From:	Board of Supervisors (BOS)
To:	BOS-Supervisors; BOS-Legislative Aides
Cc:	BOS-Operations; Carroll, John (BOS); Calvillo, Angela (BOS); De Asis, Edward (BOS); Entezari, Mehran (BOS); Mchugh, Eileen (BOS); Ng, Wilson (BOS); Somera, Alisa (BOS)
Subject:	FW: Submitting Written Testimony for File Number 240766
Date:	Tuesday, September 3, 2024 12:34:33 PM
Attachments:	ACI SF letter.pdf

Hello,

Please see below communication and attached regarding **File No. 240766:**

Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.

Regards,

John Bullock
Office of the Clerk of the Board
San Francisco Board of Supervisor
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
(415) 554-5184
BOS@sfgov.org | www.sfbos.org

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From: Steve Pociask <steve@theamericanconsumer.org>
Sent: Friday, August 30, 2024 9:39 AM
To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Subject: Submitting Written Testimony for File Number 240766

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

August 30, 2024

Dear members of the San Francisco Board of Supervisors:

On behalf of the American Consumer Institute, an organization dedicated to advocating for consumers' rights, I write to express our opposition to a proposed ordinance that would ban the use of Artificial Intelligence (AI) in rental pricing decisions. While we share your concern about housing affordability in the city, File Number 240766 will make no impact on the structural problems that cause high rent prices. We strongly urge you to reject File Number 240766 and instead focus on real solutions that will yield meaningful outcomes.

AI presents a major opportunity for businesses to become more efficient, which will ultimately increase consumer welfare. But in order to fully unlock the innovative nature of AI, policymakers must do more to embrace its use and not stymie its development. Unfortunately, the Board's proposal would discourage future innovations and progress. Worse yet, it continues the new trend by some lawmakers appearing to take the easy route of blaming algorithms at the expense of doing the real work to identify causes and solutions to the more difficult and wider issues driving rent prices upwards.

Revenue management software simply manages supply and demand inputs to help renters price units at a rate that people are willing to pay and maintain high occupancy rates. If algorithms are responsible for higher rental prices in San Francisco, why then does the public information provided from Zillow indicate that overall rent prices in San Francisco fell hundreds of dollars year-over-year?

As the American Consumer Institute noted in a recent op-ed, "while rent-setting algorithms have taken the blame for rising prices, there is scant evidence they are responsible. Roger Valdez from the Center for Housing Economics argues that the rise in rent prices is caused by other factors in the market and that algorithms react to these factors when they compile data to determine the optimal price."

Markets fluctuate and are influenced by inflation, interest rates, capacity, demand, and many other factors.

Rather than pointing blame at a single software company, like RealPage Inc., consumers in San Francisco would be better served if the city worked in conjunction with the private sector to build more housing. For decades, local governments like San Francisco have

put up complicated roadblocks that make it difficult for people and businesses to use their land for the most efficient use. These government-mandated barriers include exclusionary land use requirements, exorbitant building fees, stringent environmental laws, and even quotas on minimum parking lot space per apartment unit.

The *San Francisco Standard* noted in a recent story the many factors that cause the cost of building in the U.S. to be the highest in the world. Interestingly, the piece highlights the Board's role in perpetuating this crisis, "The capper is that even if the years-long permitting process goes well, there is the threat of arbitrary project denial at the Board of Supervisors."

Burdensome regulations make it costly to build high-density housing units, which prevents the supply of housing from reaching an equilibrium with housing demand. This imbalance ultimately increases prices in the market and compounds the challenge of higher construction costs that make housing less affordable.

AI is a consumer welfare enhancing technology. And scapegoating technology for the unintended effects of poor policy decisions that have made housing unaffordable does nothing to solve the underlying issues. In summary, we stand in opposition to the proposed anti-consumer law File Number 240766.

Sincerely,

Steve Pociask
President and CEO
American Consumer Institute
Steve@TheAmericanConsumer.Org

ATTACHMENT: PDF with ACI Letterhead

The American Consumer Institute
Center for Citizen Research

August 30, 2024

Dear members of the San Francisco Board of Supervisors:

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Sincerely,

Steve Pociask
President and CEO
American Consumer Institute
Steve@TheAmericanConsumer.Org

From:	Board of Supervisors (BOS)
To:	BOS-Supervisors; BOS-Legislative Aides
Cc:	Calvillo, Angela (BOS); Mchugh, Eileen (BOS); Ng, Wilson (BOS); Somera, Alisa (BOS); De Asis, Edward (BOS); BOS-Operations; Board of Supervisors (BOS); Carroll, John (BOS)
Subject:	FW: Banning rent fixing! Cancel real page (File Nos. 240766 & 240796)
Date:	Thursday, August 29, 2024 11:51:50 AM
Attachments:	Screenshot_20240801-142846.png

Dear Supervisors,

Please see below for a letter from a member of the public regarding:

> **File No. 240766** - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.
>
> **File No. 240796** - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco, and to authorize enforcement by tenants' rights organizations.

Regards.

Richard Lagunte
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Voice (415) 554-5184 | Fax (415) 554-5163
bos@sfgov.org | www.sfbos.org

Pronouns: he, him, his

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From: Aaron Cravens <aaron@revelpharmaceuticals.com>
Sent: Thursday, August 1, 2024 2:30 PM

To: Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Subject: Banning rent fixing! Cancel real page

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I'm thrilled to see the recent news article highlighting the board of supervisors pursued and hopeful banning of the real page price fixing system.

I know many people in my Mission Bay neighborhood who have been abused by this technology.

Thank you for your efforts!!!

Aaron

San Francisco becom...
From kron4.com – delivered by

San Francisco becomes first US city to ban automated rent-fixing technology

Hamza Fahmy 2 days ago

SAN FRANCISCO - JULY 08: A sign advertising an apartment for rent is displayed in a window July 8, 2009 in San Francisco, California. As the economy continues to falter, vacancy rates for U.S. apartments have spiked to a twenty two year high of 7.5 percent, just short of the record high of 7.8 percent set in 1986. (Photo by Justin Sullivan/Getty Images)

SAN FRANCISCO (KRON) — On Tuesday, San Francisco became the first city in the nation to have a local ban on automated rent-fixing software. The ban on the use and sale of the technology, penned by Board of Supervisors President Aaron Peskin, aims to ultimately "put more units on the market."

From:	Board of Supervisors (BOS)
To:	BOS-Supervisors; BOS-Legislative Aides
Cc:	Calvillo, Angela (BOS); Mchugh, Eileen (BOS); Ng, Wilson (BOS); Somera, Alisa (BOS); De Asis, Edward (BOS); BOS-Operations; Board of Supervisors (BOS); Carroll, John (BOS)
Subject:	FW: Attachment to the Official Record for File no. 240766 and 240796
Date:	Thursday, August 29, 2024 2:22:13 PM
Attachments:	2024.08.20 Letter from RealPage, Inc. to American Economic Liberties Project.pdf

Dear Supervisors

Please see below and attached for a letter from Gibson, Dunn & Crutcher LLP, on behalf of RealPage, Inc., regarding:

> **File No. 240766** - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco.
>
> **File No. 240796** - Ordinance amending the Administrative Code to prohibit the sale or use of algorithmic devices to set rents or manage occupancy levels for residential dwelling units located in San Francisco, and to authorize enforcement by tenants' rights organizations.

Regards,

Richard Lagunte
Office of the Clerk of the Board
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Voice (415) 554-5184 | Fax (415) 554-5163
bos@sfgov.org | www.sfbos.org

Pronouns: he, him, his

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From: Johnston, Gabriella <GJohnston@gibsondunn.com>
Sent: Thursday, August 29, 2024 1:25 PM

To: Carroll, John (BOS) <john.carroll@sfgov.org>; Board of Supervisors (BOS) <board.of.supervisors@sfgov.org>
Cc: Weissman, Stephen <SWeissman@gibsondunn.com>
Subject: Attachment to the Official Record for File no. 240766 and 240796

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Dear Mr. Carroll,

We would like to add the attachment to the official record for File no. 240766 and 240796.

This should be reflected in both the upcoming full Board of Supervisors meeting and the 9/9 Land-use and transportation committee meeting.

Sincerely,
Gabriella

Gabriella Johnston
Associate Attorney

T: +1 332.253.7641 | M: +1 347.503.5117
GJohnston@gibsondunn.com

GIBSON DUNN
Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193

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Please see our website at https://url.avanan.click/v2/___https://www.gibsondunn.com/___.YXAzOnNmZHQyOmE6bzo3MDQ0MTRmYzBlMDU2NWYyYTRkM2QyNjNkMzhiZGNjNDo2OjNhOWE6MmM2ZTQ2YzM4NDQ4M2UzODI2OTc5ZmQwYTUzZThlNTcyMjlkZGRhY2YzNGJmZTIxMzVmOWI4MDJmODY3NzEyZDp0OkY6Tg for information regarding the firm and/or our privacy policy.

GIBSON DUNN

Stephen Weissman
Partner
T: +1 202.955.8678
M: +1 202.270.6028
sweissman@gibsondunn.com

August 20, 2024

Lee Hepner
Senior Legal Counsel
American Economic Liberties Project
lhepner@economicliberties.us

Re: False and Misleading Statements Regarding RealPage, Inc.

Dear Mr. Hepner:

We write regarding false and misleading statements that you and your organization, American Economic Liberties Project, have made regarding revenue management software ("RMS") sold by our client RealPage, Inc. ("RealPage"). For example, in a recent presentation to the San Francisco City Council, you falsely characterized RealPage's RMS as an "automated rent setting" tool, you presented unsupported allegations from complaints in pending lawsuits as if they were facts, and you knowingly, or at least recklessly, presented false information about RealPage's RMS market penetration, including in San Francisco. At best, these misrepresentations and false statements reflect a worrying lack of due diligence on your part. There is extensive publicly available information, including on RealPage's website,[1] that describes, in detail, how RealPage's RMS works and why the assertions by you and your organization perpetuate a false narrative about RealPage and its RMS products.

In the presentation you submitted to the San Francisco City Council, you begin, on page 2, by defining "'automated rent setting' or 'AI revenue management.'" On this slide you claim, in three bullet points, that this process involves: (1) landlords delegating pricing and supply decisions to a common decisionmaker, (2) landlords sharing data with a common decisionmaker who have oversight of daily pricing decisions, and (3) landlords making collective decisions about the pricing and supply of multifamily apartments. But this is not how RealPage's RMS products work and even minimal diligence on your part would have revealed as much. Users of RealPage products, including AI Revenue Management, do not "delegate their rental price and supply decisions to a common decisionmaker." To the contrary, RealPage's RMS makes pricing *recommendations*, that users then decide to accept or reject. And RealPage has published data on its website that shows this allegation is demonstrably false: on average, landlords using RealPage's RMS accept the software's recommendations *less than 50% of the time*.[2]

Throughout your presentation to the San Francisco City Council, you also referred to allegations in currently pending lawsuits against RealPage, including the private multi-district class action litigation in Nashville (the "MDL") and the lawsuit by the Arizona Attorney General's Office (the

[1] *See* https://www.realpagepublicpolicy.com/.

[2] *See* https://www.realpagepublicpolicy.com/realpagestatement at 3.

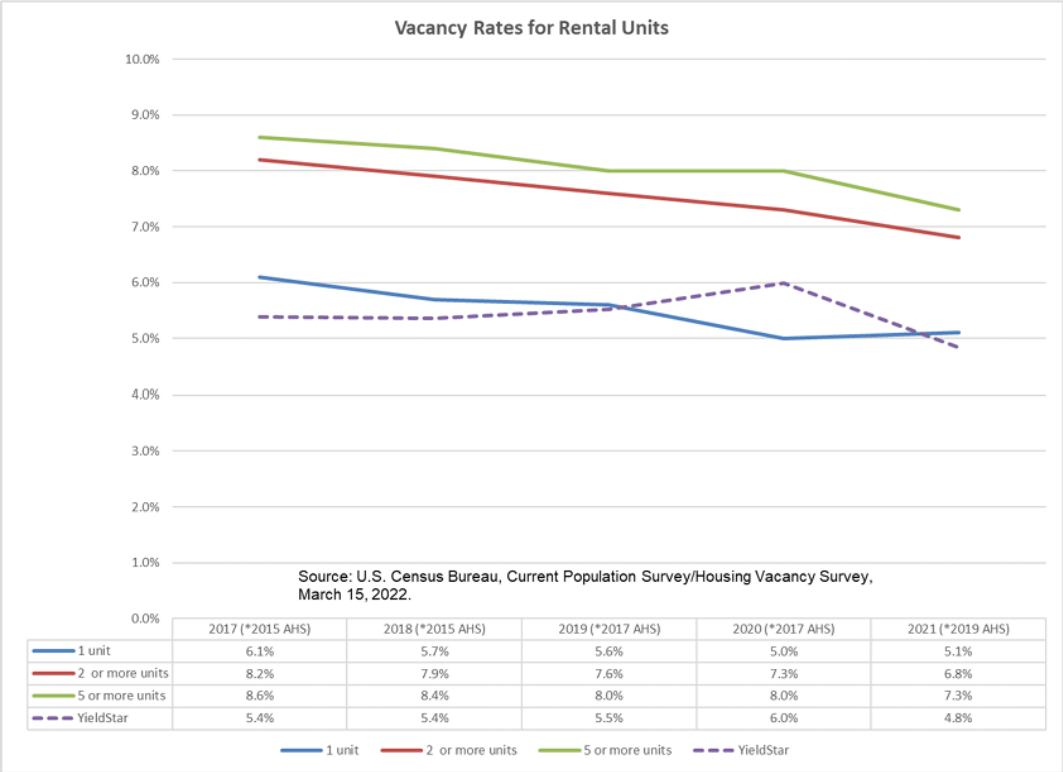
"AZAG lawsuit"). The allegations you reference in both complaints are just that—allegations. You know full well that, at the pleadings stage, courts are required to treat these allegations as true. But they have never been proven and will not be; to the contrary, RealPage has explained publicly—citing to irrefutable evidence—why they are false. Yet, you misleadingly present these allegations as established facts. For example, on page 8 of your presentation to the San Francisco City Council, you cite to an allegation in the MDL complaint that "Lessors are able to increase rents 'year over year, between 5% and 12% in every market'" *as if it were a fact*, without clarifying that this statement is an unsupported allegation in a pending lawsuit. Documents that you reference in your presentation contradict your assertion that RealPage's RMS was designed to increase rents. For example, the excerpt from RealPage's website—with information on how YieldStar can help customers—referenced on page 7 expressly notes that "YieldStar does more than rent pricing." This snapshot references RealPage's lease expiration management and move-in day optimization features, both of which help customers to better align supply and demand so units are not sitting vacant. In other words, these features help customers to increase revenue by increasing *occupancy* (not rents).

Despite acknowledging features of RealPage's RMS designed to *increase* occupancy, later in your presentation, on page 11, you include a slide that purports to show a shift over time from a negative to positive relationship between rents and vacancy rates (i.e., a shift to both vacancy rates and rents increasing in parallel) beginning in late 2015. You attribute this shift to "the advent of RealPage" and assert that "there's no reason in a healthy market why vacancies should be increasing and causing an increase in rent."[3] Notably, this chart does not include *any* specific data about properties using RealPage's RMS and does not differentiate between the vacancy rates for properties using RealPage's RMS versus those that do not. In fact, RealPage's own data shows that properties using RealPage's RMS have *lower* vacancy rates than the national average (*see* Fig. 1).[4] And a shift in late 2015 (even if one occurred) could not be attributed to "the advent of RealPage" when RealPage's RMS has been commercially available since 2005.

[3] San Francisco Board of Supervisors Land Use and Transportation Committee Regular Meeting (July 29, 2024) at 21.

[4] *See* https://www.realpage.com/storage/files/pages/faqs/pdfs/2023/03/realpage-response-to-senators-warren-smith-sanders-markey.pdf at 12.

FIGURE 1



	2017 (*2015 AHS)	2018 (*2015 AHS)	2019 (*2017 AHS)	2020 (*2017 AHS)	2021 (*2019 AHS)
1 unit	6.1%	5.7%	5.6%	5.0%	5.1%
2 or more units	8.2%	7.9%	7.6%	7.3%	6.8%
5 or more units	8.6%	8.4%	8.0%	8.0%	7.3%
YieldStar	5.4%	5.4%	5.5%	6.0%	4.8%

In many cases, the allegations that you reference in your presentation do not even support your assertions. For example, on pages 12 and 13 of your presentation, you assert that "[p]rice setting algorithms increase eviction rates." In support of this claim, you cite to two allegations: a statement from the Arizona Attorney General's complaint alleging that RealPage's RMS "increased turnover rates by 15 percentage points" and a statement in the MDL complaint alleging that a lessor defendant's "turnover rates increased around 15 percentage points in 2006 after implementing YieldStar." Not only are these statements unproven allegations in pending lawsuits (which you again failed to clarify during your presentation), these statements say nothing about eviction rates. Turnover rate in the multifamily residential rental industry is the number of residents that decide to move out when their lease is over versus those that choose to renew their lease. There is simply no basis to assert—and no plaintiff in the suits you rely on has even *alleged*—that RealPage RMS (or RMS generally) increases eviction rates.

Your presentation also falsely overstates the market penetration of RealPage's RMS in San Francisco. To show RealPage's "market penetration," on slides 14 to 16 you include snapshots

from RealPage's webpage called "RealPage Explore." RealPage Explore is a publicly available webpage through which RealPage provides regularly updated market and property data collected from public sources. RealPage Explore and the associated data has been available to the public since May 2018. When a user accesses RealPage Explore, the first thing they see is a disclaimer that states:

> RealPage Explore provides publicly available property specific information *without regard to whether the properties are RealPage customers*. RealPage Explore does not provide a listing of properties that use RealPage revenue management products. Properties found on Explore may or may not use any RealPage products, including revenue management."[5]

To access the snippets from RealPage Explore that you included in your presentation, you necessarily would have been taken to the page that includes the disclaimer cited above. Despite this disclaimer—which, again, you either did not bother to review or deliberately ignored—you falsely claimed during your presentation to the San Francisco City Council that these slides with information from RealPage Explore represent "a visual about [RealPage's] market penetration in the San Francisco bay area."[6] They do not; the reality is that the market penetration of RealPage RMS in the San Francisco MSA is very low—approximately 6.1% for AIRM and YieldStar (combined) and 4% for LRO.

In sum, your assertions about RealPage's RMS are false, misleading, and easily disproven by publicly accessible data and other resources. They are also inflammatory and prejudicial in that you are knowingly contributing to the widespread misinformation about RMS at a time when legislative bodies and courts are considering these issues. We demand that you immediately cease and desist from perpetuating your false assertions about RealPage and correct the record.

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

/s/ *Stephen Weissman*

Stephen Weissman

---

[5] *See* https://www.realpage.com/explore/main (emphasis added).

[6] San Francisco Board of Supervisors Land Use and Transportation Committee Regular Meeting (July 29, 2024) at 21.