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

11
12 UNITED STATES OF AMERICA,
13 *Plaintiff,*
14 v.
15 BAZAARVOICE, INC.
16 *Defendant.*

Case No. 13-cv-00133 EMC

**STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER**

17
18 **1. PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of
20 confidential, proprietary, or private information for which special protection from public
21 disclosure and from use for any purpose other than prosecuting this litigation would be
22 warranted. Accordingly, the Parties hereby stipulate to, and petition the Court to enter, the
23 following Stipulated Protective Order. The Parties acknowledge that this Order does not confer
24 blanket protections on all disclosures or responses to discovery and that the protection it affords
25 from public disclosure and use extends only to the limited information or items that are entitled
26 to confidential treatment under the applicable legal principles. The parties further
27 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order creates

1 no entitlement to file confidential information under seal; Civil Local Rules 79-5 and General
2 Order 62 set forth the procedures that must be followed and the standards that will be applied
3 when a Party seeks permission from the Court to file material under seal.

4 **2. DEFINITIONS**

5 **2.1 Challenging Party:** A Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 **2.2 “CONFIDENTIAL” Information or Items:** Information (regardless of how it
8 is generated, stored, or maintained) or tangible things that qualify for protection under Federal
9 Rule of Civil Procedure 26(c), or any document, transcript, or other material that the party
10 reasonably believes to constitute or include such information.

11 **2.3 Designating Party:** A Party or Non-Party that designates information or items
12 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 **2.4 Disclosure or Discovery Material:** Any Investigation Materials and all items
15 or information, regardless of the medium or manner generated, stored, or maintained
16 (including, among other things, testimony, transcripts, and tangible things), that are produced
17 or generated in disclosures or responses to discovery in this matter.

18 **2.5 Expert:** A person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
20 witness or as a consultant in this action and who is not a past or a current employee of a Party
21 or of a competitor of a Party and who, at the time of retention, is not anticipated to become an
22 employee or a Party’s competitor.

23 **2.6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information**
24 **or Items:** Any “Confidential” Information which the Designating Party, as defined herein,
25 reasonably believes to be so competitively sensitive that it is entitled to extraordinary
26 protections.

1 **2.7 In-House Counsel:** Attorneys who are employees of a Party to this action. In-
2 House Counsel does not include Outside Counsel of Record or any other outside counsel.

3 **2.8 Investigation:** Plaintiff Department of Justice’s pre-Complaint inquiries into
4 the acquisition of PowerReviews by Defendant Bazaarvoice.

5 **2.9 Investigation Materials:** Documents, data, electronically stored information,
6 or transcripts of testimony that (i) that any Party has produced during the Investigation; (ii) any
7 Non-Party provided to any Party either voluntarily or under compulsory process during the
8 Investigation; or (iii) any Party sent to any Non-Party during the Investigation.

9 **2.10 Non-Party:** Any natural person, partnership, corporation, association, or other
10 legal entity not named as a Party to this action.

11 **2.11 Outside Counsel of Record:** Attorneys who are not employees of a Party to
12 this action but are retained to represent or advise a Party to this action and have appeared in this
13 action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of
14 that Party.

15 **2.12 Party:** Any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and all of their support staff).

17 **2.13 Producing Party:** A Party or Non-Party that produces Disclosure or Discovery
18 Material in this action.

19 **2.14 Professional Vendors:** Persons or entities that provide litigation support
20 services (*e.g.*, electronic discovery, photocopying, videotaping, translating, preparing exhibits
21 or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
22 employees and subcontractors.

23 **2.15 Protected Material:** Any Disclosure or Discovery Material that is designated
24 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
25 including, but not limited to, all Investigation Materials so designated.

26 **2.16 Receiving Party:** A Party that receives Disclosure or Discovery Material from
27 a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from Protected
4 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
5 testimony, conversations, or presentations by Non-Parties, Parties or their Counsel that might
6 reveal Protected Material. However, the protections conferred by this Stipulation and Order do
7 not cover the following information: (a) any information that is in the public domain at the time
8 of disclosure to a Receiving Party, or that becomes part of the public domain after its disclosure
9 to a Receiving Party as a result of publication not involving a violation of this Order, including
10 becoming part of the public record through trial or otherwise; and (b) any information known to
11 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
12 disclosure from a source who obtained the information lawfully and under no obligation of
13 confidentiality to the Designating Party. Any use of Protected Material at trial shall be
14 governed by a separate agreement or order.

15 **4. DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations imposed by
17 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
18 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
19 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
20 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
21 action, including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 **5.1 Service of Protective Order.** Whenever discovery is sought by subpoena from
25 a Non-Party, a copy of the Protective Order shall accompany the subpoena.

26 **5.2 Exercise of Restraint and Care in Designating Material for Protection.**

27 Each Party or Non-Party that designates information or items for protection under this Order
28

1 must take care to limit any such designation to specific material that qualifies under the
2 appropriate standards. To the extent that it is practical to do so, the Designating Party must
3 designate for protection only those parts of material, documents, items, or oral or written
4 communications that qualify – so that other portions of the material, documents, items, or
5 communications for which protection is not warranted are not swept unjustifiably within the
6 ambit of this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. The parties shall not
8 make designations that are clearly unjustified or make designations for an improper purpose
9 (*e.g.*, to unnecessarily encumber or delay the case development process or to impose
10 unnecessary expenses and burdens on other parties).

11 If it comes to a Designating Party’s attention, either through its own diligence or by
12 notification by the Receiving Party, that information or items that it designated for protection
13 do not qualify for protection or the level of protection designated, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 **5.3 Manner and Timing of Designations.** Except as otherwise provided in this
16 Order (*see, e.g.*, second paragraph of Section 5.3(a) below), or as otherwise stipulated or
17 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be
18 clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 **(a) for information in documentary form (apart from transcripts of depositions or**
21 **other pretrial or trial proceedings),** that the Producing Party affix the legend
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
23 page that contains protected material. If only a portion or portions of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
25 (*e.g.*, by making appropriate markings in the margins) and must specify, for each portion, the
26 level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
27 – ATTORNEYS’ EYES ONLY”).

1 A Party or Non-Party that makes original documents or materials available for
2 inspection need not designate them for protection until after the inspecting Party has indicated
3 which material it would like copied and produced. During the inspection and before the
4 designation, all of the material made available for inspection shall be deemed “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified
6 the documents it wants copied and produced, the Producing Party must determine which
7 documents, or portions thereof, qualify for protection under this Order. Then, before producing
8 the specified documents, the Producing Party must label each page that contains Protected
9 Material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY.” If only a portion or portions of the material on a page qualifies for protection, the
11 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
12 markings in the margins).

13 **(b) for testimony given in deposition or in other pretrial or trial proceedings**, all
14 transcripts of depositions taken in this action after entry of the Protective Order will be treated
15 as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in their entirety for fifteen
16 (15) days after the date a copy of the final transcript has been made available to the Producing
17 Party for review. No later than five (5) days after receipt of the final transcript, the Party that
18 noticed the deposition shall provide the final transcript to the Producing Party. At any time
19 during the fifteen (15) days following receipt of the final transcript, the Producing Party may
20 designate testimony as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY.” These designations (with reference to the page(s) and line(s) of the final
22 transcript) must be provided in writing to Plaintiff’s and Defendant’s counsel. The parties may
23 modify this procedure for any particular deposition or proceeding through agreement on the
24 record at such deposition or proceeding or otherwise by written stipulation, without further
25 order of the Court.

26 In transcripts containing Protected Material, the title page shall be followed by a slip-
27 sheet provided by the Producing Party that lists all of the pages (including line numbers as
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1 appropriate) that have been designated as Protected Material and the level of protection being
2 asserted by the Producing Party. The Producing Party shall inform the court reporter of these
3 requirements. Any transcript that is prepared before the expiration of a fifteen (15) day period
4 for designation shall be treated during that period as if it had been designated “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed.
6 After the expiration of that period, the transcript shall be treated only as actually designated.

7 Absent good cause, the Parties shall give the Producing Party (or Parties) at least two
8 (2) calendar days notice if they reasonably expect a deposition, hearing, or other proceeding to
9 include Protected Material so that the Producing Party (or Parties) can ensure that only
10 authorized individuals as defined in Sections 7.2 or 7.3 are present at those proceedings. The
11 use of a document as an exhibit at a deposition shall not in any way affect its designation as
12 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 If any document or information designated as “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is used during the course of a deposition,
15 that portion of the deposition record reflecting such Protected Material shall be sealed and
16 marked according to the procedures set forth above (*i.e.*, via a slip-sheet inserted behind the
17 cover page that provides designations and corresponding line and page numbers) and access
18 thereto and handling thereof shall be limited pursuant to the terms of this Protective Order.

19 **(c) for information produced in some form other than documentary and for any**
20 **other tangible items**, that the Producing Party affix in a prominent place on the exterior of the
21 container or containers in which the information or item is stored the legend
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
23 a portion or portions of the information or item warrant protection, the Producing Party, to the
24 extent practicable, shall identify the protected portion(s), specifying that they qualify as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 **5.4 Designation of Investigation Materials.** Within ten (10) business days after
27 the Court’s entry of this Order, the Department of Justice shall send, by electronic mail,

1 facsimile, or overnight delivery, a copy of this Order to each Non-Party that produced
2 Investigation Materials (or, if represented by counsel, the Non-Party's counsel). Within ten
3 (10) business days after the Court's entry of this Order, the Department of Justice shall send, by
4 electronic mail, facsimile, or overnight delivery, a copy of this Order to each Non-Party that
5 testified at a deposition during the course of the investigation.

6 All transcripts of depositions taken by Plaintiff during the Investigation will be treated
7 as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in their entirety for twenty
8 (20) days after entry of the Order. At any time during the 20-day period, the Producing Party
9 may designate as Protected Material any portion of the transcript, by page and line as set forth
10 in Section 5.3(b), and any accompanying exhibits that it produced during the Investigation.

11 All documents provided to Plaintiff during the Investigation will be treated as if they
12 have been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in their
13 entirety for thirty (30) days after entry of the Order. At any time during the 30-day period, any
14 person may designate any document or portion of a document produced during the
15 Investigation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY" by providing Plaintiff with document-production page numbers or other means of
17 easily identifying the designated documents. Within seven (7) days following the 30-day
18 period, Plaintiff shall transmit to Defendant all confidentiality designations received from Non-
19 Parties.

20 All Investigation Materials produced by Bazaarvoice or any other Non-Party that were
21 marked "HIGHLY CONFIDENTIAL" during the course of the Investigation shall be deemed
22 to be designated as "CONFIDENTIAL" and need not be re-designated.

23 **5.5 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure
24 to designate qualified information or items as "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not, standing alone, waive the
26 Designating Party's right to secure protection under this Order for such material. Upon timely
27 correction of a designation, the Receiving Party must make reasonable efforts to assure that the

1 material is treated in accordance with the provisions of this Order. Any such subsequent
2 designation, however, will not render the prior disclosure a violation of this Order if disclosure
3 was proper when made.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 **6.1 Timing of Challenges.** Any Party may challenge the designation of any
6 Protected Material at any time. Unless a prompt challenge to a Designating Party's designation
7 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
8 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after the original
10 designation is disclosed.

11 **6.2 Meet and Confer.** The Challenging Party may file a motion challenging a
12 confidentiality designation at any time if there is good cause for doing so, including a challenge
13 to the designation of a deposition transcript or any portions thereof. The Challenging Party shall
14 initiate the dispute resolution process by providing written notice of each designation it is
15 challenging and describing the basis for each challenge. To avoid ambiguity as to whether a
16 challenge has been made, the written notice must recite that the challenge to confidentiality is
17 being made in accordance with this specific paragraph of the Order. The parties shall attempt to
18 resolve each challenge in good faith and must begin the process by conferring directly (in voice-
19 to-voice dialogue or as otherwise required under the Local Rules or Court Order) within fourteen
20 (14) days of the date of service of notice. In conferring, the Challenging Party must explain the
21 basis for its belief that the confidentiality designation was not proper and must give the
22 Designating Party an opportunity to review the designated material, to reconsider the
23 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
24 designation. A Challenging Party may proceed to the next stage of the challenge process only if
25 it has engaged in this meet and confer process first, or establishes that the Designating Party is
26 unwilling to participate in the meet and confer process in a timely manner.

1 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without Court
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality that
3 complies with Civil Local Rule 7, Civil Local Rule 79-5, General Order 62, and/or any other
4 applicable Court Order or Rule within twenty-one (21) days of the Parties agreeing that the meet
5 and confer process will not resolve their dispute. Failure to make such a motion within twenty-
6 one (21) days shall automatically waive the confidentiality designation for each challenged
7 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
8 designation at any time if there is good cause for doing so, including a challenge to the
9 designation of a deposition transcript or any portions thereof.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
11 Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose
12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
13 sanctions. Unless the confidentiality designation has been waived by failure to file a motion to
14 retain confidentiality as described above, all parties shall continue to afford the material in
15 question the level of protection to which it is entitled under the Producing Party's designation
16 until the Court rules on the challenge.

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 **7.1 Basic Principles.** Subject to the exceptions described in this Order, a Receiving
19 Party may use Protected Material that is disclosed or produced by another Party or by a Non-
20 Party in connection with this case only for prosecuting, defending, or attempting to settle this
21 litigation. Such Protected Material may be disclosed only to the categories of persons and
22 under the conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of Section 13 ("FINAL DISPOSITION"),
24 below.

25 Protected Material must be stored and maintained by a Receiving Party at a location and
26 in a secure manner that ensures that access is limited to the persons authorized under this
27 Order.

1 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
2 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL” only to:

4 (a) Outside Counsel of Record acting for Defendant in this action, that counsel’s
5 employees, and independent contractors assisting such outside counsel in the defense of this
6 action;

7 (b) United States Department of Justice attorneys and employees, and independent
8 contractors retained by the United States Department of Justice to assist in the prosecution of
9 this litigation or otherwise assist in its work;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to be Bound” (Exhibit A);

13 (d) the Court and its personnel if reasonably necessary to support a Party’s filing in this
14 litigation, and subject to any agreement the Parties may later make concerning the filing of
15 documents consistent with the Rules of Court;

16 (e) court reporters and their staff, trial consultants, and Professional Vendors to whom
17 disclosure is reasonably necessary for this litigation and who have signed the
18 “Acknowledgment and Agreement to be Bound” (Exhibit A), unless otherwise agreed by the
19 Designating Party or ordered by the Court;

20 (f) any special masters and/or mediators utilized in this litigation, and their employees
21 and agents;

22 (g) authors, addressees, and recipients of particular information designated as Protected
23 Materials solely to the extent that they have previously had lawful access to the particular
24 information disclosed or to be disclosed;

25 (h) persons (and their counsel) whom either Party believes, in good faith, to have
26 had prior access to the Protected Material, or who have been participants in a communication
27 that is the subject of the Protected Materials, may have access to Protected Material to the
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1 extent necessary to verify the person's access or participation. In seeking to verify a person's
2 access or participation, a Party may disclose only information to which the person may have
3 had access or that is the subject of the communication in which the person may have
4 participated. Unless and until the person or the person's counsel confirms that the person had
5 access or was a participant, disclosure must be limited to the information necessary to confirm
6 the person's access or participation. Absent good cause, Party must provide reasonable notice
7 of no less than two (2) days to the Producing Party that Protected Materials will be disclosed to
8 any person (or counsel) under this provision; and

9 (i) The following in-house counsel for Defendant, as well as the designated in-
10 house counsel's necessary secretarial, clerical, administrative or support staff, as long as the
11 designated in-house counsel (1) are not involved in any way in competitive decisions involving
12 product development, pricing, or product marketing, and (2) have signed the
13 "Acknowledgement and Agreement to be Bound" (Exhibit A):

- 14 • Bryan Barksdale; and
- 15 • Kin Gill

16 In the event that either counsel becomes involved in any way in competitive decisions
17 involving product development, pricing, or product marketing, Defendant shall cease to provide
18 that counsel with access to Confidential Information.

19 **7.3. Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES**
20 **ONLY" Information or Items.** Unless otherwise ordered by the Court or permitted in writing
21 by the Designating Party, a Receiving Party may disclose any information or item designated
22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
25 the information for this litigation;

1 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to be Bound” (Exhibit A);

4 (c) the Court and its personnel if reasonably necessary to support a Party’s filing in this
5 litigation, and subject to any agreement the Parties may later make concerning the filing of
6 documents consistent with the applicable federal and local rules and standing orders;

7 (d) court reporters and their staff, trial consultants, and Professional Vendors to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to be Bound” (Exhibit A), unless otherwise agreed by the
10 Designating Party or ordered by the Court; and

11 (e) the author or recipient of a document containing the information or a custodian or
12 other person who otherwise possessed or knew the information.

13 **7.4 Disclosure of Confidentiality Waiver.** If a Party receives a confidentiality
14 waiver to allow disclosure of Protected Materials, that waiver (including identifying the
15 specific Protected Material to which it pertains) must be disclosed to counsel for all other
16 Parties as soon as practicable, but in any even no later than five (5) business days following the
17 waiver.

18 **7.5 Right to Exclude Non-Authorized Persons.** The Designating Party shall have
19 the right to exclude all persons not authorized to have access to Protected Materials from the
20 room where the deposition is being conducted, but only during that portion of the deposition in
21 which the Protected Material is disclosed.

22 **7.6 Otherwise Permitted Disclosures.** Nothing in this Protective Order:

23 (a) limits a person’s use or disclosure of its own information that has designated as
24 Protected Material;

25 (b) prevents disclosure of Protected Material by any Party to any current employee of
26 the person that designated the information as Protected Material;

1 (c) prevents the United States, subject to taking appropriate steps to preserve the further
2 confidentiality of such information, from disclosing information designated as Protected Material
3 (i) to duly authorized representatives of the Executive Branch of the United States Government;
4 (ii) to secure compliance with a Final Judgment that is entered in this action; (iii) for law
5 enforcement purposes, or (iv) as may be required by law; or

6 (d) prohibits the discussion of factual events with witnesses simply because those
7 events are referenced in documents or other materials designated as Protected Material, provided
8 that the witness in question had lawful access to the particular information being discussed.

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
10 **OTHER LITIGATION**

11 If a Party is served with a subpoena or a court order issued in other litigation that
12 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
13 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall include a
15 copy of the subpoena or court order and shall be immediate and in no event more than three
16 court days after receiving the subpoena or order;

17 (b) promptly notify in writing the person who caused the subpoena or order to issue in
18 the other litigation that some or all of the material covered by the subpoena or order is subject
19 to this Order. Such notification shall include a copy of this Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served with the
23 subpoena or court order shall not produce any information designated in this action as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before
25 a determination by the court from which the subpoena or order issued, unless the Party has
26 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
27 expense of seeking protection in that court of its confidential material. Nothing in these
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1 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
2 disobey a lawful directive from another court.

3 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
4 **THIS LITIGATION**

5 (a) The terms of this Order are applicable to information produced by a Non-Party in
6 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
7 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with
8 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
9 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
11 Party's Protected Material in its possession, and the Party is subject to an agreement with the
12 Non-Party not to produce the Non-Party's Protected Material then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party that
14 some or all of the information requested is subject to a confidentiality agreement with a Non-
15 Party;

16 (2) promptly provide the Non-Party with a copy of this Order, the relevant
17 discovery request(s), and a reasonably specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-Party.

19 (c) If the Non-Party fails to object or seek a protective order from this Court within
20 fourteen (14) days of receiving the notice and accompanying information, the Party may
21 produce the Non-Party's confidential information responsive to the discovery request. If the
22 Non-Party timely seeks a protective order, the Party shall not produce any information in its
23 possession or control that is subject to the confidentiality agreement with the Non-Party before
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1 a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
7 unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the
8 Protected Material; (c) inform the person or persons to whom unauthorized disclosures were
9 made of all the terms of this Order; and (d) request such person or persons to execute the
10 “Acknowledgment and Agreement to be Bound.” (Exhibit A).

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 The parties understand that this litigation will involve review of a high volume of
14 electronically stored information, and therefore a high likelihood exists that privileged
15 documents may be inadvertently produced in the course of the litigation. Each Producing Party
16 shall make efforts that are reasonably designed to protect its privileged materials. When a
17 particular discovery request requires a production or inspection that is too voluminous,
18 expedited or complex (such as certain electronic productions) to allow for an adequate pre-
19 production review, the parties may enter into non-waiver agreements for that particular
20 production. If the Receiving Party is unwilling to enter into such an agreement, the Producing
21 Party may move the Court for a non-waiver order.

22 For discovery requests that are not too voluminous, expedited, or complex and for which
23 the parties have not entered a non-waiver agreement, the parties agree to be governed by Federal
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26 ¹ The purpose of this provision is to alert the interested parties to the existence of
27 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its
28 confidentiality interests.

1 Rule of Evidence 502(b) and Federal Rule of Civil Procedure 26(b)(5)(B) regarding inadvertent
2 production and claims of privilege.

3 In addition, in the event that despite reasonable efforts a Producing Party discovers that it
4 has inadvertently produced privileged materials, then within thirty (30) calendar days of that
5 discovery, the Producing Party shall notify the Receiving Party that the document(s),
6 electronically stored information, or materials should have been withheld on grounds of privilege
7 or other protection (“Claim of Privilege”). After the Receiving Party receives this notice from
8 the Producing Party under this paragraph, the Receiving Party shall sequester the materials, and
9 shall not disclose or release the inadvertently produced material to any person or entity pending
10 resolution of the Producing Party’s claim of privilege. If the Receiving Party receives material
11 that on its face appears to the subject to the attorney-client privilege or otherwise confidential,
12 under circumstances where it is clear that they were not intended for the Receiving Party, the
13 Receiving Party shall notify the Producing Party, sequester the materials, and shall not disclose
14 or release the inadvertently produced material to any person or entity pending resolution of the
15 Producing Party’s claim of privilege.

16 If the parties are unable to reach a satisfactory agreement as to the return, destruction or
17 use of such materials, the parties shall hold a meet and confer, as defined in Civil Local Rule 1-
18 5(n) and any other applicable Rule or Order, as soon as reasonably possible after notice of the
19 inadvertent production. If the Producing Party and Receiving Party agree that the inadvertently
20 produced material is privileged, and was disclosed despite efforts by the Producing Party that
21 were “reasonably designed” to protect the materials, then the Receiving Party shall return or
22 certify the destruction of all copies (including summaries) of such material. If no agreement is
23 reached, then within ten (10) court days after the meet and confer, the Producing Party must seek
24 a ruling from this Court to establish that the material is privileged and that the Producing Party
25 did not waive the privilege by inadvertently producing the material. If the Producing Party seeks
26 such a ruling, the Receiving Party shall continue to sequester the material, and shall not disclose
27

1 or release the inadvertently produced material to any person or entity pending the Court's ruling
2 on the Producing Party's motion.

3 **12. MISCELLANEOUS**

4 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person
5 to seek its modification by the Court in the future.

6 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Order, no
7 Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Order. Similarly, no Party waives any
9 right to object on any ground to use in evidence of any of the material covered by this Order.

10 **12.3 Filing Protected Material.** Without written permission from the Designating
11 Party or a court order secured after appropriate notice to all interested persons, a Party may not
12 file in the public record in this action any Protected Material. A Party that seeks to file under
13 seal any Protected Material must comply with Civil Local Rule 79-5 and General Order 62.
14 Protected Material may only be filed under seal pursuant to a court order authorizing the
15 sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and
16 General Order 62, a sealing order will issue only upon a request establishing that the Protected
17 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection
18 under the law.

19 When a Party wishes to file a document that has been designated "CONFIDENTIAL"
20 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" by another Party or Non-
21 Party, or a Party wishes to file a document or referencing materials designated
22 "CONFIDENTIAL" by another Party or Non-Party, the Party shall (1) comply with Civil Local
23 Rule 79-5(d); and (2) provide written notice by email or overnight mail to the Designating
24 Party no later than the day that the Party files an Administrative Motion for a sealing order. As
25 required by Local Rule 79-5 and General Order 62, within seven (7) days after the filing and
26 serving of the Administrative Motion, the Designating Party must file with the Court and serve
27 a declaration establishing that the designated information is sealable, and must lodge and serve

1 a narrowly tailored proposed sealing order, or must withdraw the designation of confidentiality.
2 If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule
3 79-5 and General Order 62 is denied by the Court, then the Receiving Party may file the
4 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
5 instructed by the Court.

6 **13. FINAL DISPOSITION**

7 Within sixty (60) days after the final disposition of this action, as defined in Section 4
8 ("DURATION"), each Receiving Party must return all Protected Material to the Producing
9 Party or destroy such material. As used in this subdivision, "all Protected Material" includes
10 all copies, abstracts, compilations, summaries, and any other format reproducing or capturing
11 any of the Protected Material. Whether the Protected Material is returned or destroyed, the
12 Receiving Party must submit a written certification to the Producing Party (and, if not the same
13 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
14 category, where appropriate) all the Protected Material that was returned or destroyed, and (2)
15 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
16 or any other format reproducing or capturing any of the Protected Material. Notwithstanding
17 this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
18 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
19 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
20 such materials contain Protected Material. Any such archival copies that contain or constitute
21 Protected Material remain subject to this Protective Order as set forth in Section 4. Should
22 Plaintiff wish to retain any Protected Material for the purposes set forth in 7.6(c), Plaintiff must
23 move this Court within fourteen days following the termination of litigation for modification of
24 this Order.

25 **14. RIGHT TO SEEK MODIFICATION**

26 Nothing in this Order prevents any person, including members of the public, from
27 seeking modification of this Order, upon motion made pursuant to the rules of this Court.

1 SO STIPULATED.

4 Dated: March 4, 2013

By: /s/ Dominique-Chantale Alepin
Dominique-Chantale Alepin
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Attorneys for Defendant
Bazaarvoice, Inc.

11 Dated: March 4, 2013

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

Attorneys for Plaintiff
United States of America

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 Dated: **March 4, 2013**



The Honorable Laurel Beeler
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2013 in the case of *United States v. Bazaarvoice, Inc.*, Case No. 13-cv-0133-EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name _____

Signature: _____

ATTESTATION

1
2 I, **Dominique-Chantale Alepin**, am the ECF User whose identification and password are
3 being used to file the **STIPULATION AND [PROPOSED] PROTECTIVE ORDER**. In
4 compliance with Civil Local Rule 5-1(i)(3), I hereby attest that **Michael D. Bonanno** has
5 concurred in this filing.

6
7 Dated: March 4, 2013

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

8
9 By: /s/ Dominique-Chantale Alepin
10 Dominique-Chantale Alepin

11 Attorneys for Defendant
12 Bazaarvoice, Inc.