropolitan statistical areas (MSAs) throughout the United States, and less than 4% of rental units used Lease Rent Options (LRO).***





To support false claims about RealPage's purported market penetration, the lawsuits and media repeatedly and erroneously point to RealPage's website, specifically the Explore tool (https://www.realpage.com/explore/main), for a listing of properties that allegedly use RealPage revenue management products.

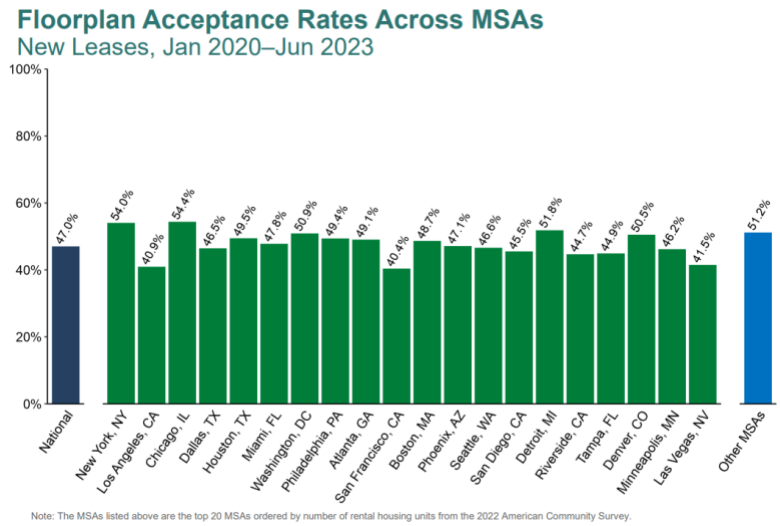
As a prominent legend on the website clearly states, RealPage Explore provides publicly available information about specific properties, regardless of whether they are RealPage revenue management customers or have any other RealPage product or service. In fact, many of the properties shown on RealPage Explore do not use any RealPage products at all.



2. *RealPage customers make their own pricing decisions, and acceptance rates of RealPage's pricing recommendations have been greatly exaggerated.*

RealPage does not "set" its customers' rents, and the data shows such allegations are without any merit. RealPage customers make decisions about their unique strategies and set their parameters for pricing recommendations. RealPage revenue management software then provides bespoke pricing recommendations to customers based on their unique strategies and property histories. Housing providers do not cede any discretion to RealPage in making their decisions regarding rent setting. While RealPage revenue management software assists housing providers in analyzing their properties' data and determining how their supply (availability) compares to demand (leasing activity) for each floor plan, the software offers only recommendations.

Our customers always retain 100% flexibility and are never obligated – contractually or otherwise – to follow the pricing recommended by the software. Customers accept RealPage's price recommendations for their listed rental prices at widely varying rates. Overall, for YieldStar and AIRM, property owners and managers accept RealPage's floor-plan-level rental price recommendations for new leases less than 50% of the time.[1] A single customer that owns or manages multiple properties often accepts our rental price recommendations at widely varying rates even among its own properties. And these acceptance rates do not account for further deviations at the individual lease level (i.e., the leasing office deciding to make changes) after the customer has made a decision to set a different price or to accept the software's price recommendation. Such further deviations commonly include additional discounts on the rental price or the inclusion of concessions that benefit prospective renters.



Although the public narrative about RealPage's software suggests it always recommends higher rents, the reality is far different. Our revenue management products recommend decreases, increases, or maintenance of existing rental prices depending on the housing provider's preferred strategy.

Contrary to false assertions made by critics, there are no negative consequences when a customer declines RealPage's pricing recommendation. RealPage does not penalize, remove, "kick off," or take any adverse action against customers if they have low acceptance rates. It is ludicrous to think that RealPage has any power over its customers to do so. This false claim also fundamentally misunderstands RealPage's business model in that RealPage is compensated for its services based on the number of units that use RealPage revenue management software—not based on acceptance rates. While RealPage has

[1] From January 2020-June 2023, in the top 20 Metropolitan Statistical Areas (MSAs) across the country, the overall acceptance rates for new leases ranged from just over 40% to just under 55%.

recommended that customers accept pricing recommendations 80-90% of the time, customers choose to accept recommendations at their own discretion at widely varying (and significantly lower) rates, which is always their prerogative.

Nor is it true that RealPage's revenue management software is designed to recommend "above market" rent prices. To the contrary, RealPage's revenue management products are focused on recommending rents that will cause a property's vacant units to be filled at competitive prices. This can only work if the software recommends prices in all directions. When the software detects that units at a property are not leasing up quickly enough to keep pace with upcoming availability at that property, it will routinely recommend price reductions. The software often recommends reductions before an owner would otherwise intuitively determine to lower its rents. The software makes those recommendations without regard to what is happening at other properties and completely independently of any recommendations being made to other RealPage customers.

RealPage software does not recommend withholding any apartment units from the market, and our customers generally experience lower vacancy rates. The software recommends prices for all available units at a property. Properties that utilize our revenue management tools consistently achieve vacancy rates below the national average, promoting a healthier and competitive housing market for apartment owners and their residents.

3. *RealPage's revenue management products use nonpublic data only in anonymized, aggregated forms such that customers gain no insight through the software into their competitors' specific prices or strategies, which is perfectly consistent with the antitrust laws.*

RealPage software makes rent price recommendations based primarily on a property's own internal supply (availability) and demand (leasing activity) data.

RealPage software does not provide competitors with specific information about any other properties. RealPage revenue management software does not share or use competitor occupancy, competitor occupancy goals, or the rent prices recommended to competitors, and reports to the contrary are false.

YieldStar and AIRM responsibly use aggregated and anonymized rent pricing data from multiple sources to provide the algorithm and customers with insights when the software recommends a change in rent (either up or down). If an increase or decrease in rent price is recommended to balance upcoming availability of a floor plan at the property with expected demand for that floor plan to align with the property's specific strategy, then the software considers publicly available advertised rents (combined with nonpublic executed lease pricing data, where available) from other properties when calculating the magnitude of the recommended adjustment. RealPage further designed YieldStar and AIRM to ensure that property owners/managers do not have visibility into the pricing of a competitor's specific properties, nor does the software recommend rents for any property based on the recommendations being made to a competitor's property.

LRO does not use competitor nonpublic executed lease pricing data in the market insights used to recommend prices for a customer. LRO is also completely separate from YieldStar and AIRM, and contrary to the allegations, LRO does not have access to the YieldStar/AIRM database, and the YieldStar/AIRM database does not have access to the LRO database.

Importantly, our data indicates that nonpublic executed lease pricing data is, on average, ***lower*** than the corresponding publicly available advertised information about the same properties' rental units. Intuitively, this makes sense because properties may offer discounts and concessions at the time of lease that lower

the effective executed lease price as compared to the published advertised rent price for any particular unit. Prohibiting use of such nonpublic information, as some politicians and special interest groups have recently tried to do, could result in using incorrect and inflated price information that may harm consumers and will logically result in less accurate market price data and less competitive pricing recommendations.

Using nonpublic data to build, test, enhance, and train revenue management models does not violate antitrust laws because it is pro-competitive and ensures that recommended prices more accurately reflect current market conditions. As a federal court recently noted, the "mere use of algorithmic pricing based on artificial intelligence by a commercial entity, without any allegations about any agreement between competitors—whether explicit or implicit—to accept the prices that the algorithm recommends does not plausibly allege an illegal agreement." *See Gibson, et al. v. Cendyn Group, LLC, et al.*, Case No. 2:23-cv-00140-MMD-DJA (Order dismissing case dated May 8, 2024, related to a hotel room pricing algorithm that, as alleged in the complaint, runs on the "confidential" and "pooled" data of hotel customers using the software in a central hub and "trains itself" on that data; "calculates demand and generates 'optimal' room rates, on a daily basis," for each hotel customer; and gets better at predicting optimal hotel room pricing with the benefit of information provided by each customer.).[2]

In 2015, when Jonathan Kanter, the current Assistant Attorney General for the U.S. Department of Justice (DOJ) Antitrust Division, was in private practice, he and his co-authors recognized the "pro-competitive advantages" of algorithm-based software and noted in an article that "there are many consumer benefits stemming from the use of algorithm-based software, **including for pricing** [emphasis added]."[3]

The DOJ extensively reviewed LRO and YieldStar in 2017, without objecting to, much less challenging, any feature of the products. In 2017, the DOJ reviewed RealPage's acquisition of LRO to ensure there were no antitrust concerns. As part of DOJ's comprehensive review that lasted most of the year, the DOJ gathered extensive information about LRO and YieldStar and conducted numerous interviews with RealPage personnel. This process provided DOJ with full visibility into how RealPage's revenue management software operated. Following this review, the DOJ granted antitrust clearance for RealPage's acquisition of LRO without any objections about RealPage's revenue management products or related business practices. RealPage's revenue management products are fundamentally the same today as they were when the DOJ reviewed them in 2017.

RealPage will continue cooperating with any inquiries from government authorities, including the DOJ.

4. Plaintiffs in the RealPage civil cases will not be able to support their false claims.

In the RealPage multidistrict litigation (MDL), and in copycat suits brought by two state Attorneys General, who did not provide RealPage with any opportunity to be heard before suing, the plaintiffs rely on the same false claims discussed above. Because these claims have no basis in reality, plaintiffs will not be able to find support for them in discovery.

Although we are pleased that the MDL Court dismissed the student housing complaint (which was based on the same revenue management software at issue in the multifamily housing complaint) and rejected applicability of the "per se" rule even as to the false allegations in the multifamily housing complaint, we recognize the Court was legally bound at this stage to accept as true all of the false and inaccurate assertions made in the complaint.

Those lawsuits live or die based on whether the assertions made in the complaint (and refuted above) are true or false.

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[2] Dkt. No. 144 (First Amended Class Action Complaint), Dkt. No. 183 (Order dismissing case with prejudice).
[3] "A Closer Look at DOJ's 1st E-Commerce Price Fixing Case," Law360 (May 12, 2015).

The lead opposing counsel in the MDL described the "heart" of the plaintiffs' theory to the Court in the following way:

> *That's the **heart of this case**, is that the horizontal -- the horizontal defendants here, the property owners and managers, are working together on pricing strategy. And it **only works** if they **all work together**. And – because if somebody undercuts it, of course – if somebody doesn't go in, they'll steal business away from the others. Because the others are raising the price of the recommendations that RealPage -- and RealPage doesn't just say, hey, we're going to set your prices. They say we're going to set your prices; you're going to get a super competitive return. We're going to set your prices above the market. …*
>
> *And that's what they [RealPage] tell the owners/operators they're going to do. Okay? And the owner/operators we know accept their recommendation, according to [Confidential Witness 7], at least 80 percent of the time. …*
>
> ***Because it doesn't – it doesn't work unless enough of the property owners, you know, accept … the price given.***[4]

To be clear, these are the allegations on which the plaintiffs' claims against RealPage rest, but these alleged "facts" are false. As RealPage and its customers know, "the heart of this case" ***never had a heartbeat*** – the data clearly shows that RealPage does not set customers' prices and customers do what they believe is best for their respective properties to vigorously compete against each other in the market. ***It is unfortunate that the public is repeatedly being told these falsehoods and that RealPage and its customers do not have the opportunity to correct them within the lawsuits until a later stage in the case.***[5]

5. *Housing affordability is a national problem created by economic and political forces—not by the use of revenue management software.*

Affordability of rental housing in the U.S. is a critically important issue, driven by a persistent undersupply of rental housing units, increasing demand for rental housing in many areas of the country, inflationary pressures that affect costs to build, insure and manage housing properties, inefficient or unnecessarily onerous permit and zoning requirements, elevated mortgage rates, increasing home prices driving more people to rent than own their homes, changes in where and how people choose to live, and many other complex factors.

Everyone should have access to decent housing that is affordable. Unfortunately, rather than focusing on policies and factors that could actually improve housing affordability in the U.S., some have chosen to attack the industry's use of revenue management software as a potential culprit for the country's housing affordability crisis. This misguided narrative appeals to fear and ignorance, while sidestepping the underlying issues that could make a real difference for those who are struggling to afford suitable housing.

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[4] Statements by Patrick J. Coughlin, Motion to Dismiss Hearing Transcript, Case No. 3:23-md-03071, Dkt. No. 673 (Hearing on December 11, 2023) [emphasis added].

[5] By way of example, RealPage learned that on November 23, 2022, Confidential Witness 4 (CW4) rejected all of the statements in the MDL complaint attributed to CW4 by confirming to plaintiffs' counsel that the statements do not reflect CW4's sentiment. CW4 contacted RealPage and provided this information unprompted, and on CW4's own accord, and explained that CW4 does not support the allegations in the lawsuit.

realpagepublicpolicy.com

From: Amina Rubio
To: Board of Supervisors (BOS)
Subject: Fwd: Open Comment
Date: Tuesday, July 16, 2024 2:27:24 PM

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Hello Supervisors,
My name is Amina Rubio, residing in district 3
I am supporting legislation that Mr. Peskin is introducing to ban price fixing in order to protect tenants.

The link below is link from
which Senator Elizabeth Warren shares her concern about price fixing software.
Please pass out the Senator's letter to the Supervisors

https://www.warren.senate.gov/imo/media/doc/2022.11.22%20Letter%20to%20RealPage%20re%20YieldStar%20Algorithm.pdf

Hi Supervisors,
I'm Amina Rubio, a tenant at 634 Powell, in a 34 unit building that was formerly owned by Mae and Ronald Tong. family owned mom and pop landlords, but taken over in 2016, by Veritas large corporate with over half as market rate units with remaining 9 long-term unit and currently 2 vacant units.

I've noticed that in recent years, turnover and empty units have increased in my building, so much so that it's now like a revolving hotel.

I've heard about this price-fixing software and am concerned that it gives my building owner more power to put pressure on me and other tenants.

If we want to create more housing and make it available to people, this type of software is not the way to do it.

I'd like to quote a letter by Senator Warren who sent an letter to Real Page about it's Yieldstar tool:

"YieldStar's recommendation that landlords keep units vacant when tenants are unable to meet its asking price undermines efforts to ensure that the housing market is fair and free from discrimination. Keeping rental prices artificially high predictably and disproportionately hurts lower-income tenants, tenants of color, female-headed households, and persons with disabilities. It also undermines efforts to increase housing affordability by limiting the expanding the housing supply"

Thank you.