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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 UNITED STATES OF AMERICA,

14 *Plaintiff,*

15 v.

16 BAZAARVOICE, INC.

17 *Defendant.*

Case No. 13-cv-00133 WHO

18 **JOINT STATEMENT REGARDING**
REMEDY PHASE AND [PROPOSED]
ORDER

Judge: Hon. William H. Orrick
Hearing: January 22, 2014
Time: 9 a.m.

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20 On June 8, 2014, the Court issued its Memorandum Opinion, ECF No. 244, holding that
21 Defendant Bazaarvoice, Inc.'s acquisition of PowerReviews, Inc. violated Section 7 of the
22 Clayton Act, 15 U.S.C. § 18. The Court ordered the parties to submit a Joint Statement
23 Regarding Remedy Phase to address the procedures to be used during the remedy phase of this
24 litigation. Plaintiff United States of America and Defendant Bazaarvoice jointly submit this
25 JOINT STATEMENT REGARDING REMEDY PHASE AND [PROPOSED] ORDER pursuant
26 to the Court's order. The parties have met and conferred, and have stipulated that the schedule
27 and procedures outlined in this [PROPOSED] ORDER will govern the remedy phase of this
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1 litigation, subject to the Court's approval. The parties, therefore, respectfully request that the
2 Court order the following:

3 **I. BRIEFING SCHEDULE**

4 A. The United States will file a motion for Final Judgment, accompanied by a
5 Proposed Final Judgment and a brief in support of its Proposed Final Judgment, no later than
6 **February 12, 2014**.

7 B. Bazaarvoice will file its opposition brief no later than **March 5, 2014**.

8 C. The United States will file its reply no later than **March 12, 2014**.

9 D. If it finds that further proceedings are necessary, the Court will schedule a hearing
10 to address the remedy for Bazaarvoice's violation of Section 7 of the Clayton Act on **March 19,**
11 **2014** at 2 p.m., or as soon thereafter as is convenient for the Court.

12 **II. INFORMATION TO BE PROVIDED**

13 Both parties agree that further information is needed to supplement the record for
14 determining a Final Judgment. Accordingly, Bazaarvoice shall conduct a reasonable search and
15 produce documents, data, or a description relevant to the below items requested by Plaintiff:

16 A. A list of all PowerReviews Enterprise customers, as of the time Bazaarvoice
17 acquired PowerReviews, and for each customer, indicate the fees that have been paid to
18 Bazaarvoice since the merger closed;

19 B. For each customer identified in response to II.A, (1) whether the customer is still
20 a Bazaarvoice customer; and (2) whether the customer has migrated from the PowerReviews
21 Enterprise platform to any Bazaarvoice platform. For each customer that has migrated to a
22 Bazaarvoice platform, describe the circumstances surrounding the migration (e.g., commercial
23 terms, incentives, costs associated with migration, and whether migration was requested by the
24 customer);

25 C. All customer contracts for customers identified in response to II.A;

26 D. A list of current customers using Bazaarvoice Express, including those that were
27 originally PowerReviews Express customers;

1 E. A list of post-merger syndication connections that were established between
2 customers using any Bazaarvoice R&R platform and customers using any PowerReviews R&R
3 platform;

4 F. The status of any integration of PowerReviews features or functionality into any
5 Bazaarvoice platform, whether or not completed, planned, or in progress;

6 G. All PowerReviews and Bazaarvoice patents, including those that are still pending;

7 H. The lease for the Bazaarvoice office space in San Francisco that was formerly
8 occupied by PowerReviews;

9 I. All current Bazaarvoice employees who were formerly employed by
10 PowerReviews;

11 J. For each individual identified in response to II.I, his or her current title, as well as
12 his or her former PowerReviews title;

13 K. Any new R&R features that Bazaarvoice has made commercially available to any
14 R&R customer since the merger closed;

15 L. Any new R&R features that Bazaarvoice has made available to any
16 PowerReviews customer since the merger closed; and

17 M. A copy of Bazaarvoice's monthly balance sheet and monthly income statement
18 for each of the past 24 months, broken down by platform, if possible.

19 Nothing herein shall require Bazaarvoice to produce privileged material or to produce a
20 privilege log. Bazaarvoice shall have the right to designate any produced materials

21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pursuant to the Protective Order.

22 Bazaarvoice shall provide the United States the materials described in Items II.A-M above after a
23 reasonable search no later than **January 31, 2014**

24 Bazaarvoice reserves the right to produce other materials and information it believes
25 would be relevant to the determination of an appropriate remedy. Bazaarvoice shall make a good
26 faith effort to produce any such materials to Plaintiff by **January 31, 2014**. If Bazaarvoice
27 locates additional materials or information after January 31, 2014 which it would like the Court
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1 to consider, it shall produce such materials immediately to Plaintiff. Plaintiff reserves the right
2 to object at any point to the consideration of such material if it believes Bazaarvoice has not
3 acted in good faith.

4 Bazaarvoice shall make a good faith effort to make a reasonable number of employees
5 available to the United States for the purposes of responding to informational inquiries. The
6 United States will provide at least forty-eight hours notice for any request for an informational
7 inquiry.

8 **III. MEDIATION**

9 The parties are also in the process of determining whether it would be productive to
10 engage in discussions with the assistance of Magistrate Judge Corley. If both parties agree that
11 Judge Corley's involvement will be helpful in narrowing the remaining issues in dispute, they
12 will jointly seek Judge Corley's assistance. Any such discussions should occur simultaneously
13 with the remedy phase administered by this Court.

14 **IV. CASE MANAGEMENT CONFERENCE**

15 The Court has scheduled a Case Management Conference on **January 22, 2013** at 9:00
16 a.m. With the Court's permission, the parties respectfully request that the conference be
17 conducted telephonically, in lieu of live appearances by counsel.

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1 **IT IS SO STIPULATED.**

2 Dated: January 17, 2014

3 Respectfully submitted by:

4 /s/ Michael D. Bonanno
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21 Attorneys for Defendant Bazaarvoice, Inc.

22 **[PROPOSED] ORDER**

23 Pursuant to the parties' stipulation, **IT IS SO ORDERED.**

24 Dated: _____, 2014

25 Hon. William H. Orrick
26 United States District Judge

ATTESTATION

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

Dated: January 17, 2014

By:

/s/ Michael D. Bonanno
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