

1 BORIS FELDMAN, State Bar No. 128838
DYLAN J. LIDDIARD, State Bar No. 203055
2 DOMINIQUE-CHANTALE ALEPIN, State Bar No. 241648
WILSON SONSINI GOODRICH & ROSATI
3 Professional Corporation
650 Page Mill Road
4 Palo Alto, CA 94304-1050
Telephone: (650) 493-9300
5 Facsimile: (650) 565-5100
Email: bfeldman@wsgr.com
6 dliddiard@wsgr.com; dalepin@wsgr.com

7 Attorneys for Defendant Bazaarvoice, Inc.

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 United States of America,) CASE NO.: 13-CV-0133-EMC
12)
13 *Plaintiff,*) **DEFENDANT BAZAARVOICE**
14) **INC.’S ANSWER TO PLAINTIFF’S**
15 *v.*) **COMPLAINT**
16)
17 Bazaarvoice, Inc.,) Complaint Filed: Jan. 10, 2013
18) Judge: Hon. Edward M. Chen_
19 *Defendant.*) Trial Date: Sept. 10, 2013
20)
21)
22)
23)
24)
25)
26)
27)
28)

19 Defendant Bazaarvoice, Inc. (“Defendant” or “Bazaarvoice”), hereby answers the
20 complaint filed on January 10, 2013 (the “Complaint”) by plaintiff United States of America
21 (“Plaintiff”).

22 **PRELIMINARY STATEMENT**

23 Plaintiff’s Complaint rests on superseded documents and predictions that bear no
24 resemblance to marketplace realities. While the Complaint speculates that there will be harm to
25 competition as a result of Bazaarvoice’s July 2012 acquisition of PowerReviews, Inc.
26 (“PowerReviews”), the reality is that there has been substantial competitor repositioning and
27 entry, and intense competition on price and innovation. The Complaint makes no mention of
28 these post-merger facts, and instead relies on gerrymandered product and geographic markets,

1 fails to acknowledge significant competitors, and underestimates the ease of entry and expansion.
2 Nor has Plaintiff alleged any cognizable market share or market concentration, such that it would
3 be entitled to a presumption that the acquisition is likely to harm competition. Customers have
4 many choices to which they can turn in this dynamic, vibrant market sector. Bazaarvoice will
5 show that customers large and small do not believe they are constrained to absorb
6 anticompetitive price increases (or reduced quality) from Bazaarvoice. In this dynamic industry
7 that is still in its infancy, the evidence will show that competition continues to flourish, and that
8 the acquisition has only helped, not harmed, customers.

9 ANSWER

10 To the extent the paragraphs of the Complaint (“Paragraphs”) are grouped under headings
11 and subheadings, Defendant responds generally that such headings and subheadings (some of
12 which are repeated below for reference only and do not constitute admissions) state legal
13 conclusions and pejorative inferences to which no response is required. To the extent a response
14 is necessary, Defendant denies each and every heading and subheading in the Complaint and
15 incorporates by reference this response in each Paragraph below as if fully set forth herein.

16 Except as expressly admitted herein, Defendant denies any and all allegations as set forth
17 in the Complaint. Defendant expressly reserves the right to amend and/or supplement its Answer
18 as may be necessary. Defendant further answers the numbered paragraphs in the Complaint as
19 follows.

20 INTRODUCTION

21 1. With respect to Paragraph 1, to the extent Plaintiff’s use of “PRR platform”
22 implies a relevant product market, such use constitutes a legal conclusion to which no response is
23 required. The remainder of Paragraph 1 contains Plaintiff’s characterizations and legal
24 conclusions to which no response is required. To the extent the remaining allegations in
25 Paragraph 1 require a response, Defendant denies those allegations.

1 The remainder of Paragraph 7 contains Plaintiff’s characterizations and legal conclusions, to
2 which no response is required. To the extent that the remaining allegations in Paragraph 7
3 require a response, Defendant denies those allegations.

4 8. Defendant admits the allegation in the first sentence of Paragraph 8. To the extent
5 Paragraph 8 purports to quote snippets from or characterize a memorandum, the memorandum
6 speaks for itself, and Plaintiff’s characterization requires no response. The remainder of
7 Paragraph 8 contains Plaintiff’s characterizations and legal conclusions, to which no response is
8 required. To the extent that the remaining allegations in Paragraph 8 require a response,
9 Defendant denies those allegations.

10 9. Defendant admits the allegations in the first and second sentences of Paragraph 9.
11 To the extent Paragraph 9 purports to quote snippets from or characterize a memorandum, the
12 memorandum speaks for itself, and Plaintiff’s characterization requires no response. The
13 remainder of Paragraph 9 contains Plaintiff’s characterizations and legal conclusions, to which
14 no response is required. To the extent that the remaining allegations in Paragraph 9 require a
15 response, Defendant denies those allegations.

16 10. Defendant admits the allegations in Paragraph 10.

17 **THE DEFENDANT AND THE TRANSACTION**

18 11. Defendant admits the allegations in Paragraph 11.

19 12. Defendant admits the allegations in Paragraph 12.

20 **JURISDICTION**

21 13. Defendant admits that Plaintiff purports to “bring this action under Section 15 of
22 the Clayton Act, 15 U.S.C. §25.” Defendant denies that it has violated any provision of the
23 Clayton Act.

24 14. With respect to Paragraph 14, to the extent Plaintiff’s use of “PRR platform”
25 implies a relevant product market, such use constitutes a legal conclusion to which no response is
26 required. Defendant admits the remaining allegations in Paragraph 14.

27 15. Defendant admits the allegation in Paragraph 15.

1 **VENUE**

2 16. Defendant admits the allegation in Paragraph 16.

3 **INTRADISTRICT ASSIGNMENT**

4 17. Defendant admits the allegations in Paragraph 17.

5 **PRR PLATFORMS**

6 18. With respect to Paragraph 18, to the extent Plaintiff's use of "PRR platform"
7 implies a relevant product market, such use constitutes a legal conclusion to which no response is
8 required. The remainder of Paragraph 18 contains Plaintiff's characterizations to which no
9 response is required. To the extent the remaining allegations in Paragraph 18 require a response,
10 Defendant denies those allegations.

11 19. Paragraph 19 contains Plaintiff's characterizations to which no response is
12 required. To the extent the remaining allegations in Paragraph 19 require a response, Defendant
13 denies those allegations.

14 20. Paragraph 20 contains Plaintiff's characterizations to which no response is
15 required. To the extent the allegations in Paragraph 20 require a response, Defendant denies
16 those allegations.

17 21. Paragraph 21 contains Plaintiff's characterizations to which no response is
18 required. To the extent the allegations in Paragraph 21 require a response, Defendant denies
19 those allegations.

20 22. With respect to Paragraph 22, to the extent Plaintiff's use of "PRR platform"
21 implies a relevant product market, such use constitutes a legal conclusion to which no response is
22 required. The remainder of Paragraph 22 contains Plaintiff's characterizations to which no
23 response is required. To the extent the remaining allegations in Paragraph 22 require a response,
24 Defendant denies those allegations.

25 23. With respect to Paragraph 23, to the extent Plaintiff's use of "PRR platform"
26 implies a relevant product market, such use constitutes a legal conclusion to which no response is
27 required. The remainder of Paragraph 23 contains Plaintiff's characterizations to which no

1 response is required. To the extent the remaining allegations in Paragraph 23 require a response,
2 Defendant denies those allegations.

3 24. With respect to Paragraph 24, to the extent Plaintiff's use of "PRR platform"
4 implies a relevant product market, such use constitutes a legal conclusion to which no response is
5 required. The remainder of Paragraph 24 contains Plaintiff's characterizations to which no
6 response is required. To the extent the remaining allegations in Paragraph 24 require a response,
7 Defendant denies those allegations.

8 25. With respect to Paragraph 25, to the extent Plaintiff's use of "PRR platform"
9 implies a relevant product market, such use constitutes a legal conclusion to which no response is
10 required. The remainder of Paragraph 25 contains Plaintiff's characterizations to which no
11 response is required. To the extent the remaining allegations in Paragraph 25 require a response,
12 Defendant denies those allegations.

13 26. With respect to Paragraph 26, to the extent Plaintiff's use of "PRR platform"
14 implies a relevant product market, such use constitutes a legal conclusion to which no response is
15 required. The remainder of Paragraph 26 contains Plaintiff's characterizations to which no
16 response is required. To the extent the remaining allegations in Paragraph 26 require a response,
17 Defendant denies those allegations.

18 27. With respect to Paragraph 27, to the extent Plaintiff's use of "PRR platform"
19 implies a relevant product market, such use constitutes a legal conclusion to which no response is
20 required. The remainder of Paragraph 27 contains Plaintiff's characterizations and legal
21 conclusions to which no response is required. To the extent the remaining allegations in
22 Paragraph 27 require a response, Defendant denies those allegations.

23 28. With respect to Paragraph 28, to the extent Plaintiff's use of "PRR platform"
24 implies a relevant product market, such use constitutes a legal conclusion to which no response is
25 required. To the extent Paragraph 28 purports to quote snippets from or characterize deposition
26 testimony, the testimony speaks for itself, and Plaintiff's characterization requires no response.
27 The remainder of Paragraph 28 contains Plaintiff's characterizations to which no response is

1 required. To the extent the remaining allegations in Paragraph 28 require a response, Defendant
2 denies those allegations.

3 29. Paragraph 29 contains Plaintiff's characterizations and legal conclusions to which
4 no response is required. To the extent the allegations in Paragraph 19 require a response,
5 Defendant denies the allegations.

6 **RELEVANT MARKET ALLEGED**

7 30. Paragraph 30 is a statement of Plaintiff's legal position, to which no response is
8 required.

9 31. The first sentence of Paragraph 31 is a statement of Plaintiff's legal position, to
10 which no response is required. The remaining allegations in Paragraph 31 contain Plaintiff's
11 legal conclusions, to which no response is required. To the extent the remaining allegations in
12 Paragraph 31 require a response, Defendant denies those allegations.

13 **ALLEGATIONS ASSERTING THE ELIMINATION OF HEAD-TO-HEAD**
14 **COMPETITION BETWEEN BAZAARVOICE AND POWERREVIEWS WILL HARM**
15 **RETAILERS AND MANUFACTURERS**

16 **A. Allegations asserting Bazaarvoice's acquisition of PowerReviews eliminated**
17 **the company's closest competitor and is likely to substantially lessen**
18 **competition.**

19 32. With respect to Paragraph 32, to the extent Plaintiff's use of "PRR platform"
20 implies a relevant product market, such use constitutes a legal conclusion to which no response is
21 required. To the extent Paragraph 32 purports to quote snippets from or characterize an email,
22 the email speaks for itself, and Plaintiff's characterization requires no response. The remainder
23 of Paragraph 32 contains Plaintiff's characterizations and legal conclusions to which no response
24 is required. To the extent the remaining allegations in Paragraph 32 require a response,
25 Defendant denies those allegations.

26 33. To the extent the second sentence of Paragraph 33 purports to quote snippets from
27 or characterize an email, the email speaks for itself, and Plaintiff's characterization requires no
28 response. Defendant admits that "BATNA and ZOPA are acronyms which stand for 'best

1 alternative to negotiated agreement’ and ‘zone of possible agreement.’” The remainder of
2 Paragraph 33 contains Plaintiff’s characterizations and legal conclusions to which no response is
3 required. To the extent the remaining allegations in Paragraph 33 require a response, Defendant
4 denies those allegations.

5 34. With respect to Paragraph 34, to the extent Plaintiff’s use of “PRR platform”
6 implies a relevant product market, such use constitutes a legal conclusion to which no response is
7 required. To the extent Paragraph 34 purports to quote snippets from or characterize an email,
8 the email speaks for itself, and Plaintiff’s characterization requires no response. The remainder
9 of Paragraph 34 contains Plaintiff’s characterizations and legal conclusions to which no response
10 is required. To the extent the remaining allegations in Paragraph 34 require a response,
11 Defendant denies those allegations.

12 35. With respect to Paragraph 35, to the extent Plaintiff’s use of “PRR platform”
13 implies a relevant product market, such use constitutes a legal conclusion to which no response is
14 required. To the extent Paragraph 35 purports to quote snippets from or characterize an email,
15 the email speaks for itself, and Plaintiff’s characterization requires no response. The remainder
16 of Paragraph 35 contains Plaintiff’s characterizations and legal conclusions to which no response
17 is required. To the extent the remaining allegations in Paragraph 35 require a response,
18 Defendant denies those allegations.

19 36. With respect to Paragraph 36, to the extent Plaintiff’s use of “PRR platform”
20 implies a relevant product market, such use constitutes a legal conclusion to which no response is
21 required. To the extent Paragraph 3 purports to quote snippets from or characterize a
22 memorandum, the memorandum speaks for itself, and Plaintiff’s characterization requires no
23 response. The remainder of Paragraph 36 contains Plaintiff’s characterizations and legal
24 conclusions to which no response is required. To the extent the remaining allegations in
25 Paragraph 36 require a response, Defendant denies those allegations.

26 37. Defendant admits the first sentence of Paragraph 37. To the extent Plaintiff’s use
27 of “PRR platform” implies a relevant product market, such use constitutes a legal conclusion to

1 which no response is required. The remainder of Paragraph 37 contains Plaintiff's
2 characterizations and legal conclusions to which no response is required. To the extent the
3 remaining allegations in Paragraph 37 require a response, Defendant denies those allegations.

4 38. With respect to Paragraph 38, to the extent Plaintiff's use of "PRR platform"
5 implies a relevant product market, such use constitutes a legal conclusion to which no response is
6 required. The remainder of Paragraph 38 contains Plaintiff's characterizations and legal
7 conclusions to which no response is required. To the extent the remaining allegations in
8 Paragraph 38 require a response, Defendant denies those allegations.

9 39. With respect to Paragraph 39, to the extent Plaintiff's use of "PRR platform"
10 implies a relevant product market, such use constitutes a legal conclusion to which no response is
11 required. The remainder of Paragraph 39 contains Plaintiff's characterizations and legal
12 conclusions to which no response is required. To the extent the remaining allegations in
13 Paragraph 39 require a response, Defendant denies those allegations.

14 40. With respect to Paragraph 40, to the extent Plaintiff's use of "PRR platform"
15 implies a relevant product market, such use constitutes a legal conclusion to which no response is
16 required. The remainder of Paragraph 40 contains Plaintiff's characterizations and legal
17 conclusions to which no response is required. To the extent the remaining allegations in
18 Paragraph 40 require a response, Defendant denies those allegations.

19 41. Paragraph 41 contains Plaintiff's characterizations and legal conclusions to which
20 no response is required. To the extent the allegations in Paragraph 41 require a response,
21 Defendant denies those allegations.

22 **B. Allegations asserting PowerReviews "scorched earth approach to pricing"**
23 **applied significant pressure to Bazaarvoice in competitive deals.**

24 42. To the extent Paragraph 42 purports to quote snippets from or characterize an
25 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
26 remainder of Paragraph 42 contains Plaintiff's characterizations and legal conclusions to which
27

1 no response is required. To the extent the remaining allegations in Paragraph 42 require a
2 response, Defendant denies those allegations.

3 43. To the extent Paragraph 43 purports to quote snippets from or characterize an
4 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
5 remainder of Paragraph 43 contains Plaintiff's characterizations and legal conclusions to which
6 no response is required. To the extent the remaining allegations in Paragraph 43 require a
7 response, Defendant denies those allegations.

8 44. To the extent Paragraph 44 purports to quote snippets from or characterize an
9 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
10 remainder of Paragraph 44 contains Plaintiff's characterizations and legal conclusions to which
11 no response is required. To the extent the remaining allegations in Paragraph 44 require a
12 response, Defendant denies those allegations.

13 45. To the extent Paragraph 45 purports to quote snippets from or characterize an
14 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
15 remainder of Paragraph 45 contains Plaintiff's characterizations and legal conclusions to which
16 no response is required. To the extent the remaining allegations in Paragraph 45 require a
17 response, Defendant denies those allegations.

18 46. To the extent Paragraph 46 purports to quote snippets from or characterize an
19 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
20 remainder of Paragraph 46 contains Plaintiff's characterizations to which no response is
21 required. To the extent the remaining allegations in Paragraph 46 require a response, Defendant
22 denies those allegations.

23 47. To the extent Paragraph 47 purports to quote snippets from or characterize an
24 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
25 remainder of Paragraph 47 contains Plaintiff's characterizations to which no response is
26 required. To the extent the remaining allegations in Paragraph 47 require a response, Defendant
27 denies those allegations.

1 48. With respect to Paragraph 48, to the extent Plaintiff's use of "PRR platform"
2 implies a relevant product market, such use constitutes a legal conclusion to which no response is
3 required. To the extent Paragraph 48 purports to quote snippets from or characterize an email,
4 the email speaks for itself, and Plaintiff's characterization requires no response. The remainder
5 of Paragraph 48 contains Plaintiff's characterizations and legal conclusions to which no response
6 is required. To the extent the remaining allegations in Paragraph 48 require a response,
7 Defendant denies those allegations.

8 49. To the extent Paragraph 49 purports to quote snippets from or characterize an
9 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
10 remainder of Paragraph 49 contains Plaintiff's characterizations and legal conclusions to which
11 no response is required. To the extent the remaining allegations in Paragraph 49 require a
12 response, Defendant denies those allegations.

13 **C. Allegations asserting Bazaarvoice and PowerReviews engaged in "feature**
14 **driven one-upmanship," which drove both firms to innovate and develop new**
15 **PRR platform features.**

16 50. To the extent Paragraph 50 purports to quote snippets from or characterize an
17 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
18 remainder of Paragraph 50 contains Plaintiff's characterizations and legal conclusions to which
19 no response is required. To the extent the remaining allegations in Paragraph 50 require a
20 response, Defendant denies those allegations.

21 51. With respect to Paragraph 50, to the extent Plaintiff's use of "PRR platform"
22 implies a relevant product market, such use constitutes a legal conclusion to which no response is
23 required. To the extent Paragraph 51 purports to quote snippets from or characterize an email,
24 the email speaks for itself, and Plaintiff's characterization requires no response. The remainder
25 of Paragraph 51 contains Plaintiff's characterizations and legal conclusions to which no response
26 is required. To the extent the remaining allegations in Paragraph 51 require a response,
27 Defendant denies those allegations.

1 52. Defendant is without knowledge or information sufficient to form a belief as to
2 the truth of the first sentence of Paragraph 52. Defendant admits the last sentence of Paragraph
3 52. The remainder of Paragraph 52 contains Plaintiff's characterizations and legal conclusions to
4 which no response is required. To the extent the remaining allegations in Paragraph 52 require a
5 response, Defendant denies those allegations.

6 53. To the extent Paragraph 53 purports to quote snippets from or characterize an
7 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
8 remainder of Paragraph 52 contains Plaintiff's characterizations and legal conclusions to which
9 no response is required. To the extent the remaining allegations in Paragraph 53 require a
10 response, Defendant denies those allegations.

11 54. To the extent Paragraph 54 purports to quote snippets from or characterize an
12 email, the email speaks for itself, and Plaintiff's characterization requires no response. The
13 remainder of Paragraph 54 contains Plaintiff's characterizations and legal conclusions to which
14 no response is required. To the extent the remaining allegations in Paragraph 54 require a
15 response, Defendant denies those allegations.

16 **D. Allegations asserting the anticompetitive effects of the transaction will not be**
17 **counteracted by entry, repositioning or merger-specific efficiencies.**

18 55. With respect to Paragraph 55, to the extent Plaintiff's use of "PRR platform"
19 implies a relevant product market, such use constitutes a legal conclusion to which no response is
20 required. Defendant admits that "[o]ther providers exist." The remainder of Paragraph 55
21 contains Plaintiff's characterizations and legal conclusions to which no response is required. To
22 the extent the remaining allegations in Paragraph 55 require a response, Defendant denies those
23 allegations.

24 56. With respect to Paragraph 56, to the extent Plaintiff's use of "PRR platform"
25 implies a relevant product market, such use constitutes a legal conclusion to which no response is
26 required. The remainder of Paragraph 56 contains Plaintiff's characterizations and legal
27

1 conclusions to which no response is required. To the extent the remaining allegations in
2 Paragraph 56 require a response, Defendant denies those allegations.

3 57. To the extent Paragraph 57 purports to quote snippets from or characterize
4 documents, the documents speak for themselves, and Plaintiff's characterization requires no
5 response. The remainder of Paragraph 57 contains Plaintiff's characterizations and legal
6 conclusions to which no response is required. To the extent the remaining allegations in
7 Paragraph 57 require a response, Defendant denies those allegations.

8 58. To the extent Paragraph 58 purports to quote snippets from or characterize
9 documents, the documents speak for themselves, and Plaintiff's characterization requires no
10 response. The remainder of Paragraph 58 contains Plaintiff's characterizations and legal
11 conclusions to which no response is required. To the extent the remaining allegations in
12 Paragraph 58 require a response, Defendant denies those allegations.

13 59. Paragraph 59 is a statement of Plaintiff's legal position to which no response is
14 required.

15 CAUSE OF ACTION

16 60. With respect to Paragraph 60, Defendant repeats and incorporates by reference the
17 responses to Paragraphs 1 through 59 as if fully set forth herein.

18 61. Paragraph 61 is a statement of Plaintiff's legal position to which no response is
19 required.

20 62. Paragraph 62 is a statement of Plaintiff's legal position to which no response is
21 required.

22 REQUEST FOR RELIEF

23 63. With respect to Plaintiffs' prayers for relief (articulated in (a)-(d)), Defendant
24 denies all Plaintiff's claims for relief.

25 AFFIRMATIVE DEFENSES

26 Without assuming any burden of proof Defendant would not otherwise bear, Defendant
27 also asserts the following defenses and affirmative defenses.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST DEFENSE

Defendant’s acquisition of PowerReviews resulted in substantial merger-specific efficiencies and other pro-competitive benefits that counteracted any purported anticompetitive effects alleged by the Plaintiff.

SECOND DEFENSE

The contemplated relief would not be in the public interest because it would, among other things, harm consumers.

THIRD DEFENSE

Prior to the acquisition, PowerReviews’ insubstantial revenue and lack of innovation resulted in its diminished competitiveness.

FOURTH DEFENSE

Defendant reserves the right to assert any other defenses as they become known to the Defendant.

WHEREFORE, Defendant Bazaarvoice having fully answered the Complaint, pray that the Court:

1. Deny Plaintiff’s contemplated relief;
2. Enter judgment in favor of Defendant;
3. Award to Defendant its costs incurred to defend this action, including reasonable attorneys’ fees;
4. Order that such other and further relief for Defendant as the Court deems just and proper.

Dated: February 22, 2013

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Dominique-Chantale Alepin
Dominique-Chantale Alepin
dalepin@wsgr.com

Attorneys for Defendant Bazaarvoice, Inc.