

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, STATE OF
NORTH CAROLINA, STATE OF
CALIFORNIA, STATE OF COLORADO,
STATE OF CONNECTICUT, STATE OF
MINNESOTA, STATE OF OREGON, STATE
OF TENNESSEE, and STATE OF
WASHINGTON,

Plaintiffs,

vs.

Case No. 1:24-cv-00710-LCB-JLW

REALPAGE, INC.,

Defendant.

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs United States of America, and the States of North Carolina, California, Colorado, Connecticut, Minnesota, Oregon, Tennessee, and Washington, acting by and through their respective Attorneys General, oppose Defendant RealPage, Inc.'s Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), filed on December 3, 2024 (ECF No. 43). RealPage's Motion misapprehends governing law and gives short shrift to Plaintiffs' extensive allegations of RealPage's anticompetitive conduct.

Nevertheless, Plaintiffs respectfully have amended their complaint as a matter of right, *see* FED. R. CIV. 15(a)(1)(B), to add six of the many landlords that have participated in this anticompetitive scheme with RealPage (Greystar, LivCor, Camden, Cushman &

Wakefield/Pinnacle, and Willow Bridge, and Cortland) as Defendants, two additional States as co-Plaintiffs, and additional allegations of Defendants' anticompetitive conduct.¹ As this Court has held, the filing of the Amended Complaint in this action (*see* ECF No. 47) "can serve as a response to a motion to dismiss under Rule 12(b)," and it "supersedes the original complaint, rendering the original complaint of no legal effect and any motion to dismiss it moot." *Tucker Auto-Mation of N.C., LLC v. Rutledge*, No. 1:15-cv-00893, 2016 WL 11590593, at *1 & *2 (M.D.N.C. Sept. 23, 2016) (citing *Young v. City of Mount Ranier*, 238 F.3d 567, 572–73 (4th Cir. 2001)). Plaintiffs therefore respectfully request that the Court deny RealPage's Motion to Dismiss (the original Complaint) as moot. Should RealPage renew its Motion in response to the Amended Complaint, Plaintiffs will respond on the merits.

Dated: January 7, 2025

Respectfully submitted,

By: s/ Name
Henry C. Su
David A. Geiger

Attorneys
United States Department of Justice
Antitrust Division
450 Fifth Street N.W., Suite 7100
Washington, DC 20530
Telephone: (202) 307-6200
Email: henry.su@usdoj.gov

¹ Rule 15(a)(1)(B) provides that "[a] party may amend its pleading once as a matter of course no later than ... 21 days after service of a motion under Rule 12(b)[.]" FED. R. CIV. P. 15(a)(1)(B). Here, that deadline was extended to January 7, 2025, by the Court in an order entered on November 19, 2024.

**FOR PLAINTIFF STATE OF NORTH
CAROLINA:**

JEFF JACKSON
Attorney General of North Carolina

/s/ Kunal J. Choksi

KUNAL J. CHOKSI
Special Deputy Attorney General
N.C. Bar. No. 55666
JESSICA V. SUTTON
Special Deputy Attorney General
N.C. Bar No. 41652
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
Telephone: 919-716-6032
Email: kchoksi@ncdoj.gov

*Attorneys for Plaintiff State of North
Carolina*

**FOR PLAINTIFF STATE OF
CALIFORNIA:**

ROB BONTA
Attorney General of California

/s/ Pamela Pham

DOAN-PHUONG (PAMELA) PHAM
QUYEN TOLAND
Deputy Attorneys General
Office of the Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel: (213) 269-6000
Email: Pamela.Pham@doj.ca.gov

Attorneys for Plaintiff State of California

**FOR PLAINTIFF STATE OF
COLORADO**

PHILIP J. WEISER
Attorney General

/s/ Elizabeth W. Hereford

ELIZABETH W. HEREFORD
Assistant Attorney General
BRYN WILLIAMS
First Assistant Attorney General
Colorado Department of Law
Office of the Attorney General
Ralph L. Carr Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203
Telephone: (720) 508-6000
Email: Bryn.williams @coag.gov

Attorneys for Plaintiff State of Colorado

**FOR PLAINTIFF STATE OF
CONNECTICUT:**

WILLIAM TONG
Attorney General of Connecticut

/s/ Julián A. Quiñones Reyes

JULIÁN A. QUIÑONES REYES
Assistant Attorney General
Office of the Connecticut Attorney
General
165 Capitol Avenue
Hartford, CT 06106
Telephone: (860) 808-5030
Email: Julian.Quinones@ct.gov

*Attorney for Plaintiff State of
Connecticut*

**FOR PLAINTIFF STATE OF
MINNESOTA:**

KEITH ELLISON
Attorney General of Minnesota

s/Katherine A. Moerke
KATHERINE A. MOERKE
ELIZABETH ODETTE
SARAH DOKTORI
Assistant Attorneys General
Office of the Minnesota Attorney
General
445 Minnesota Street, Suite 600
St. Paul, MN 55101-2130
katherine.moerke@ag.state.mn.us
Telephone: (651) 757-1288
elizabeth.odette@ag.state.mn.us
Telephone: (651) 728-7208
sarah.doktori@ag.state.mn.us
Telephone: (651) 583-6694

Attorneys for Plaintiff State of Minnesota

**FOR PLAINTIFF STATE OF
OREGON:**

DAN RAYFIELD
Attorney General of Oregon

/s/ Timothy D. Smith
Timothy D. Smith
Attorney-in-Charge
Antitrust, False Claims, & Privacy
Section
Oregon Department of Justice
100 SW Market St, Portland OR 97201
503.798.3297 |
tim.smith@doj.oregon.gov

Attorneys for Plaintiff State of Oregon

**FOR PLAINTIFF STATE OF
TENNESSEE:**

JONATHAN SKRMETTI
Attorney General of Tennessee

/s/ S. Ethan Bowers

S. ETHAN BOWERS
Senior Assistant Attorney General
DANIEL LYNCH
Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202
6.15.837.5582 |
Ethan.Bowers@ag.tn.gov

Attorneys for State of Tennessee

**FOR PLAINTIFF STATE OF
WASHINGTON:**

ROBERT W. FERGUSON
Attorney General

/s/ Rachel A. Lumen

BRIAN H. ROWE
RACHEL A. LUMEN
SARAH SMITH-LEVY
KENDALL SCOTT COWLES
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744
brian.rowe@atg.wa.gov
rachel.lumen@atg.wa.gov
sarah.e.smith-levy@atg.wa.gov
kendall.scottcowles@atg.wa.gov

Attorney for Plaintiff State of Washington

WORD COUNT CERTIFICATION

I certify that this Opposition complies with the applicable word limits excluding the caption, signature lines, certificate of service, and any cover page or index in accordance with Local Civil Rule 7.3(d)(1). This certification is made in accordance with Local Civil Rule 7.3(d)(1). The undersigned relied on the word count feature provided by word processing software. The Opposition contains 307 words.

Dated: January 7, 2025

By: s/ Henry C. Su
Henry C. Su

Attorney
United States Department of Justice
Antitrust Division
450 Fifth Street N.W., Suite 7100
Washington, DC 20530
Telephone: (202) 307-6200
Email: henry.su@usdoj.gov

*Attorney for Plaintiff United States of
America*

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: s/ Henry C. Su
Henry C. Su