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9 Attorneys for Plaintiff United States of America

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 **STIPULATION AND**
19 **[PROPOSED] ORDER**

Judge: Hon. William H. Orrick
Hearing Date: April 25, 2014
Time: 9 a.m.

20 **STIPULATION AND [PROPOSED] ORDER**

21 It is hereby stipulated and agreed by and between the undersigned parties, subject to
22 approval and entry by the Court, that:

- 23 1. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A
24 may be filed with and entered by the Court, upon the motion of any party or upon the
25 Court's own motion, at any time after compliance with the requirements of the
26 Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to
27 any party or other proceedings, provided that the United States has not withdrawn its
28 consent, which it may do at any time before the entry of the proposed Final Judgment

1 by serving notice thereof on Defendant and by filing that notice with the Court.

2 Defendant agrees to arrange, at its expense, publication as quickly as possible of the
3 newspaper notice required by the APPA, which shall be drafted by the United States
4 in its sole discretion. The publication shall be arranged no later than three (3)
5 business days after Defendants' receipt from the United States of the text of the notice
6 and the identity of the newspaper within which the publication shall be made.

7 Defendants shall promptly send to the United States (1) confirmation that publication
8 of the newspaper notice has been arranged, and (2) the certification of the publication
9 prepared by the newspaper within which the notice was published. The United States
10 has submitted a short memorandum summarizing the procedures regarding the
11 Court's entry of the proposed Final Judgment, which is attached as Exhibit B. This
12 Judgment would settle this case pursuant to the Antitrust Procedures and Penalties
13 Act, 15 U.S.C. § 16(b)-(h) (the "APPA"), which applies to civil antitrust cases
14 brought and settled by the United States.

- 15 2. Defendant shall abide by and comply with the provisions of the Second Amended
16 Proposed Final Judgment, pending the Judgment's entry by the Court, or until
17 expiration of time for all appeals of any Court ruling declining entry of the Second
18 Amended Proposed Final Judgment, and shall, from the date of the signing of this
19 Stipulation by the parties, comply with all the terms and provisions of the Second
20 Amended Proposed Final Judgment. The United States shall have the full rights and
21 enforcement powers in the proposed Final Judgment, as though the same were in full
22 force and effect as the Final order of the Court.
- 23 3. Notwithstanding any prior Orders of the Court, Defendant may divest the Divestiture
24 Assets to Acquirer in a manner consistent with the terms of the Second Amended
25 Proposed Final Judgment, after the Court has signed this Stipulation and Order.
- 26 4. This Stipulation and Order shall apply with equal force and effect to any amended
27 proposed Final Judgment agreed upon in writing by the parties and submitted to the
28 Court.

- 1 5. In the event (1) the United States has withdrawn its consent, or (2) the proposed Final
2 Judgment is not entered pursuant to this Stipulation and Order, the time has expired
3 for all appeals of any Court ruling declining entry of the proposed Final Judgment,
4 and the Court has not otherwise ordered continued compliance with the terms and
5 provisions of the proposed Final Judgment, then the parties are released from all
6 further obligations under this Stipulation, and the making of this Stipulation shall be
7 without prejudice to any party in this or any other proceeding.
- 8 6. Defendant represents that the divestiture ordered in the Second Amended Proposed
9 Final Judgment can and will be made, and that Defendant will later raise no claim of
10 mistake, hardship or difficulty of compliance as grounds for asking the Court to
11 modify any of the provisions contained therein.
- 12 7. Defendant shall not appeal the Court's finding of liability in this matter to this or any
13 other court.
- 14 8. Defendant shall pay the United States its costs for this litigation, in the amount of
15 \$222,073.36.
- 16 9. From April 17, 2014, until the date of the sale of the Divestiture Assets pursuant to
17 the proposed Final Judgment, Defendant is prohibited from: (1) transferring any
18 customer currently using the PowerReviews enterprise ratings and reviews platform
19 to a Bazaarvoice ratings and reviews platform (except for those customers who have
20 previously signed an agreement to transfer and have begun the process of
21 transferring); and (2) signing any agreement or reaching any understanding with any
22 customer currently using the PowerReviews enterprise ratings and reviews platform
23 pursuant to which Bazaarvoice would use a Bazaarvoice ratings and reviews platform
24 to provide services to that customer.
- 25 10. Defendant shall establish an incentive program designed to encourage current
26 customers of the PowerReviews enterprise ratings and reviews platform to continue
27 using the PowerReviews enterprise ratings and reviews platform. The incentive
28 program must be reasonably calculated to maintain the PowerReviews customer base

1 to be sold as part of the Divestiture Assets, as determined by the United States in its
2 sole discretion.

3
4
5 Dated: April 24, 2014

6
7 Respectfully submitted,

8
9 FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT
BAZAARVOICE, INC.

10 /s/ Michael D. Bonanno
11 United States Department of Justice
12 Antitrust Division
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Attorneys for Defendant Bazaarvoice, Inc.

16
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19
20 **[PROPOSED] ORDER**

21
22 **IT IS SO ORDERED.**

23 Dated: _____

24 HON. WILLIAM H. ORRICK
25 United States District Judge

ATTESTATION

This stipulation is being filed through the Electronic Case Filing (ECF) system by attorney Michael Bonanno of the United States Department of Justice, Antitrust Division. By his signature, he attests that the United States has obtained concurrence in the filing of this document from Boris Feldman, pursuant to Civil L.R. 5-1(i)(3).

Dated: April 24, 2014

By : _____ /s/ Michael D. Bonanno
Michael D. Bonanno
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EXHIBIT A

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9 Attorneys for Plaintiff United States of America

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 **PLAINTIFF'S SECOND AMENDED**
19 **[PROPOSED] FINAL JUDGMENT**

Judge: Hon. William H. Orrick
Hearing Date: April 25, 2014
Time: 9 a.m.

20 **PLAINTIFF'S SECOND AMENDED [PROPOSED] FINAL JUDGMENT**

21 Plaintiff United States of America filed its Complaint on January 10, 2013; Defendant
22 Bazaarvoice, Inc., filed its Answer on February 22, 2013, denying the substantive allegations in
23 the Complaint; this Court having conducted a full trial on all issues of liability and issued its
24 findings of fact and conclusions of law on January 8, 2014, holding that the acquisition of
25 PowerReviews by Bazaarovoice violated Section 7 of the Clayton Act, 15 U.S.C. § 18; and

26 The United States and Defendant, by their respective attorneys, have consented to the
27 entry of this Final Judgment; and
28

1 Defendant agrees to be bound by the provisions of this Final Judgment pending its
2 approval by the Court; and

3 The essence of this Final Judgment is the prompt and certain divestiture of certain assets
4 and rights by Defendant to fully restore the competition eliminated by Bazaarvoice’s unlawful
5 acquisition;

6 It is hereby ORDERED, ADJUDGED AND DECREED:

7 **I. Jurisdiction**

8 This Court has personal jurisdiction over Bazaarvoice and subject matter jurisdiction
9 under Section 15 of the Clayton Act, 15 U.S.C. § 25.

10 **II. Definitions**

11 As used in this Final Judgment:

12 A. “Acquirer” means the entity to whom Defendant divests the Divestiture Assets.

13 B. “Bazaarvoice” or “Defendant” means Bazaarvoice, Inc., a Delaware corporation
14 with its headquarters in Austin, Texas, its successors and assigns, and its subsidiaries, divisions,
15 groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents,
16 and employees.

17 C. “Divestiture Assets” means

18 1. All tangible and intangible assets that were acquired by Bazaarvoice when it
19 purchased the PowerReviews business on June 12, 2012, including:

20 i. All tangible assets that comprise the PowerReviews business, including
21 research and development activities; all personal property, inventory, materials, supplies, office
22 furniture, computer systems, and other tangible property and all assets used in connection with
23 the PowerReviews business; all licenses, permits and authorizations issued by any governmental
24 organization relating to the PowerReviews business; all contracts, teaming arrangements,
25 agreements, leases, commitments, certifications, and understandings, relating to the
26 PowerReviews business, including supply agreements; all customer lists, contracts, accounts, and
27 credit records; and all repair and performance records and all other records relating to the
28 PowerReviews business; and

1 ii. All intangible assets used in the development, production, servicing and
2 sale of the PowerReviews assets, including, but not limited to, all patents, licenses and
3 sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service
4 names, technical information, computer software and related documentation, know-how, trade
5 secrets, drawings, blueprints, designs, design protocols, specifications for materials,
6 specifications for parts and devices, safety procedures for the handling of materials and
7 substances, all research data concerning historic and current research and development relating
8 to the PowerReviews assets, quality assurance and control procedures, design tools and
9 simulation capability, all manuals and technical information Defendant provides to its own
10 employees, customers, suppliers, agents or licensees, and all research data concerning historic
11 and current research and development efforts relating to the PowerReviews assets, including, but
12 not limited to, designs of experiments, and the results of successful and unsuccessful designs and
13 experiments.

14 2. All tangible and intangible assets, as described above, that were acquired,
15 developed, designed, or produced for use with the PowerReviews assets described in II.C.1 since
16 June 12, 2012.

17 3. A license, for four (4) years, to sell Bazaarvoice's Syndication Services
18 product or service offering to customers of Acquirer as described in Section V.A.

19 4. All technology (whether software, hardware, or both), know-how (including
20 trade secrets), and other intellectual property rights necessary for Acquirer to provide access to
21 Bazaarvoice's Syndication Services to its customers.

22 5. A list of all of Defendant's customers that either (1) renewed a contract for the
23 provision of a PRR Platform with Defendant since June 12, 2012, or (2) became a new customer
24 of Defendant for a PRR Platform since June 12, 2012. Such list shall include the name of each
25 such customer and the date on which the customer's contract expires and/or is up for renewal.

26 6. A list of each feature, improvement, upgrade or any other technology related to
27 PRR Platforms that Defendant developed since June 12, 2012 for use with Bazaarvoice's PRR
28 Platform(s).

1
2 D. “PowerReviews” means (1) PowerReviews, Inc., the company that was acquired
3 by Bazaarvoice on June 12, 2012, and (2) all the assets formerly of PowerReviews, Inc.

4 E. “PowerReviews Enterprise Platform” means all PowerReviews PRR Platform
5 products except for PowerReviews Express (also referred to as Bazaarvoice Express) products
6 and the Buzzillions web product.

7 F. “PRR Platform” means the front-end and back-end technologies, including
8 features such as moderation, syndication, and analytics, that enables the collection, organization,
9 storage, use and display of user-generated product ratings and reviews and related content on a
10 website.

11 G. “Transition Services Agreement” means an agreement between Defendant and
12 Acquirer for Defendant to provide all necessary transition services and support to enable
13 Acquirer to fully operate the Divestiture Assets and compete effectively in the market for
14 providing PRR Platforms in the United States as of the date the Divestiture Assets are sold.

15 H. “Syndication Services” means the products and services currently provided by
16 Bazaarvoice, and any successor thereto, that provide the ability to share product ratings and
17 reviews and related content between two or more customers.

18 **III. Applicability**

19 A. This Final Judgment applies to Bazaarvoice as defined above, and all other
20 persons in active concert or participation with it who receive actual notice of this Final Judgment
21 by personal service or otherwise.

22 B. If, prior to complying with Section IV and VI of this Final Judgment, Defendant
23 sells or otherwise disposes of all or substantially all of their assets or of lesser business units that
24 include the Divestiture Assets, Defendant shall require the purchaser to be bound by the
25 provisions of this Final Judgment. Defendant need not obtain such an agreement from the
26 Acquirer of the assets divested pursuant to this Final Judgment.

27 **IV. Divestiture**

1 A. Defendant is ordered and directed to divest the Divestiture Assets within ten (10)
2 days of the entry of the Final Judgment in this matter in a manner consistent with this Final
3 Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United
4 States, in its sole discretion, may agree to one or more extensions of this time period not to
5 exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances.
6 Defendant agrees to use its best efforts to divest the Divestiture Assets as expeditiously as
7 possible.

8 B. Defendant shall inform any person making inquiry regarding a possible purchase
9 of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide
10 that person with a copy of this Final Judgment. Defendant shall offer to furnish to all
11 prospective Acquirers, subject to customary confidentiality assurances, all information and
12 documents relating to the Divestiture Assets customarily provided in a due diligence process
13 except such information or documents subject to the attorney-client privilege or work-product
14 doctrine. Defendant shall make available such information to the United States and the Trustee
15 at the same time that such information is made available to any other person.

16 C. Defendant shall provide Acquirer and the United States with information relating
17 to the personnel involved in the production, operation, development and sale of the Divestiture
18 Assets, and all Bazaarvoice PRR Platforms, to enable Acquirer to make offers of employment.
19 Defendant will not interfere with any negotiations by Acquirer to employ any of Defendant's
20 current or former employees. Interference with respect to this paragraph includes, but is not
21 limited to, enforcement of non-compete clauses with regard to the Acquirer, and offers to
22 increase salary or other benefits apart from those offered company-wide. In the event any
23 current or former employee(s) of Defendant accepts an offer of employment with Acquirer
24 within six (6) months of the date of the sale of the Divestiture Assets, Defendant will not seek to
25 enforce any restrictions against or otherwise prohibit such employee(s) from using or disclosing
26 to the Acquirer any of Defendant's trade secrets, know-how or proprietary information related to
27 PowerReviews' or Defendant's PRR Platform technology in connection with the employee(s)'s
28 employment with Acquirer, nor will Defendant seek to impede or prohibit Acquirer's use of such

1 trade secrets, know-how or proprietary information. Nothing in this paragraph shall prevent
2 Defendant from taking any appropriate legal action against any of Defendant's current or former
3 employees who (1) accept an offer of employment with Acquirer and (2) remove tangible
4 documents (whether in hard-copy or electronic form) or items from Bazaarvoice that contain
5 trade secrets, know-how or proprietary information.

6 D. Defendant shall permit prospective Acquirers of the Divestiture Assets to have
7 reasonable access to personnel and to make inspections of the physical facilities; and access to
8 any and all financial, operational, or other documents and information customarily provided as
9 part of a due diligence process.

10 E. Defendant shall warrant to Acquirer that each asset will be operational on the date
11 of sale.

12 F. Defendant shall not take any action that will impede in any way the permitting,
13 operation, or divestiture of the Divestiture Assets.

14 G. At the election of Acquirer, Defendant and Acquirer shall enter into a Transition
15 Services Agreement for a period up to one (1) year from the date of the divestiture. The
16 Transition Services Agreement shall enumerate all the duties and services that Acquirer requires
17 of Defendant. Defendant shall perform all duties and provide any and all services required of
18 Defendant under the Transition Services Agreement. Any amendments, modifications or
19 extensions of the Transition Services Agreement may only be entered into with the approval of
20 the Court.

21 H. After the sale of the Divestiture Assets until (1) the expiration of the current PRR
22 Platform contract or (2) one year from the date of the letter described in Section IV.I, whichever
23 is later, for any PRR Platform customer of Defendant that wishes to become a PRR Platform
24 customer of Acquirer, Defendant shall waive any potential breach of contract claim related to the
25 transfer of that customer from Defendant to Acquirer, notwithstanding any other agreement to
26 the contrary.

27 I. Within three (3) calendar days of the date of the sale of the Divestiture Assets,
28 Defendant shall send a letter to all persons who were customers of Defendant as of the date of

1 the sale of the Divestiture Assets notifying the recipients of the divestiture and providing a copy
2 of this Final Judgment. The letter shall also specifically inform customers of Defendant's
3 obligations under Section IV.H of this Final Judgment. Acquirer shall have the option to include
4 its own letter with Defendant's letter. Defendant shall provide the United States, and the
5 Trustee, a copy of its letter at least three (3) calendar days before it is sent.

6 J. Unless the United States otherwise consents in writing, the divestiture pursuant to
7 Section IV, or by Trustee appointed pursuant to Section VI, of this Final Judgment, shall include
8 the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United
9 States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part
10 of a viable, ongoing business of providing PRR Platforms in the United States. The divestiture,
11 whether pursuant to Section IV or Section VI of this Final Judgment,

12 1. shall be made to an Acquirer that, in the United States' sole discretion, has
13 the intent and capability (including the necessary managerial, operational, technical and financial
14 capability) of competing effectively in the business of PRR Platforms; and

15 2. shall be accomplished so as to satisfy the United States, in its sole
16 discretion, that none of the terms of any agreement between Acquirer and Defendant gives
17 Defendant the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or
18 otherwise to interfere in the ability of Acquirer to compete effectively.

19 **V. Other Required Conduct**

20 A. Defendant shall provide to Acquirer and Acquirer's customers access to
21 Defendant's syndication network for four (4) years following the date of sale of the Divestiture
22 Assets by:

23 1. Providing Syndication Services according to the financial terms described
24 in the fee schedule set forth in the definitive divestiture agreement. The pricing contained in the
25 fee schedule shall reflect only Defendant's actual costs in providing the service with no
26 additional fees or charges in connection with the provision of this service. The Acquirer may
27 elect to pay Defendant directly or to have Defendant bill Acquirer's customers for Syndication
28 Services; and

1 2. Providing Syndication Services on non-discriminatory terms with respect
2 to Defendant's and Acquirer's customers. For the avoidance of doubt, the following is a non-
3 exhaustive list of terms for which Defendant may not discriminate:

- 4 i. speed of content transmission;
- 5 ii. server lag time and/or uptime;
- 6 iii. alignment of product databases;
- 7 iv. database synchronization;
- 8 v. content presentation;
- 9 vi. pricing to Defendant's customers based on syndication partner(s);
- 10 vii. data fields transmitted or utilized; and
- 11 viii. integration with Question and Answer products.

12 Nothing in this paragraph shall be interpreted to permit Acquirer's customers receiving
13 Syndication Services from Defendant to violate any terms of service that are applicable to all of
14 Defendant's customers receiving Syndication Services.

15 B. Defendant shall promptly notify the Trustee and the United States of all
16 complaints, whether written or oral, it receives relating to Section V.A of this Final Judgment.
17 The Trustee may conduct an investigation of any complaint and shall submit all findings from
18 any such investigation to the United States and Defendant.

19 C. Defendant shall refrain from soliciting the customers acquired by Acquirer as part
20 of the Divestiture Assets for six (6) months following the date of sale of the Divestiture Assets.

21 D. Defendant shall provide to Acquirer, at no cost to Acquirer, an irrevocable, fully
22 paid-up perpetual and non-exclusive license to all Bazaarvoice patents and patent applications
23 related to PRR Platforms issued or filed at the time the Divestiture Assets are sold to Acquirer.
24 Defendant shall not sue any PRR Platform customer of Acquirer for infringement of any patent
25 or patent application issued or filed at the time the Divestiture Assets are sold relating to such
26 customer's use of any PRR Platform or other Divestiture Asset provided by Acquirer.

27 E. Defendant is prohibited from retaining a copy of or offering for sale any of the
28 Divestiture Assets described in Section II.C.1 and 2.

VI. Appointment of Trustee

1
2 A. Upon application of the United States, the Court shall appoint a Trustee selected
3 by the United States and approved by the Court to monitor Defendant's compliance with the
4 obligations set forth in this Final Judgment, and, if necessary, effect the sale of the Divestiture
5 Assets.

6 B. If Defendant has not sold the Divestiture Assets during the period set forth in
7 Section IV.A, only the Trustee shall have the right to sell the Divestiture Assets. The Trustee
8 shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the
9 United States at such price and on such terms as are then obtainable upon reasonable effort by
10 the Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and
11 shall have such other powers as this Court deems appropriate. Subject to Section VI.D of this
12 Final Judgment, the Trustee may hire at the cost and expense of Defendant any investment
13 bankers, attorneys, or other agents, who shall be solely accountable to the Trustee, reasonably
14 necessary in the Trustee's judgment to assist in the divestiture and performance of the other
15 duties required of the Trustee by this Final Judgment. The Trustee shall provide notice to the
16 United States and Defendant of all persons hired by the Trustee, and the terms of such persons'
17 compensation, within one (1) day of hiring.

18 C. Defendant shall not object to a sale by the Trustee on any ground other than the
19 Trustee's malfeasance. Any such objections by Defendant must be conveyed in writing to the
20 United States and the Trustee within ten (10) calendar days after the Trustee has provided the
21 notice required under Section VII.

22 D. The Trustee shall serve at the cost and expense of Defendant, on such terms and
23 conditions as the United States approves, and shall account for all monies derived from the sale
24 of the assets sold by the Trustee and all costs and expenses so incurred. After approval by the
25 Court of the Trustee's accounting, including any remaining fees for its services and those of any
26 professionals and agents retained by the Trustee, all remaining money shall be paid to Defendant.
27 The compensation of the Trustee and any professionals and agents retained by the Trustee shall
28 be on reasonable and customary terms. With respect to work performed pertaining to the

1 divestiture, incentives based on the price and terms of the divestiture and the speed with which it
2 is accomplished may be provided. If the Trustee and Defendant are unable to reach agreement
3 on the Trustee's or any agents' or consultants' compensation or other terms and conditions of
4 engagement within fourteen (14) calendar days of appointment of the Trustee, the United States
5 may, in its sole discretion, take appropriate action, including making a recommendation to the
6 Court.

7 E. Defendant shall use its best efforts to assist the Trustee in accomplishing the
8 required divestiture and performing the other duties required of the Trustee by this Final
9 Judgment. The Trustee and any consultants, accountants, attorneys, and other persons retained
10 by the Trustee shall have full and complete access to the personnel, books, records, and facilities
11 of Defendant, and Defendant shall develop financial and other information from Defendant as
12 the Trustee may reasonably request, subject to reasonable protection for trade secret or other
13 confidential research, development, or commercial information. Defendant shall take no action
14 to interfere with or to impede the Trustee's accomplishment of the divestiture or any other duties
15 outlined in this Final Judgment.

16 F. After appointment, the Trustee shall file monthly reports with the United States,
17 Defendant, and the Court setting forth the Trustee's efforts to accomplish the divestiture ordered
18 under this Final Judgment, and Defendant's compliance with the other terms of this Final
19 Judgment. To the extent such reports contain confidential or highly confidential information
20 under the Protective Order, such reports shall not be filed in the public docket of the Court. Such
21 reports shall include the name, address, and telephone number of each person who, during the
22 preceding month, made an offer to acquire, expressed an interest in acquiring, entered into
23 negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the
24 Divestiture Assets, and shall describe in detail each contact with any such person. The Trustee
25 shall maintain full records of all efforts made to divest the Divestiture Assets.

26 G. If the Trustee has not accomplished the divestiture ordered under this Final
27 Judgment within six (6) months after appointment, the Trustee shall promptly file with the Court
28 a report setting forth (1) the Trustee's efforts to accomplish the required divestiture, (2) the

1 reasons, in the Trustee's judgment, why the required divestiture has not been accomplished, and
2 (3) the Trustee's recommendations. To the extent such reports contain confidential or highly
3 confidential information under the Protective Order, such reports shall not be filed in the public
4 docket of the Court. The Trustee shall at the same time furnish such report to the United States
5 which shall have the right to make additional recommendations consistent with the purpose of
6 the Final Judgment. The Court thereafter shall enter such orders as it deems appropriate to carry
7 out the purpose of the Final Judgment.

8 H. The Trustee shall serve until four (4) years following the date of sale of the
9 Divestiture Assets.

10 I. If the United States determines that the Trustee has ceased to act or failed to act
11 diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a
12 substitute Trustee.

13 **VII. Notice and Court Approval of Proposed Divestiture**

14 A. Within one (1) calendar day following execution of a definitive divestiture
15 agreement, Defendant or the Trustee, whichever is then responsible for effecting the divestiture
16 required herein, shall notify the United States and the Court of any proposed divestiture required
17 by Section IV or VI of this Final Judgment. If the Trustee is responsible, the Trustee shall
18 similarly notify Defendant; if Defendant is responsible, it shall similarly notify the Trustee. The
19 notice shall set forth the details of the proposed divestiture and list the name, address, and
20 telephone number of each person not previously identified who offered or expressed an interest
21 in or desire to acquire any ownership interest in the Divestiture Assets, together with full details
22 of the same.

23 B. Within three (3) calendar days of receipt by the United States of such notice, the
24 United States may request from Defendant, the proposed Acquirer, any other third party, or the
25 Trustee, if applicable, additional information concerning the proposed divestiture, the proposed
26 Acquirer, and any other potential Acquirer. Defendant and the Trustee shall furnish any
27 additional information requested within five (5) calendar days of the receipt of the request,
28 unless the parties shall otherwise agree.

1 C. Within twenty-one (21) calendar days after receipt of the notice or within fifteen
2 (15) calendar days after the United States has been provided the additional information requested
3 from Defendant, the proposed Acquirer, any third party, and the Trustee, whichever is later, the
4 United States shall provide written notice to Defendant and the Trustee stating whether or not it
5 objects to the proposed divestiture. If the United States provides written notice that it does not
6 object, the divestiture may be consummated, subject only to Defendant's limited right to object
7 to the sale under Section VI.C of this Final Judgment. Absent written notice that the United
8 States does not object to the proposed Acquirer or upon objection by the United States, a
9 divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection
10 by Defendant under Section VI.C, a divestiture proposed under Section VI shall not be
11 consummated unless approved by the Court.

12 **VIII. Financing**

13 Defendant shall not finance all or any part of any purchase made pursuant to Section IV
14 or VI of this Final Judgment.

15 **IX. Affidavits**

16 A. Within twenty (20) calendar days of the entry of this Final Judgment, and every
17 thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or
18 VI, Defendant shall deliver to the United States an affidavit as to the fact and manner of its
19 compliance with Section IV or VI of this Final Judgment. Each such affidavit shall include the
20 name, address, and telephone number of each person who, during the preceding thirty (30)
21 calendar days, made an offer to acquire, expressed an interest in acquiring, entered into
22 negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the
23 Divestiture Assets, and shall describe in detail each contact with any such person during that
24 period. Each such affidavit shall also include a description of the efforts Defendant has taken to
25 solicit buyers for the Divestiture Assets, and to provide required information to prospective
26 Acquirers, including the limitations, if any, on such information.

27 B. Within twenty (20) calendar days of the date of the sale of the Divestiture Assets,
28 Defendant shall deliver to the United States an affidavit that describes in reasonable detail all

1 actions Defendant has taken and all steps Defendant has implemented on an ongoing basis to
2 comply with Section V of this Final Judgment. Defendant shall deliver to the United States an
3 affidavit describing any changes to the efforts and actions outlined in Defendant's earlier
4 affidavits filed pursuant to this section within fifteen (15) calendar days after the change is
5 implemented.

6 C. Defendant shall keep all records of all efforts made to preserve and divest the
7 Divestiture Assets until one year after such divestiture has been completed.

8 **X. Compliance Inspection**

9 A. For the purposes of determining or securing compliance with this Final Judgment,
10 or of any related order, or of determining whether the Final Judgment should be modified or
11 vacated, and subject to any legally recognized privilege, from time to time authorized
12 representatives of the United States Department of Justice, including consultants and other
13 persons retained by the United States, shall, upon written request of an authorized representative
14 of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to
15 Defendant, be permitted:

16 1. Access during Defendant's office hours to inspect and copy, or at the
17 option of the United States, to require Defendant to provide hard copy or electronic copies of, all
18 books, ledgers, accounts, records, data, and documents in the possession, custody, or control of
19 Defendant, relating to any matters contained in this Final Judgment; and

20 2. To interview, either informally or on the record, Defendant's officers,
21 employees, or agents, who may have their individual counsel present, regarding such matters.
22 The interviews shall be subject to the reasonable convenience of the interviewee and without
23 restraint or interference by Defendant.

24 B. Upon the written request of an authorized representative of the Assistant Attorney
25 General in charge of the Antitrust Division, Defendant shall submit written reports or respond to
26 written interrogatories, under oath if requested, relating to any of the matters contained in this
27 Final Judgment as may be requested.

1 C. If at the time information or documents are furnished by Defendant to the United
2 States, Defendant represents and identifies in writing the material in any such information or
3 documents to which a claim of protection may be asserted under the Protective Order, then the
4 United States shall give Defendant ten (10) calendar days notice prior to divulging such material
5 in any legal proceeding (other than a grand jury proceeding).

6 **XI. Notification**

7 A. Unless such transaction is otherwise subject to the reporting and waiting period
8 requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15
9 U.S.C. § 18a (the “HSR Act”), Defendant, without providing advance notification to the
10 Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including
11 any financial, security, loan, equity or management interest, in a person providing PRR
12 Platforms in the United States during the term of this Final Judgment if the purchase price of
13 such assets or interest exceeds \$10,000,000.

14 B. Such notification shall be provided to the Antitrust Division in the same format
15 as, and per the instructions relating to the Notification and Report Form set forth in the Appendix
16 to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the
17 information requested in Items 5 through 9 of the instructions must be provided only about PRR
18 Platforms. Notification shall be provided at least thirty (30) calendar days prior to acquiring any
19 such interest, and shall include, beyond what may be required by the applicable instructions, the
20 names of the principal representatives of the parties to the agreement who negotiated the
21 agreement, and any management or strategic plans discussing the proposed transaction. If within
22 the 30-day period after notification, representatives of the Antitrust Division make a written
23 request for additional information, Defendant shall not consummate the proposed transaction or
24 agreement until thirty (30) calendar days after submitting all such additional information. Early
25 termination of the waiting periods in this paragraph may be requested and, where appropriate,
26 granted in the same manner as is applicable under the requirements and provisions of the HSR
27 Act and rules promulgated thereunder. This Section shall be broadly construed and any
28

1 ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in
2 favor of filing notice.

3 **XII. No Reacquisition**

4 Defendant may not reacquire any part of the Divestiture Assets during the term of this
5 Final Judgment.

6 **XIII. Retention of Jurisdiction**

7 This Court retains jurisdiction to enable any party to this Final Judgment to apply to this
8 Court at any time for further orders and directions as may be necessary or appropriate to carry
9 out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and
10 to punish violations of its provisions.

11 **XIV. Expiration of Final Judgment**

12 Unless this Court grants an extension, this Final Judgment shall expire ten years from the
13 date of its entry.

14 **XV. Public Interest Determination**

15 Entry of this Final Judgment is in the public interest. The parties have complied with the
16 requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making
17 copies available to the public of this Final Judgment, the Competitive Impact Statement, and any
18 comments thereon and the United States' responses to comments. Based upon the record before
19 the Court, which includes the Competitive Impact Statement and any comments and response to
20 comments filed with the Court, entry of this Final Judgment is in the public interest.

21
22 **IT IS SO ORDERED.**

23
24 Dated: _____

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26 _____
27 HON. WILLIAM H. ORRICK
28 United States District Judge

EXHIBIT B

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9 Attorneys for Plaintiff United States of America

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 **EXPLANATION OF CONSENT
DECREE PROCEDURES**

Judge: Hon. William H. Orrick
Hearing Date: April 25, 2014
Time: 9 a.m.

19
20 **UNITED STATES EXPLANATION OF CONSENT DECREE PROCEDURES**

21 The United States submits this short memorandum summarizing the procedures regarding
22 the Court’s entry of the proposed Final Judgment. This Judgment would settle this case pursuant
23 to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the “APPA”), which applies
24 to civil antitrust cases brought and settled by the United States.
25

26 1. Today, the United States has filed this Explanation of Consent Decree Procedures, a
27 proposed Final Judgment and a Stipulation and [Proposed] Order between the parties by which
28 they have agreed that the Court may enter the proposed Final Judgment after the United States

1 has complied with the APPA. The United States will also file a Competitive Impact Statement
2 relating to the proposed Final Judgment.

3 2. The Stipulation and [Proposed] Order is a document that has been agreed to by
4 both the United States and the Defendant. The United States and the Defendant ask that the
5 Court sign this Order, which ensures that the Defendant preserve competition by complying with
6 the provisions of the proposed Final Judgment during the pendency of the proceedings required
7 by the Tunney Act. *See* 15 U.S.C. § 16(b)-(h).

8
9 3. The APPA requires that the United States publish the proposed Final Judgment
10 and the Competitive Impact Statement in the *Federal Register* and cause to be published a
11 summary of the terms of the proposed Final Judgment and the Competitive Impact Statement in
12 certain newspapers at least sixty (60) days prior to entry of the proposed Final Judgment.
13 Defendant in this matter has agreed to arrange and bear the costs for the newspaper notices. The
14 notice will inform members of the public that they may submit comments about the proposed
15 Final Judgment to the United States Department of Justice, Antitrust Division, 15 U.S.C. §
16 16(b)-(c).

17
18 4. During the sixty-day period, the United States will consider, and at the close of that
19 period respond to, any comments that it has received, and it will publish the comments and the
20 United States' responses in the Federal Register.

21 5. After the expiration of the sixty-day period, the United States will file with the
22 Court the comments and the United States' responses, and it may ask the Court to enter the
23 proposed Final Judgment (unless the United States has decided to withdraw its consent to entry
24 of the Final Judgment, as permitted by Paragraph 1 of the Stipulation, *see* 15 U.S.C. § 16(d)).

25 6. If the United States requests that the Court enter the proposed Final Judgment after
26 compliance with the APPA, 15 U.S.C. § 16(e)-(f), then the Court may enter the Final Judgment
27 without a hearing, provided that it concludes that the Final Judgment is in the public interest.
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1 Dated: April 24, 2014

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Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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