

Summary of Yardi's Motion to Dismiss RealPage's Amended Counterclaims

On June 16, 2011, Yardi filed a motion to dismiss five of RealPage's six Amended Counterclaims. As Yardi states in the motion, the form and nature of RealPage's Amended Counterclaims illustrate why they should be dismissed – "RealPage simply has manufactured these counterclaims, and bolted them in front of its Answer, to divert attention from its admitted illegal conduct, level inflammatory and irrelevant accusations at Yardi, and unleash a torrent of expensive discovery."

The complete brief is available on Yardi's website at <http://www.yardi.com/legal/Motion-to-Dismiss.pdf>. The statements below, quoting directly from Yardi's filing with the Court, summarize Yardi's motion:

Yardi brought this case against RealPage after discovering RealPage had broken into Yardi's password-protected customer support website and downloaded substantial amounts of Yardi's trade secrets and copyrighted support material. This theft occurred while Yardi was engaging RealPage in dialogue about Yardi's concerns that RealPage might be violating Yardi's intellectual property rights.

In its response to Yardi's Complaint, RealPage admitted to much of this downloading. However, RealPage hid those admissions behind 32 pages of alleged "Counterclaims." The Counterclaims suffered from a variety of fatal defects that Yardi disclosed to RealPage in meet and confer discussions. In response, RealPage filed a major overhaul as "Amended Counterclaims." Because RealPage failed to cure those defects, Yardi moves to dismiss five of the six Amended Counterclaims. RealPage still fails to plead viable antitrust and contractual interference causes of action. Its unfair competition and prospective interference counterclaims also fail to the extent they rely on alleged antitrust violations or contractual interference.

In due course, Yardi will prove all of RealPage's counterclaims false – although that is evident on their face. For example, RealPage alleges that starting in 2008 a Yardi employee, who it describes as a "Yardi mole," "willfully and maliciously" took RealPage's "most highly confidential trade secrets" and used them to "unfairly compete against RealPage." These allegations are false. Were they true, RealPage had a duty to disclose them to prospective and current shareholders even prior to its first public offering in August 2010. It defies logic that RealPage would instead sit idly by, laboring against the effects of this alleged devastating theft, and do nothing about it until more than two years later when forced to admit to Yardi's unrelated allegations.

At trial, this case will center around RealPage's admitted computer fraud, misappropriation, and infringement. Right now, the Court should dismiss five of RealPage's six Amended Counterclaims. RealPage has now twice failed to allege sufficient facts in support of these counterclaims and instead has pled itself into an incurable corner. In addition to its contradictory allegations, public statements by RealPage properly subject to judicial notice foreclose the possibility of any good faith amendment. The Court should grant Yardi's motion to dismiss without leave to amend.