1 Sophia M. Rios (SBN 305801)
2 BERGER MONTAGUE PC
   401 B Street, Suite 2000
3 San Diego, CA 92101
   Tel: (619) 489-0300
4 Email: srios@bm.net

5
   [additional counsel listed on signature page]
6

7 *Counsel for Plaintiff and the Proposed Class*

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10   **UNITED STATES DISTRICT COURT**

11   **SOUTHERN DISTRICT OF CALIFORNIA**

12 SHERRY BASON; LOIS WINN;   Case No. ____'22CV1611 WQHMDD____
13 GEORGES EMMANUEL NJONG
    DIBOKI; JULIA SIMS; and SOPHIA
14 WOODLAND, Individually and on   **CLASS ACTION COMPLAINT**
    Behalf of All Others Similarly Situated,
15   Plaintiffs,
                                          JURY TRIAL DEMANDED
16
        vs.
17
    REALPAGE, INC.; GREYSTAR REAL
18 ESTATE PARTNERS, LLC; LINCOLN
    PROPERTY CO.; FPI
19 MANAGEMENT, INC.; MID-
    AMERICA APARTMENT
20 COMMUNITIES, INC.; AVENUE5
    RESIDENTIAL, LLC; EQUITY
21 RESIDENTIAL; ESSEX PROPERTY
    TRUST, INC; THRIVE
22 COMMUNITIES MANAGEMENT,
    LLC; and SECURITY PROPERTIES
23 INC.,
24   Defendants.
25
26
27
28

NATURE OF THE ACTION

1.   Plaintiffs Sherry Bason, Lois Winn, Georges Emmanuel Njong Diboki, Julia Sims, and Sophia Woodland challenge a cartel among lessors of multifamily residential real estate leases ("Lessors") to artificially inflate the prices of multifamily residential real estate in the United States above competitive levels.

2.   Until approximately 2016, and potentially earlier, many of the nation's largest Lessors priced their leases based upon their own assessments of how to best compete against other Lessors. Lessors generally priced their units competitively to maximize occupancy (that is, maximizing output). Lessors had an incentive to lower their prices to attract lessees away from their competitors, until all available leases were sold. In this way, competition drove rent levels to reflect available supply of rental units and lessee demand. Lessors also independently determined when to put their leases on the market, resulting in unpredictable supply levels—a natural phenomenon in a competitive market. When supply exceeded demand, Lessors cut prices.

3.   As a former industry executive explained, the market structure is "a classic prisoners' dilemma." Since residential real estate is a perishable resource (if a unit sits vacant for a month, a Lessor can never monetize that lost month of rent), Lessors favored a strategy of keeping "heads in the beds," a term for offering sufficiently attractive lease pricing to maximize physical occupancy levels in multifamily residential real estate properties. Thus, that industry executive opined, while all Lessors "would be better off limiting their rent reductions [discounts]," if any Lessor "lower[ed] their rents while the others don't, then that [Lessor] would outperform."

4.   However, beginning in approximately 2016, and potentially earlier, Lessors replaced their independent pricing and supply decisions with collusion. Lessors agreed to use a common third party that collected real-time pricing and

1 recommendations. Lessors also agreed to follow these recommendations, on the

2 expectation that competing Lessors would do the same.

3   5.   That third party is RealPage, Inc. ("RealPage"). RealPage provides

4 software and data analytics to Lessors. RealPage also serves as the mechanism by

5 which Lessors collude and avoid competition, increasing lease prices to Plaintiffs and

6 other members of the proposed Class. RealPage openly boasts that its services

7 "balance supply and demand to maximize [Lessors'] revenue growth." And that is

8 precisely what RealPage has done, facilitating an agreement among participating

9 Lessors not to compete on price, and allowing Lessors to coordinate both pricing and

10 supply through two mutually reinforcing mechanisms in furtherance of their agreed

11 aim of suppressing price competition for multifamily residential real estate leases.

12   6.   First, Lessors "outsource daily pricing and ongoing revenue oversight"

13 to RealPage, replacing separate centers of independent decision-making with one.

14 RealPage collects up-to-the-minute data on the historical and contemporaneous

15 pricing from participating Lessors, data that, according to RealPage, is updated

16 "every time [Lessors] make or change a [lease] renewal offer," spanning over "16

17 million units," which is a "very large chunk of the total inventory in the country." It

18 standardizes this data to account for differences in the characteristics or "class" of the

19 property in question, and then sets prices for participating Lessors using a common

20 formula. RealPage touts that it sets pricing for Lessors' "properties as though we

21 own them ourselves"—i.e., the participating Lessors' cartel replicates the market

22 outcomes one would observe if they were a monopolist of residential leases, which

23 is the goal of any cartel.

24   7.   While Lessors are able reject the RealPage pricing through an onerous

25 process, RealPage emphasizes the need for "discipline" among participating Lessors.

26 To encourage adherence to its common scheme, RealPage explains that for its

27 services to be most effective in increasing rents, Lessors must accept the pricing at

28 least eighty percent of the time. These efforts are successful, with a RealPage

1 employee explaining that as many as 90 percent (and at least 80 percent) of prices are
2 adopted by participating Lessors without any deviation. As one Lessor explains,
3 while "we are all technically competitors," RealPage "helps us work together," "to
4 work with a community in pricing strategies, not to work separately."

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

14   9.   By staggering lease renewals to artificially smooth out natural
15 imbalances of supply and demand, RealPage and participating Lessors also eliminate
16 any incentive to undercut or cheat on the cartel (avoiding a race to the bottom, or
17 "prisoner's dilemma"). This is a central mantra of RealPage, to sacrifice "physical"
18 occupancy (i.e., to decrease output) in exchange for "economic" occupancy, a
19 manufactured term RealPage uses to refer to increasing prices and decreasing
20 occupancy (output) in the market.

21   10.   RealPage's and participating Lessors' coordinated efforts have been
22 effective at driving anticompetitive outcomes: higher prices and lower occupancy
23 (output).   RealPage brags that participating Lessors experience "[r]ental rate
24 improvements, year over year, between 5% and 12% in every market." One Lessor
25 said that the net effect of raising rents and "pushing people out" of the residential real
26 estate leases they could no longer afford, was "10 million in income." As discussed
27 below, RealPage and participating Lessors have accomplished this task even under
28 market downturns such as the Covid-19 pandemic.

11.   This misconduct has hit the military community particularly hard. With respect to men and women on active duty, military bases often do not provide "on-post" housing, or have no available housing, requiring personnel to rent apartments. For instance, the Associated Press recently explained how the waitlist for "on-post" housing at Naval Base San Diego exceeds a year. Indeed, an estimated 63% of service members live in "off-post" private housing. While the Department of Defense provides a monthly basic allowance for housing, it is often insufficient to cover the costs of "off-post" housing. Kate Needham, a veteran who co-founded the nonprofit Armed Forces Housing Advocates in May 2021, explained: "We have families coming to us that are on exorbitantly lengthy waiting lists and sitting in homes that they can't afford." Many veterans depend upon residential leases for their housing, often spending over half of household income on rent. Rising rents increase levels of homelessness. Approximately a quarter of the nation's homeless veterans live in California, and many of them reside in San Diego. Nearly one in ten homeless individuals in San Diego served in the military.

12.   RealPage is proud of its role in the exploding increase in the prices of residential leases. In a marketing video used to attract additional Lessors to the conspiracy, a RealPage Vice President discussed the recent and never-before seen price increases for residential real estate leases, as high as 14.5% in some markets. When another RealPage executive asks: "What role has the [RealPage] software played" in those increases, the RealPage Vice President responded: "I think it's driving it, quite honestly."

13.   The conspiracy Plaintiffs challenge is unlawful under Section 1 of the Sherman Act. Plaintiffs bring this action to recover their damages, trebled, as well as injunctive and other appropriate relief, detailed infra, on behalf of all others similarly situated.

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