

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: boris.feldman@wsgr.com;  
6 dliddiard@wsgr.com; dalepin@wsgr.com

7 Attorneys for Defendant Bazaarvoice, Inc.

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

12 United States of America, ) CASE NO.: 13-cv-0133-EMC  
13 Plaintiff, )  
14 v. ) **JOINT CASE MANAGEMENT**  
15 Bazaarvoice, Inc., ) **STATEMENT**  
16 Defendant. ) Judge: Edward M. Chen  
17 ) CMC date: May 9, 2013  
18 ) Trial date: September 10, 2013  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

20 The parties to the above-entitled action jointly submit this JOINT CASE  
21 MANAGEMENT STATEMENT pursuant to the Standing Order for All Judges of the Northern  
22 District of California dated July 1, 2011 and Civil Local Rule 16-9.

23 **1. Jurisdiction and Service**

24 The basis for the Court’s subject matter jurisdiction is Section 15 of the Clayton Act, 15  
25 U.S.C. §§ 4 and 25, as well as 28 U.S.C. §§ 1345, 1331, and 1337. The Court has personal  
26 jurisdiction over Defendant and venue is proper in this Court. Defendant has accepted service of  
27 the Complaint and has waived service of summons. No parties remain to be served.  
28

1           **2. Facts**

2           In June 2012, Defendant Bazaarvoice acquired PowerReviews, Inc. On January 10,  
3 2013, after a seven-month investigation into the transaction, Plaintiff filed a complaint against  
4 Bazaarvoice alleging that the acquisition violates Section 7 of the Clayton Act, 15 U.S.C. Section  
5 18, seeking the divestiture of assets sufficient to create a competing business that can replace the  
6 competitive significance of PowerReviews in the marketplace.

7                   **a. Principal Factual Issues in Dispute**

8           The factual issues set forth below are not meant to be final or exhaustive, and the parties  
9 reserve their rights to reformulate these issues or include other appropriate issues as they develop  
10 or become known to the parties through the course of discovery and investigation. It is too early  
11 in the proceedings to identify all of the issues in dispute. Furthermore, the characterization of an  
12 issue as “factual” is not a concession that it is not a legal issue or a mixed issue of fact and law.

13                   *a. Plaintiff's Position*

- 14           - Whether product ratings and reviews (PRR) platforms constitute a relevant product  
15 market.  
16           - Whether Bazaarvoice and PowerReviews competed in providing PRR platforms prior  
17 to the acquisition.  
18           - Whether many retailers and manufacturers considered Bazaarvoice's and  
19 PowerReviews' PRR platforms to be the top two PRR platforms, without close  
20 substitutes.  
21           - Whether the acquisition has resulted in any merger-specific, cognizable efficiencies  
22 or other pro-competitive benefits.

23                   *b. Defendant's Position*

- 24           - The relevant product and geographic markets;  
25           - As a result of the acquisition, whether Defendant obtained market power in the  
26 relevant markets;  
27           - As a result of the acquisition, whether there are any anticompetitive effects; and  
28           - Whether the acquisition has resulted in any pro-competitive efficiencies.

1           **3. Legal Issues**

2                   *a. Plaintiff's Position*

- 3           - Whether the acquisition, by eliminating a key competitor, is likely to result in a  
4           substantial lessening of competition and result in higher prices and lower quality.  
5           - Whether the required proof related to the likelihood of a substantial lessening of  
6           competition is materially different for consummated mergers than for  
7           unconsummated mergers.  
8           - Whether, for consummated mergers, the government can prevail under Section 7  
9           without proving that a tangible anticompetitive effect, such as a price increase, has  
10          already occurred by the time of trial.  
11          - Whether a “public interest” defense is a valid affirmative defense to a Section 7  
12          claim.

13                   *b. Defendant's Position*

- 14          - Whether Plaintiff can prevail on its claim even though it has failed to allege relevant  
15          markets and market power in such markets;  
16          - Whether Plaintiff is required to prove that there have been anticompetitive effects;  
17          - Whether Plaintiff can prevail on its claim even though the acquisition has not  
18          substantially lessened competition, or to tended to create a monopoly;  
19          - Whether Defendant can rebut any presumption of market power with evidence that  
20          there were no anticompetitive effects, or that entry or repositioning will be sufficient  
21          to defeat any alleged harm;  
22          - Whether this litigation is in the public interest;  
23          - Whether the acquisition is likely to result in any technological, efficiency or other  
24          pro-competitive gain which is greater than and offsets the effects of any alleged  
25          prevention or lessening of competition.

26           **4. Motions**

27           There has been no motion practice and there are no pending motions.

28           **5. Amendment of Pleadings**

1 Neither party anticipates amending any of the pleadings at present.

2 **6. Evidence Preservation**

3 The parties have met and conferred concerning the preservation and production of  
4 electronically stored information (“ESI”). The parties represent that they are also abiding by  
5 their agreement as reflected in the February 7, 2013 Joint Case Management Statement that was  
6 ordered by the Court.

7 **7. Disclosures**

8 The parties exchanged disclosures pursuant to Fed. R. Civ. P. 26(a) on March 1, 2013,  
9 April 1, 2013, and May 1, 2013. The parties also exchanged investigation materials.

10 **8. Discovery**

11 To date the following discovery has been taken by the respective parties:

12 *a. Plaintiff’s Position:*

13 Plaintiff has propounded fifteen interrogatories on Defendant. Two of these  
14 interrogatories were subject to a motion to compel, which was withdrawn after Defendant  
15 amended its responses on April 8, 2013. Plaintiff has served seventeen document requests on  
16 Defendant.

17 Plaintiff has taken approximately six hours of third-party depositions. All of Plaintiff’s  
18 third-party deposition time has accrued during cross-examination of witnesses noticed for  
19 deposition by Defendant. Plaintiff has also taken approximately thirteen hours of party  
20 depositions (current or former employees of the Defendant).

21 Plaintiff has served six document subpoenas on third-parties, including two investment  
22 banks, a private equity firm that made a substantial investment in Bazaarvoice, and several  
23 venture capital firms that were investors in Bazaarvoice and PowerReviews.

24 *b. Defendant’s Position:*

25 Defendant has propounded five interrogatories on Plaintiff. Three of those  
26 interrogatories were the subject of a motion to compel which was resolved by Magistrate Judge  
27 Beeler on April 22, 2013. Plaintiff was ordered to amend its responses to Interrogatory No. 3.  
28 Defendant has not served any document requests on Plaintiff.

1 Defendant has taken approximately twenty hours of third-party depositions. Twenty-four  
2 non-parties have been deposed. Defendant has taken short depositions of current, former and  
3 prospective customers of Bazaarvoice and PowerReviews, as well as various entities that  
4 implement an in-house ratings and review platform. Defendant has deposed these entities either  
5 in-person or telephonically. The majority of these depositions have lasted no more than an hour.  
6 Defendant also deposed another ratings and review provider on May 2, 2013.

7 Defendant has served eighteen document subpoenas on participants in the social  
8 commerce sphere.

9 **9. Class Actions**

10 This is not a class action.

11 **10. Related Cases**

12 On March 12, 2013, an alleged shareholder of Bazaarvoice filed a derivative lawsuit in  
13 Travis County, Texas state court, Case No. D-1-GN-13-000874. The Petition asserts,  
14 purportedly on behalf of Bazaarvoice, claims for breach of fiduciary duty and corporate waste  
15 against the Company's directors and officers, based on the same underlying allegations presented  
16 in this action.

17 **11. Relief**

18 *Plaintiff* requests that:

- 19 (1) Bazaarvoice's acquisition of PowerReviews be adjudged to violate Section 7 of  
20 the Clayton Act, 15 U.S.C. § 18;
- 21 (2) the Court order Bazaarvoice to divest assets, whether possessed originally by  
22 PowerReviews, Bazaarvoice, or both, sufficient to create a separate, distinct and  
23 viable competing business that can replace PowerReviews' competitive  
24 significance in the marketplace;
- 25 (3) the United States be awarded the costs of this action; and
- 26 (4) the United States be awarded any other equitable relief the Court deems just and  
27 proper.

28 *Defendant* requests that the Court:

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

7 **12. Settlement and ADR**

8 Pursuant to the Local Rules, the parties have reviewed the ADR Handbook, discussed it

9 with their counsel, and come to the conclusion that they would not like to proceed with ADR.

10 The parties participated in an ADR Conference on February 11, 2013.

11 **13. Consent to Magistrate for All Purposes**

12 The parties have declined to proceed before a Magistrate Judge for all purposes.

13 **14. Other References**

14 The parties do not believe that this case is suitable for reference to binding arbitration,

15 special master, or the Judicial Panel on Multidistrict Litigation.

16 **15. Narrowing of Issues**

17 At this time, the parties do not believe that it is possible to narrow the issues in this case.

18 **16. Expedited Trial Procedure**

19 This case is set to go to trial on September 10, 2013.

20 **17. Scheduling**

21 The following dates were entered by the Court on February 19, 2013:

22 Trial Date	September 10, 2013, 8:30 am
23 Final Pre-Trial Conference	August 27, 2013 at 8:30 am
24 Dispositive Motions	Last day to be heard: 6/13/2013 at
25	1:30pm
26 Non-Expert Discovery Cut-Off	June 28, 2013
27 Expert Identification	Experts to be called in case-in-chief
28	shall be identified by May 31, 2013;

	Rebuttal experts be identified by June 14, 2013
Expert Reports	Opening reports: June 21, 2013 Rebuttal reports: July 12, 2013
Expert Discovery cut-off	August 6, 2013

### 18. Trial

A trial date has been set for September 10, 2013. The parties anticipate that the bench trial will take approximately twenty days.

### 19. Disclosure of Non-Party Interested Entities or Persons

On January 15, 2013, Defendant filed its "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

Pursuant to Civil L.R. 3-16, Defendant certifies that the below listed persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities may (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding by virtue of their having some form of beneficial ownership of five percent or more of Bazaarvoice's equity securities, according to the following documents that were filed with the United States Securities and Exchange Commission: Form 4 (filed February 29, 2012), Schedule 13G (filed February 13, 2013), Schedules 13G (filed February 14, 2013) and Schedule 13G (filed March 25, 2013).

- Austin Ventures VIII, L.P.
- Battery Ventures VIII, L.P.
- Brett A. Hurt and affiliated entities
- Entities affiliated with Eastern Advisors
- Entities affiliated with Empire Capital Management, L.L.C.
- Southpoint Master Fund, LP
- T. Rowe Price Associates, Inc. and/or T. Rowe Price New Horizons Fund, Inc.

1 Defendant further certifies that as of this date – other than the named parties – it is  
2 unaware of any person or entity with an interest to report. Civil. L.R. 3-16(c)(2).

3 **20. Other**

4 The parties have nothing else at this time.

5  
6 Dated: May 2, 2013

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

7

8

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

9

10

Attorneys for Defendant Bazaarvoice, Inc.

11

12 Dated: May 2, 2013

UNITED STATES OF AMERICA

13

14

By: /s Michael D. Bonanno  
Michael D. Bonanno  
michael.bonanno@usdoj.gov

15

16

Attorneys for Plaintiff  
United States of America

17

18

19

20

21

22

23

24

25

26

27

28



**ATTESTATION**

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

I, Dominique-Chantale Alepin, am the ECF User whose identification and password are being used to file the **JOINT CASE MANAGEMENT STATEMENT**. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Michael D. Bonanno has concurred in this filing.

Dated: May 2, 2013

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:           /s/ Dominique-Chantale Alepin            
Dominique-Chantale Alepin

Attorneys for Defendant Bazaarvoice, Inc.