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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Bazaarvoice, Inc.,

Defendant.

) CASE NO.: 13-cv-0133 WHO
)
) **BAZAARVOICE'S FINAL**
) **PROPOSED FINDINGS OF FACT**
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PUBLIC VERSION

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1. Overview of Proposed Findings of Fact

1. Bazaarvoice, Inc.'s ("Bazaarvoice") acquisition of PowerReviews, Inc. ("PowerReviews") in June 2012 raises the question of whether PowerReviews possessed such unique irreplaceable attributes as a competitor that its acquisition is likely to substantially lessen competition in violation of Section 7 of the Clayton Act.
2. The government relies on pre-merger documents and market shares to predict the likely effects of the merger. The government fashions a competitive landscape in which some customers will suffer higher prices and lagging innovation because the putative market for ratings and reviews ("R&R") allegedly cannot replace PowerReviews.
3. Bazaarvoice contends that the government's case does not comport with changing industry dynamics and powerful market forces. Like most technology-based industries, the competitive conditions facing R&R providers, including Bazaarvoice, are rapidly evolving, and the products available to customers (and the competitors vying to develop and sell these products) are still in their infancy.
4. Sophisticated business customers testified that PowerReviews has been sufficiently replaced, and that they have alternatives to Bazaarvoice today for their R&R. The options include "in-house" solutions developed by the customers themselves (or in partnership with a third-party), R&R solutions provided by e-commerce platforms that customers already use, commercial vendors of R&R and other social commerce tools, and major Internet and data software companies operating in the social commerce space that have all the assets necessary to extend their product offerings to include R&R quickly and without significant cost.
5. The customers say that they have reached, and will reach out to these alternatives when they must renew their R&R contract or purchase R&R functionality for their websites. Because of the abundant competitive options available to them, customers testified that they have not been and do not expect to be harmed by Bazaarvoice's acquisition of PowerReviews.
6. Customer demand for alternative suppliers to PowerReviews has been and will continue to be satisfied by numerous competitors – firms such as Pluck and Gigya as well as e-commerce platforms with built-in R&R. Competitors say they will compete vigorously against Bazaarvoice for R&R business, and they see the acquisition as an opportunity for them to compete for Bazaarvoice's R&R customers.

7. The ever-present competitive threat is internal solutions. The government concedes that in-house solutions are in the relevant market. This means that a “hypothetical monopolist commercial vendor” of R&R could not profitably raise price because enough customers would switch to in-house to defeat the increase. In-house remains a vital and credible alternative for every customer type.
8. Bridging any competitive gap are rapid entrants, such as Amazon, that have the productive and distribution assets to extend their business into the sale of R&R used by manufacturers and retailers. Amazon has testified that it thinks every day about supplying R&R to websites.
9. These forces have had a powerful competitive constraining impact on Bazaarvoice since it acquired PowerReviews almost a year and a half ago – continued customer losses and significant discounting for accounts that it has been able to win or retain. The pre-merger predictions that the elimination of PowerReviews would cause anticompetitive outcomes have been proven wrong. Everyone – customers, competitors, industry experts, as well as Bazaarvoice executives – agrees. Only the government disagrees.
10. One pre-merger prediction that has proven accurate is that by acquiring PowerReviews, customers of both companies have benefitted from the greater social commerce opportunities uniquely created by the combination. Customers of Bazaarvoice and PowerReviews testified that the acquisition provides greater syndication capabilities that they believe will help their businesses grow.
11. For the Court’s convenience, Bazaarvoice submits the following: (i) proposed findings of facts, (ii) proposed ultimate findings of facts, and (iii) Appendix A, Customer Testimony, Appendix B, Trial Witnesses, and Appendix C, Exhibits in further support of the proposed findings.

2. The Parties

a. The Plaintiff - Department of Justice

12. The United States Department of Justice Antitrust Division (the government or “DOJ”) is the U.S. federal executive department responsible for the enforcement of the antitrust laws of the United States.

b. The Defendant - Bazaarvoice

13. Bazaarvoice was founded in 2005. DX1802 at 3; Trial Tr. 78:16-20. Bazaarvoice is a publicly traded Delaware corporation with its principal place of business in Austin, Texas. DX1802 at 3. Bazaarvoice was privately held until February 2012 when it filed its initial public offering. DX1802 at 3; Trial Tr. 85:4-9
14. Bazaarvoice sells solutions, which are primarily provided via a SaaS platform, that help businesses “capture and display online word of mouth about specific

products and services” or “user generated content” or “UGC.” DX1802 at 3; DX1432 at 8; Trial Tr. 99:5-16. Bazaarvoice’s first offering was R&R functionality. DX1802 at 20. It has since expanded its available products which now include other social commerce tools. DX1802 at 20; Trial Tr. 91:1-2.

15. Today, Bazaarvoice offers four services to its clients: Bazaarvoice Conversations, Bazaarvoice Connections, Bazaarvoice Analytics Solutions, and Bazaarvoice Media. DX1802 at 4-5.

- Bazaarvoice Conversations is a suite of functionality that includes R&R, Question and Answer (“Q&A”), Campaigns, Applications for Facebook, and a Third Party Developer Application Programming Interface (“API”). DX1802 at 4; Trial Tr. 785:22-786:15.
- Bazaarvoice Connections includes three components: BrandVoice, BrandAnswers, and Brand Response. DX1802 at 4. BrandVoice enables brands to enter into distribution relationships allowing them to display review content from their brand websites on retail websites. DX1802 at 4. This is also referred to as syndication. DX1802, at 4. BrandAnswers enables brands to interact directly with consumers on retail websites within Bazaarvoice’s network and to answer questions and provide suggestions on alternative products that may better meet that consumer’s needs. DX1802 at 4. Brand Response enables brands to interact with consumers by responding to reviews posted on retail websites within the Bazaarvoice network. DX1802 at 4.
- Bazaarvoice Analytics Solutions includes two components: Bazaarvoice Intelligence and Workbench Analytics. DX802 at 5. Bazaarvoice Intelligence allows clients to derive market, consumer and product insights based on the underlying data that Bazaarvoice collects on their behalf. DX1802 at 5. The Bazaarvoice Intelligence functionality is designed to help clients analyze UGC, which in turn, allows its customers to use the insights gained from this analysis to make better marketing and merchandising decisions. DX1802 at 5; Trial Tr. 790:23-791:8. Workbench Analytics provides basic analytics capabilities that allows clients to generate reports highlighting ratings trends, text analysis and product and service issue identification. DX1802 at 5. Through its Workbench Analytics tool, Bazaarvoice provides clients with the ability to generate reports assessing the impact that Bazaarvoice’s services have on their sites. DX1802 at 5; Trial Tr. 109:10-16, 115:11-116:5, 790:23-791:8.
- Bazaarvoice Media sells advertising on behalf of retailers, brands, and agencies, and provides capabilities that incorporate consumers’ authentic opinions in advertising campaigns. DX1802 at 5.

16. In addition to providing the software used to capture UGC on websites, Bazaarvoice, through its BrandVoice service, also syndicates UGC between brand and retail sites. DX1802 at 4. Syndication generally involves collecting UGC from one website and making that UGC available on another website. DX1432 at 41. One type of syndication involves taking UGC from brand or manufacturer

website and placing it on a retailer website. Osborne Tr. 228:13-21; Trial Tr. 117:18-118:5, 787:12-788:4. Syndication can be obtained from Bazaarvoice as a standalone service or in conjunction with the purchase of a Bazaarvoice Conversations service. Trial Tr. 787:12-17, 1768:4-16. The Bazaarvoice syndication tool can be used to syndicate content outside the Bazaarvoice network. Defosse Tr. 155:23-156:8.

17. Bazaarvoice's sales data shows that the Company currently has syndication customers that are not customers of its R&R solution (e.g., Sears). DX1433 at ¶¶ 207, 222. Only a small percentage of Bazaarvoice's and PowerReviews' customers use syndication. PFF ¶ 184.

18. Bazaarvoice sells its solutions to a wide range of customers, including, but not limited to, firms in the retail, consumer products, travel and leisure, technology, telecommunications, financial services, healthcare, and automotive industries. DX1802 at 6; Trial Tr. 90:7-22. As of April 2013, Bazaarvoice served 1,208 active enterprise clients. DX1802 at 6.

19. In its 2012 fiscal year, Bazaarvoice earned approximately \$106.1 million in revenue worldwide from the sale, support and service of its solutions. DX1802 at 39.

c. PowerReviews

20. PowerReviews was incorporated in October 2005. DX1624 at 9. Before it was acquired by Bazaarvoice, PowerReviews was a privately held Delaware corporation, with its principal place of business in San Francisco, California. DX1624 at 3, 9; DX1802 at 3.

21. PowerReviews was never a profitable company. During the 2011 calendar year, PowerReviews earned approximately \$11.5 million in revenue. DX1623 at 6. Throughout its history as an independent business, PowerReviews generated cumulative revenues of just \$28 million, and cumulative losses of \$48 million. DX1433 at ¶ 205; DX1387.001.

22. Most of PowerReviews' customers were subscribers to its most basic service, PowerReviews Express. [REDACTED] DX0021 at BV-VOL-000000949.

23. At the time of the acquisition, PowerReviews was approximately one-tenth the size of Bazaarvoice. GX1181.

3. Jurisdiction

24. Bazaarvoice sells its products throughout the United States. Such sales represent a regular, continuous and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

1 25. Bazaarvoice transacts business and has offices within the Northern District of
2 California.

3 **4. Procedural Background.**

4 26. On May 24, 2012, Bazaarvoice announced that it had reached a definitive
5 agreement to purchase PowerReviews, and on June 12, 2012, completed the
6 acquisition. DX1801 at 2; Trial Tr. 776:12-16, 1824:7-9. Bazaarvoice acquired
7 PowerReviews for \$31 million in cash and 6.4 million shares of common stock,
8 for a total value of approximately \$150.8 million. DX1801 at 4; DX1802 at 3.

9 27. On June 14, 2012, the DOJ opened an informal investigation into Bazaarvoice's
10 acquisition of PowerReviews. On August 3, 2012, the DOJ issued a Civil
11 Investigative Demand to Bazaarvoice requesting documents and data.
12 Bazaarvoice complied fully with the DOJ's requests.

13 28. On January 10, 2013, the DOJ filed a Complaint against Bazaarvoice in the U.S.
14 District Court for the Northern District of California, San Francisco Division,
15 concerning Bazaarvoice's acquisition of PowerReviews. The Complaint alleges
16 that Bazaarvoice's acquisition of PowerReviews violates Section 7 of the Clayton
17 Act, 15 U.S.C. Section 18. The DOJ seeks as a remedy the creation of a new
18 competitor from the divestiture of unspecified Bazaarvoice assets.

19 29. On February 7, 2013, the DOJ proposed that the parties should be limited to 80
20 hours of deposition time for current Bazaarvoice employees and 90 hours of
21 deposition time for non-parties. Joint Case Management Statement (ECF #26 at
22 12:12-14). Bazaarvoice asked that the parties be permitted to 170 hours
23 combined of deposition time for employees and non-party witnesses. Joint Case
24 Management Statement (ECF #26 at 14:11-15).

25 30. At the February 14th Case Management Conference, the DOJ again sought to
26 limit the number of deposition hours for non-parties. The DOJ expressed concern
27 that non-party depositions were burdensome and depositions of non-parties could
28 "far exceed 90" if the Court accepted Bazaarvoice's proposal. Case Management
29 Conference Transcript (ECF #38 at 13:9-12). The Court agreed with the DOJ and
30 set a limit of 90 hours for depositions of non-parties.

31 31. On March 1, 2013, the DOJ's produced Initial Disclosures which included 76
32 customers. These were customers that had been contacted by the DOJ during its
33 investigation of the acquisition. Plaintiff's Response to Defendant's First Set of
34 Interrogatories, dated March 5, 2013.

35 32. Bazaarvoice began taking depositions of customers and competitors, including
36 many identified in the DOJ's March 1 Initial Disclosures. Plaintiff's March 1
37 Rule 26 Disclosures. On May 28, Bazaarvoice brought a motion seeking
38 additional deposition hours for non-parties. The DOJ opposed that request. In the
39 Joint Discovery Letter Brief of May 28th, the DOJ argued that Bazaarvoice had
40 already surpassed a sufficient number of non-party depositions needed for its
41 defense. ECF #66 at 3. The DOJ contended that any more customer depositions
42 would be "unnecessarily duplicative" since nothing would be "[addressed]" in its

91st deposition that [Bazaarvoice] has not already addressed during its first 90 depositions.” ECF #66 at 3.

33. In the end, Bazaarvoice obtained testimony from 52 of the 76 customers identified by the DOJ in its March 1 Initial Disclosures. Appendix A; Plaintiff’s March 1 Rule 26 Disclosures. Bazaarvoice also obtained testimony from an additional 14 customers who are listed in the IR500. Appendix A.

34. The DOJ identified and submitted expert reports from Carl Shapiro, an economist, and Chris Dellarocca, an industry expert. Bazaarvoice identified and submitted expert reports from Ramsey Shehadeh, an economist, and Jason Goldberg, an industry expert. The parties conducted expert discovery, including depositions of each expert, through August 6, 2013. The DOJ did not call Chris Dellarocca at trial.

- Dr. Shapiro “learned a bunch about the industry from” Mr. Goldberg’s testimony. Trial Tr. 1065:5-7.
- Dr. Shapiro relied on Professor Dellarocca’s expert report. Trial Tr. 1078:19-1079:1.

35. The trial of this matter began before the Honorable William H. Orrick on September 23, 2013, and concluded on October 10, 2013. Closing arguments were held on October 15, 2013.

36. The parties called numerous fact and expert witnesses via live testimony and video depositions, and submitted a combined total of 980 exhibits into evidence. Appendix B contains a list of the witnesses that testified, either live or via video, during the trial. Appendix C contains a list of the exhibits accepted into evidence.

5. Industry Characteristics: Overview of E-Commerce, Social Commerce, and R&R Functionality

a. E-commerce platforms

37. E-commerce platforms provide the infrastructure for an underlying e-commerce website, and are the “host” platform upon which all other features are added. DX1432 at 13-14; Trial Tr. 1455:25-1457:2.

38. There are several basic categories of webpages which most e-commerce platforms offer, including the Home Page, Category and Sub-Category Pages, Product Detail Pages, Search Result Pages, Multi-SKU Pages, Quick-View, Shopping Cart, Checkout, and Order Confirmation. DX1432 at 12-13; Trial 1455:25-1457:2.

- The Home Page is the initial page that the customer sees when typing the top level domain into a browser. DX1432 at 12; Trial Tr. 1455:25-1457:2.

- Category and Sub-Category Pages organize products by category, and usually include small product photos called thumbnails. DX1432 at 13; Trial Tr. 1455:25-1457:2.
- Product Detail Pages contain specific attributes about a product including which options are available, such as size or color. DX1432 at 13; Trial Tr. 1455:25-1457:2.
- Search Result Pages show multiple products that are responsive to a query, and often allow the customer to refine or narrow search options through an iterative process. DX1432 at 13; Trial Tr. 1455:25-1457:2.
- A multi-SKU Page is an umbrella term for any page that contains many products with similar attributes, including Category, Sub-Category, and Search Result Pages. DX1432 at 13.
- Quick-View is a feature of a multi-SKU Page that allows the customer to see more specific details about a product and add it to a Shopping Cart without leaving the webpage. DX1432 at 13.
- The Shopping Cart is a list of items selected by the customer across the entire e-commerce website that the customer intends to purchase. DX1432 at 13.
- The Checkout Page is a page or series of pages through which the customer enters payment and shipping information; this process is sometimes called a Checkout Flow. DX1432 at 13.
- The Order Confirmation Page confirms to a customer that an order has been completed successfully. DX1432 at 13.

39. E-commerce platform providers vary in sophistication and price, with some e-commerce vendors targeting larger sites and others targeting smaller sites. DX1432 at 13-15; Trial Tr. 1458:4-23.

- Oracle Commerce, IBM WebSphere Commerce, and hybris, which was acquired by SAP in June 2013, comprise the Gartner Group's "top quadrant" e-commerce platform providers and offer a wide range of built in features (Gartner is a well-known research firm that reports on Internet companies). DX1432 at 1, 14.
- There are many e-commerce platform vendors available to smaller sites, including Magento, Volusion, Shopify, Red Prairie and Ektron, which include the basic features of an e-commerce platform and a wide variety of functionality. DX1432 at 14; Yukel Tr. 13:1-13; Arbogast Tr. 9:12-15; Randle Tr. 13:16-23; Waring Tr. 12:6-12; Beale Tr. 27:23-28:8; Doss Tr. 14:11-14; Friedland Tr. 34:3-35:2; Parsons Tr. 47:5-48:4; Trial Tr. 1661:4-10.

- Many website operators develop a proprietary e-commerce platform rather than purchase an off-the-shelf solution so that they have full control of the e-commerce platform's customizability and can offer their customers a differentiated shopping experience. DX1432 at 14; Trial Tr. 1458:24-1459:18, 1493:12-1494:13; Meisels Tr. 19:21-20:5; Rose Tr. 25:4-6; Knisely Tr. 29:6-8.

40. E-commerce platform functionality can be extended through the use of software components ("plug-ins" or "add-ons"). DX1432 at 13-15; Trial Tr. 1437:14-1438:10. There are at least 38 add plug-ins or add-ons that may be built on top of an e-commerce platform. R&R is a plug-in. DX1432 at 15-18; Trial Tr. 94:10-19.
41. Plug-ins and add-ons are often created and integrated by third-party tool developers who specialize in building these tools and integrating them with e-commerce platforms. DX1432 at 18, 64; Yukel Tr. 36:24-37:14; Arbogast Tr. 11:7-11:21; Randle Tr. 18:2-15; Waring Tr. 13:8-17. These plug-ins or add-ons can also be (and are) provided "natively" (i.e., included) by e-commerce platform providers and are often integrated into the e-commerce platform itself. DX1432 at 21; Yukel Tr. 14:25-15:3; Beale Tr. 27:23-28:8; Doss Tr. 16:6-9.

b. Social commerce suites

42. [REDACTED] Crickmer Tr. 16:24-17:8; Traywick Tr. 19:3-10; Evons Tr. 13:2-12; Moog Tr. 78:19-79:6; Smith Tr. 11:10-12:1; Hughes Tr. 18:8-19:17; Chin Tr. 11:15-12:20; Reilly Tr. 13:10-14:6; Ogle Tr. 10:2-21; Trial Tr. 1285:10-17. Social commerce tools allow a "website audience to be able to engage with that website in some way, shape or form." Tarkowski Tr. 10:17-21; Jolitz Tr. 11:10-19; Bausch Tr. 15:4-17. The tools can also create or facilitate the creation of UGC. DX1433 at ¶¶ 21-24.

43. [REDACTED] DX1433 at ¶ 21; Tarkowski Tr. 12:1-5; Crickmer Tr. 18:4-12.

- UGC facilitates the sale or commercialization of products or services. DX1432 at 22; DX1433 at ¶ 25; Bausch Tr. 15:11-24; Seebeck Tr. 11:19-12:4; Maki Tr. 7:18-8:5.
- UGC can be created using a number of similar social commerce tools, including customer commentary, R&R, blogs, imagery (i.e., pictures), Facebook shares and "likes," and other forum-like content. May Tr. 9:12-18; Glispy Tr. 20:13-24:15; Bausch Tr. 15:11-24; Moen Tr. 26:5-23; Reilly Tr. 13:23-14:6; Trial Tr. 96:7-13.

44. Social commerce tools include:

- Social Sharing: websites with social sharing allow users to share the site content with friends on their social networks such as Facebook, Google+, Pinterest, and Twitter. DX1432 at 26-27; Tarkowski Tr. 15:11-21.
- Social Sign-In: [REDACTED] DX1432 at 27-28; Tarkowski Tr. 23:25-24:17; Crickmer Tr. 167:5-17.
- Question & Answer: [REDACTED] DX1432 at 31; Eberstadt Tr. 13:13-24.
- Ratings: websites with ratings typically display stars (i.e., ★★★★★) that reflect user opinion of a product or service and can be combined with reviews or used alone. DX1432 at 32; Tarkowski Tr. 21:13-19; Trial Tr. 91:3-15.
- Reviews: websites with reviews allow users to write their opinions regarding products and services in a text field on the website. DX1432 at 32-33; Tarkowski Tr. 21:13-19; Trial Tr. 91:16-20.
- Gamification: websites with gamification use game tactics to incentivize customers to generate UGC and participate in discount and loyalty programs. DX1432 at 34; Tarkowski Tr. 15:11-13, 16:6-9, 25:8-23; Trial Tr. 93:12-94:1.
- Comments, Forums, and Discussions: [REDACTED] DX1432 at 33; Tarkowski Tr. 14:1-4, 15:11-23; Eberstadt Tr. 77:17-25; Schuster Tr. 19:18-20:7. The terms comments, forums, and discussions are often used interchangeably. DX1432 at 33.
- Blogs: [REDACTED] Crickmer Tr. 153:14-154:22.

c. R&R: one type of social commerce tool

45. R&R is one kind of social commerce tool that provides benefits that other social commerce tools provide including:

- Serving as “social proof” of the quality or attributes of a product. DX1432 at 22-23.
- Assisting search engine optimization (“SEO”) and improving website ranking in search engine results. DX1432 at 22-25, 32-33; Jolitz Tr. 8:4-16; Beale Tr. 22:5-22:18; Trial Tr. 97:21-25.

- Providing feedback to website operators that can be used to improve products. DX1432 at 22; Randle Tr. 22:7-23:6.
- Increasing conversion, by helping customers to make better purchasing decisions and thereby decreasing returns. Jimenez Tr. 7:4-8:3.

46. Other social commerce tools serve the same function as R&R. PFF ¶¶708-774.

d. Competition generally for R&R

47. R&R software is widely available and easy to develop. PFF ¶99. Although R&R functionality was novel when it was released in 2005, today many consider basic R&R functionality a commodity. Trial Tr. 667:2-668:7, 1170:4-15, 1174:16-25; DX0251 at BZ-00283757; DX1391; Jeske Tr. 48:1-8; Evons Tr. 22:24-24:1; Hodapp Tr. 63:9-13; Maki Tr. 30:22-31:5; Hurt Tr. 103:8-20; Meisels Tr. 29:7-30:9; Godfrey Tr. 30(b)(6) 54:11-23; Osborne Tr. 226:17-20; Svatek Tr. 163:7-23; Cotlar Tr. 46:9-25; Friedland Tr. 22:22-23:16.

48. There are various “features” offered by R&R software and social commerce suppliers including moderation, attribute ratings, data analytics, and syndication. PFF ¶¶15, 275-474. Vendors differentiate their products and try to add value to their solution by offering different features. PFF ¶¶15, 275-474; Trial Tr. 92:21-2-94:19. Vendors may also differentiate their products by offering customization to suit the particular needs of a customer. [REDACTED]

Heverley Tr. 66:14-67:4, 102:23-103:6; DX1432 at 38; Trial Tr. 830:24-831:21.

49. E-commerce sites want varying levels of complexity and differentiating features for their websites. This impacts their decision on which R&R product to use. Depending on their vision for their website, customers may prefer a “Mercedes or Cadillac version” of R&R functionality. Cobb Tr. 50:23-51:18. However, not every website prefers a complex R&R solution. Trial Tr. 1208:15-19. E-commerce sites make a trade-off between complexity and simplicity in selecting an R&R solution; a complex R&R solution may not be appealing to some consumers. DX1432 at 15, 18, 19.

50. R&R is sold on a “value pricing” model in which the vendor attempts to estimate the ROI that the R&R product will deliver, and uses this estimation to determine the pricing for the customer. Stowell Tr. 28:9-39:15; Trial Tr. 800:10-24.

51. The price an R&R vendor can charge for an R&R solution is affected by non-R&R alternatives. An R&R solution will offer only incremental value to an e-commerce site that already employs other social commerce tools. DX1432 at 36. Other social commerce alternatives dilute the consumer’s attention and as more social proof is offered about a product, consumers pay less attention to each individual element. DX1432 at 21-22. Thus, all vendors of social commerce tools, including R&R, compete for the social commerce “wallet” because customers have limited resources to dedicate to a variety of social commerce options. Trial Tr. 640:10-641:5, 821:8-823:7, 1120:16-1121:7; Barton Tr.

151:5:152:4, 152:11-18, 269:1-17; Targett Tr. 20:10-21:3, 24:22-25:2, 25:14-18; Bausch Tr. 19:3-7; Doss Tr. 23:13-24:5; Maki Tr. 17:1-6; Moen Tr. 29:2-19; DX1432 at 20.

52. The value to the customer of an R&R solution and price an R&R vendor can charge for an R&R solution is also affected by a consumer's ability to read reviews elsewhere, e.g. Amazon marketplace, before purchasing the product from that other website. GX0986 at 6-7; DX1432 at 10-12; Trial Tr. 1515:1-21; DX1895.

53. [REDACTED] DX1432 at 68-70; Crickmer Tr. 83:5-84:22; DX0753 at BZ-01746815. The purchase cycle may also be opaque to the vendors, particularly with new customers or with customers who are switching e-commerce platforms, because e-commerce websites are sophisticated customers who understand the importance of sharing limited information. DX1432 at 68; PFF ¶¶54-59.

e. In negotiations with vendors of R&R, customers control information shared

54. Rather than maintain a set list price or static schedule, most vendors of R&R negotiate individually with each customer, and structure the fee on the projected ROI that the R&R solution can realize for the customer. DX1432 at 68-70; Trial Tr. 800:10-24. In deciding whether to implement a particular solution, the customers considers a variety of factors including acquisition cost, implementation cost, financial viability of the vendor, impact on the e-commerce website's performance, anticipated ROI, delay until ROI is realized, cost and likelihood of future updates, compatibility, and whether the R&R solution will be manageable for the in-house technology team. DX1432 at 68; Mansukhani Tr. 34:2-35:8; Cotlar Tr. 14:5-13.

55. When evaluating an R&R solution, prospective customers control the information provided to R&R vendors. DX1432 at 68-70; Trial Tr. 800:10-24. [REDACTED] Trial Tr. 1630:11-15, 298:22-299:5; DX1432 at 68-70; Giannoni Tr. 56:9-18; Jimenez Tr. 22:9-15; Crickmer Tr. 84:23-85:2. [REDACTED] DX1432 at 69-70; DX1314; Seebeck Tr. 32:18-33:19; Maki Tr. 23:18-24:15, 27:16-28:4; Pierson Tr. 39:22-40:7; Trial Tr. 1630:11-15; Jimenez Tr. 22:9-15; Giannoni Tr. 56:9-18.

56. [REDACTED] DX1432 at 68; Giannoni Tr. 56:9-18; Crickmer Tr. 84:23-85:2; Jimenez Tr. 22:9-15. Customer control over the information provided to the vendor and the opacity of the negotiation process puts the customer in a position of power. It allows customers to make significant demands on the vendor,

including on price, features, or terms of the contract. DX1432 at 68-70; Newlin Tr. 42:17-43:5; Koven Tr. 40:9-19.

57. Another factor that makes it difficult for vendors of social commerce tools to gain insight into customer alternatives and preferences is that the vendor typically only has the attention of one stakeholder at the customer, but most e-commerce customers have many stakeholders who often have competing priorities. The department negotiating with the vendor might be unaware of budgeting considerations that will be imposed by another department. DX1432 at 70.

58. Even if an e-commerce website anticipates renewing its contract with an R&R vendor, it will typically build a list of viable alternatives, if for no other reason than to maintain negotiating leverage. DX1432 at 69; Seebeck Tr. 32:18-33:19; Maki Tr. 23:18-24:15, 27:15-28:14; Trial Tr. 1213:7-11.

59. It is routine to consider only one viable alternative when an e-commerce website is negotiating a renewal. DX1432 at 69; G. Green Tr. 12:20-23; Maki Tr. 18:23-19:6; Yudin Tr. 43:6-44:24; Masciola Tr. 46:25-47:3; Morgan Tr. 16:7-22; D. Green Tr. 32:12-33:16.

6. The Rationale for Bazaarvoice's Acquisition of PowerReviews

a. Bazaarvoice did not pay a premium to eliminate price competition

60. The price Bazaarvoice paid for PowerReviews was based on the multiple that Bazaarvoice was trading at as a public company. Trial Tr. 250:7-15.

61. The financial models that Bazaarvoice used to consider the acquisition of PowerReviews did not project increased prices or margins attributable to the elimination of price competition with PowerReviews. Trial Tr. 842:5-842:8.

62. The financial models that Bazaarvoice used in seeking approval of the merger from its board of directors did not project price increases that were not accompanied by corresponding features or value. Trial Tr. 842:16-842:20.

63.

DX1195.

b. Bazaarvoice acquired PowerReviews in order to compete more effectively in the social commerce space and target brand advertising on retailer sites

64. The social commerce industry has been growing and evolving. PFF ¶¶85-95. Bazaarvoice competes in a "very nascent, dynamically competitive and evolving marketplace . . ." and as such must continue to innovate and add value to the solutions it is providing. DX1377 at 4; Trial Tr. 759:18-25, 1400:21-1401:5, 1415:15-24.

- 1 65. Bazaarvoice has long recognized that its “core business (content capture &
2 display, to put it simply) is trending towards commoditization.” DX0574 at BZ-
3 01171168. As a result, Bazaarvoice has sought to expand its offerings beyond
4 R&R to: “new initiatives – CI, Network, Advertising – to completely replace [the]
5 core business revenue AND much more.” Bazaarvoice knows that if it doesn’t
6 “figure out how to completely replace [the] ‘legacy’ business, someone else will
7 beat [them] to it.” DX0574 at BZ-01171168; Trial Tr. 835:6-836:9.
- 8 66. Bazaarvoice will increasingly earn revenues from advertising as opposed to
9 licensing fees from its solution services. Trial Tr. 791:9-793:3, 804:25-806:4,
10 1429:5-1430:20.
- 11 67. Bazaarvoice’s CEO explained that the “most attractive strategy for
12 [Bazaarvoice]. . . is to build a large audience that has lots of content data and then
13 provide tools to allow the retailers, [its] retail clients, to make money from their
14 assets, facilitated by the efficiencies [Bazaarvoice] bring[s] through [its]
15 technology.” Trial Tr. 836:21-839:18; DX0735.
- 16 68. Brands spend over \$100 billion in online advertising globally and have
17 historically paid tens of billions of dollars to retailers for shelf space in brick and
18 mortar retail stores. Trial Tr. 806:5-19, 822:13-18.
- 19 69. Bazaarvoice’s CEO testified that he wants to pursue a business model where
20 brands pay Bazaarvoice to advertise on retailer sites and Bazaarvoice in turn
21 shares the advertising revenues with retailers. Trial Tr. 836:21-839:18. Under
22 this model, Bazaarvoice would actually “become a profit center for retailers,” and
23 it would be “a future where retailers get a check from us[.]” Trial Tr. 836:21-
24 840:6; DX0735.
- 25 70. A larger number of retailers through which brands can display content, advertise
26 and engage with consumers all enabled by Bazaarvoice creates “the most
27 interesting and exciting business opportunity.” DX1855 at BZ-01722463; Trial
28 Tr. 843:23-845:12, 248:17-249:16, 251:3-11, 1399:16-1400:1, 1429:5-1430:19.
71. By expanding its number of clients, including retailers and brands, Bazaarvoice is
also able to obtain more data variety and volume, and provide better data analytics
products. Trial Tr. 1391:6-1392:5. “The more data [Bazaarvoice has] and
control[s] the more valuable the company will be regardless of revenue and
profitability.” DX0735 at BZ-01710985; Trial Tr. 1391:6-1392:5, 1391:14-
1392:5.
72. The ultimate rationale for the acquisition was based upon the belief that
Bazaarvoice’s “future solutions are dependent on building the largest network
possible with the greatest consumer reach.” GX1175 at BZ-00509904; Trial Tr.
247:15-249:16. Bazaarvoice saw the acquisition as being an “audience-and-data
acquisition opportunity to drive long-term enterprise value” in the area of
advertising which the Bazaarvoice board believed to be the future of the company.
GX1175 at BZ-00509904.

73. Bazaarvoice also believed that the acquisition of PowerReviews would make it better equipped to compete in the increasingly complex and competitive social commerce space. Bazaarvoice anticipated the following benefits:

- **Larger Network.** The long-term value of the PowerReviews' acquisition was in increasing the opportunities for Bazaarvoice's media and analytics offerings. In purchasing PowerReviews, Bazaarvoice acquired between 2,000 and 4,000 customer relationships, as well as millions of pieces of content that would benefit its customers. Trial Tr. 687:4-687:13. [REDACTED] DX0021 at 2; Trial Tr. 243:12-244:20, 248:17-249:16, 674:23-676:5, 804:25-806:4, 1390: 25- 1391:5; GX419 at BZ-00833484.
- **Syndication.** The acquisition would increase the number of potential syndication connections between retailer and brands, which would maximize value for Bazaarvoice's customers. Trial Tr. 169:17-170:5, 848:10-849:12. A larger syndication network increases the value proposition for brands. "The more content [Bazaarvoice could] publish for [brands], the more consumers that see their reviews, the more value they get, and the more attractive and valuable [the Bazaarvoice] solution [is] for them." Trial Tr. 840:7-842:1; DX0649 at BZ-01448284.
- **Larger Customer Base.** Brands spend \$550 billion a year to reach consumers in the \$12 trillion retail channel. The acquisition provided both companies an increased ability to upsell Bazaarvoice and PowerReviews customer base with more value-add products than simple R&R. Trial Tr. 243:23-244:20. One of the drivers behind the acquisition of PowerReviews was "to bring more value to [PowerReviews' customers] through the breadth of [Bazaarvoice's] solutions." Hurt Tr. 71:15-21; Trial Tr. 240:10-24.
- **Advertising/ Media.** Bazaarvoice would be able "to drive advertising value," because "[a]dvertisers value reach at scale." DX0476 at BZ-00850083. Trial Tr. 804:25-806:4, 848:10-849:12, 1390:25-1392:5, 1429:5-1430:19. Bazaarvoice could increase the number of brand and retail websites to which Bazaarvoice could sell personalized and re-targeted advertising. DX0476 at BZ-00860086; Trial Tr. 848:10-849:12, 1390:25-1392:5, 1400-2-20. Bazaarvoice believed it was at "the intersection" of "the space between the cloud, social media and big data" and believed that the acquisition would help develop that space. Trial Tr. 1390:17-1391:5.
- **SMB Customers.** Bazaarvoice would acquire PowerReviews' SMB customers. Bazaarvoice would also gain access to PowerReviews' technology and solutions to sell to SMB sites. DX0015 at BV-INT-00000245; DX0488 at BZ-00872501; Trial Tr. 775:23-776:11, 804:25-806:4. PowerReviews' solution is useful to Bazaarvoice from a reseller

standpoint because it was more self-service and turnkey. Bazaarvoice would gain access to a multiple tenancy technology that would allow them to serve the mid-market. Trial Tr. 1808:6-1809:16. This would allow Bazaarvoice to serve the SMB market in the long tail of retail and brands. Trial Tr. 687:4-687:19.

- **Data Analytics.** The acquisition of PowerReviews was an effort by Bazaarvoice to commercialize and monetize the data arm of its business. Trial Tr. 1391:6-1392:5. Bazaarvoice is positioning itself to capitalize on the data that it collects. Trial Tr. 1391:6-1391:19. Access to more data will improve its syndication and advertising products. Trial Tr. 1429:5-1430:20.
- **Bay Area Presence.** Bazaarvoice would gain a foothold in the technology center of the Bay Area, where PowerReviews was based. Trial Tr. 1808:6-1809:16.

74. Following the acquisition, Bazaarvoice continued on its course to create value in offering advertising to brands and retailers. Amazon.com had developed their own retail media business, and Bazaarvoice believed that with its knowledge of the retail industry and its relationships with many brands, that the media business was a sensible focus for the company. Trial Tr. 657:7-657:24. Bazaarvoice acquired Longboard Media in 2012. Longboard Media is an advertising network that allows brand advertisers to buy advertising inventory on large retail sites where they can influence purchase decisions of shoppers who are on those retail sites. Trial Tr. 656:17-657:6. Bazaarvoice acquired Longboard Media to pursue its vision of the future of the retail advertising space. Trial Tr. 271:9-17.

c. Bazaarvoice ultimately rejected the rationale that acquiring PowerReviews would eliminate price competition

75. Bazaarvoice did not acquire PowerReviews to reduce or eliminate price competition or innovation. Trial Tr. 1395:4-1395:7.

i. The sequence of negotiations

76. In the spring of 2011, Bazaarvoice and PowerReviews executives met in Austin, Texas to discuss the possibility of an acquisition. At that meeting, the parties did not discuss an acquisition price. Trial Tr. 174:18-175:7. Following the meeting, the Bazaarvoice board rejected the idea of an acquisition. At that time, there was a “marked difference of opinion” between the management of Bazaarvoice and the board of directors concerning a potential acquisition of PowerReviews. Trial Tr. 1393:12-1393:18, 174:18-21.

77. For example, a member of the Bazaarvoice board of directors stated that while it possibly “made sense” for Bazaarvoice to acquire PowerReviews, “very little of what management put forward in various documents or in conversation” concerning a potential acquisition in 2011 “made much sense.” Trial Tr. 1394:1-1394:7.

- 1 78. The board specifically rejected the notion advanced by management at that time
2 that the acquisition would alleviate pricing pressure. As noted by Ed Keller, one
3 of the board members, “[the acquisition] doesn’t really excite me either. Seems
4 like at best we buy some clients and maybe, just maybe, we reduce some pricing
5 pressure, although I’m skeptical it would be enough to justify the price.” GX518
6 at BZ-008212474. Other board members agreed with his view. Trial Tr. 244:21-
7 247:3, 259:12-19.
- 8 79. The Bazaarvoice board thought management’s claim that there had been price
9 erosion due to PowerReviews was unsubstantiated and may have been the result
10 of some sales people trying to find something to blame for their performance.
11 The board knew Bazaarvoice management had not analyzed any data to support
12 such claims. Trial Tr. 1425:14-1427:3.
- 13 80. In November 2011, Stephen Collins requested board approval to again explore the
14 possibility of a PowerReviews’ acquisition. Trial Tr. 175:13-176:11. While he
15 was given permission to meet with representatives from PowerReviews,
16 ultimately the Bazaarvoice board turned down the acquisition to focus on
17 Bazaarvoice’s IPO. The board was “adamant” that there be no acquisitions until
18 Bazaarvoice went public. Trial Tr. 1417:10-1418:4, 1393:12-1393:25.
- 19 81. In the spring of 2012, executives from PowerReviews and Bazaarvoice met again
20 in Austin, Texas. The representatives from PowerReviews included Ken Comee,
21 the new PowerReviews CEO, and Keith Adams, PowerReviews’ CFO. At that
22 meeting, the parties did not discuss the acquisition’s impact on prices. Trial Tr.
23 1808:2-5, 1814:16-1816:21.
- 24 82. One Bazaarvoice board member believed that by 2012 “[Bazaarvoice]
25 management was sufficiently bludgeoned about some of their views on the
26 rationale for the acquisition” of PowerReviews in 2011, and had come to
27 recognize the real reasons for acquiring the company in 2012. Trial Tr. 1396:5-21,
28 1396:15-21; GX429.
- ii. Relief from price erosion was not a rationale for the acquisition
83. Members of the Bazaarvoice board did not believe that removing a primary
 competitor or limiting price erosion were the “real reasons” for completing the
 transaction. Trial Tr. 1396:5-21; GX429. Bazaarvoice’s board rejected
 management’s contention that the acquisition would ease price erosion. Trial Tr.
 244:21-247:3. Elimination of competition to stabilize prices was not a rationale
 for the deal adopted by Bazaarvoice’s board. The board was also not concerned
 about PowerReviews being acquired by another competitor. Trial Tr. 169:3-16.
84. Testimony from Bazaarvoice’s board and deal documents show that relief from
 price erosion was not a rationale for the acquisition and was not a factor in the
 price Bazaarvoice paid for PowerReviews.
- The board approved the acquisition based on the rationale reflected in GX1175 describing the merger as being an “audience-and-data acquisition opportunity to drive long-term enterprise value” in the areas of advertising

and data analytics. The Bazaarvoice board believed those areas to represent the future of the company. Trial Tr. 247:15-249:16; GX1175.

- The deal documents do not reflect a rationale for acquiring PowerReviews as obtaining relief from pricing pressure. A PowerPoint presentation presented at a Bazaarvoice board meeting on April 4, 2012 contains a list of the “primary benefits” of the potential acquisition. GX0429 at BV-VOL-000000908. Included within the benefits are “[g]reater consumer reach,” “[e]xpands network,” “SMB go-to-market capability,” and “[a]llows us to concentrate more resources on Brand business sooner. GX0429 at BV-VOL-000000908; Trial Tr. 1395:8-1396:21.
- It does not include “price erosion” or “taking out our only competitor.” GX429 at BV-VOL-000000908; Trial Tr. 1395:8-1396:10. Alleviating pricing pressure was simply not “a winning argument for the board.” Trial Tr. 244:21-247:3, 259:12-19; GX0518.
- Members of Bazaarvoice’s board disagreed with some of the views of Bazaarvoice management expressed in GX0518. GX0518 at BZ-00812474. In particular, in that email chain, Ed Keller rejected the idea that the acquisition would stem any price erosion. GX0518 at BZ-00812474. Other board members agreed with Mr. Keller including Mr. Pacitti who spoke with Mr. Hurt about the fact that the acquisition would not alleviate pricing pressure, because there would be a swarm of competitors to fill PowerReviews’ place. Trial Tr. 244:21-247:3.
- At the time of the acquisition, Bazaarvoice’s board did not consider PowerReviews, at one-tenth the size of Bazaarvoice, to constitute meaningful competition. Trial Tr. 1391:6-1391:10. PowerReviews had diminished as a competitive consideration due to Bazaarvoice’s shift to focus on other value-add solutions such as data analytics and media. Trial Tr. 1391:6-1391:19.
- If the board had been concerned about price erosion and thought it was a rationale for the deal, it would have asked Bazaarvoice management to perform such an analysis as support for the transaction. But they never did. Trial Tr. 170:12-174:4; GX0518.
- The board believed that upon elimination of PowerReviews, another competitor would fill its place. Trial Tr. 246:14-25.
- The Bazaarvoice board repeatedly rejected the notion that price erosion would be stemmed through the acquisition. The contention that the acquisition would alleviate price erosion or allow Bazaarvoice to control pricing was seen as “ludicrous” and “BS” by the Bazaarvoice board. Trial Tr. 1396:23-1397:10. Chris Pacitti, a Bazaarvoice board member, when presented with easing price erosion as a justification for the deal, said he “pissed all over this when they brought it up. Complete waste of time in [his] view.” DX1880 at BZ-02381310; Trial Tr. 834:12-834:17.

- Prior to the acquisition, Bazaarvoice's current CEO stated that "analysts might expect pricing impacts" as a result of the acquisition, but noted that "this is not our strategy or the reason for the deal." He continued, "pricing per client may actually come down for retail" after the acquisition. DX1855 at BZ-01722463; Trial Tr. 843:23-845:12. During an analyst call in May 2012, Mr. Collins reiterated that pricing considerations were "not the reason for the merger." Trial Tr. 846:7-849:12; GX0840 at BZ-00869938.
- A pursuit of marginal price increases for customers would run counter to Bazaarvoice's long-term strategy of expanding its network to sell advertising to brands. Trial Tr. 849:13-850:14. If Bazaarvoice raised prices forcing retailers and brands to abandon Bazaarvoice, it would decrease the value of its network, destroy its ability to pursue its new business lines, and stem its long-term growth. Trial Tr. 842:21-843:16.

7. The Market Structure is Conducive to New Entry, and Expansion by Existing Competitors and to the Emergence of New Competitive Products

a. The market is dynamic and growing

85. As a result of changing market dynamics, there are important forces inducing entry, keeping in-house relevant, and changing the nature of the product. PFF ¶¶143-150.
86. Online commerce is growing at about 16% a year while retail stores are growing at 3-4% a year. Trial Tr. 1460:2-8; DX1432 at 7-8. E-commerce is becoming an increasingly important part of retailers' and brands' overall operations, influencing online and offline sales. GX0986 at 4; DX1432 at 8-9, 72; Maki Tr. 36:22-37:11; Glispy Tr. 87:4-12; Traywick Tr. 15:20-16:6; Yaniv Tr. 52:25-53:12; Fernandez Tr. 17:8-20; Pierson Tr. 14:18-15:10. As such, brands and retailers are investing substantial sums in improving the quality of their e-commerce websites, and differentiating themselves from their competitors. Trial Tr. 1498:19-1499:17, 1850:24-1852:16; DX1432 at 63. This has led to expanding IT departments and investment in in-house solutions, including social commerce tools. Trial Tr. 1498:19-1499:17; DX1432 at 66-67.
87. In addition, the growth of Facebook and other social networks has stimulated efforts to find new ways to make use of UGC generated on these networks. DX1432 at 8. Over the last few years, marketing strategies and website software function have proliferated to harness the power of shared user experience. DX1432 at 8.
88. The social commerce tools industry is new, dynamic, and evolving at a fast pace. Trial Tr. 759:18-25, 1400:21-1401:5. Social commerce is a "constantly evolving space" which will continue to change the nature of competition among vendors of social commerce tools, including the tools themselves. Cook Tr. 10:23-11:12; DX1432 at 6.

89. TurnTo founder George Eberstadt has described social commerce as “after 10 years of very modest innovation in e-commerce, all of a sudden the innovation level is just exploding; new business models, new shopping tools, better shopping experiences. . . The macro trend is innovation. . . .” DX1403 at 5.
90. The government’s industry expert admitted that the market for social commerce tools and R&R in particular is “dynamic” and that innovation in social commerce tools and R&R will continue even after the acquisition. The government’s economist testified that he agreed with this opinion. Trial Tr. 1079:2-1080:16; Dellarocca Tr. 130:20-132:14, 129:14-130:16.
91. There are an increasing number of social commerce providers because “social commerce is a shiny new object in the room for e-commerce.” Smith Tr. 23:13-23:25. The number of social commerce platforms has “grown immensely” in the last four years. May Tr. 10:1-10; Trial Tr. 1454:6-23; DX1432 at 47. Providers of social commerce solutions are competing in an “emerging, fast changing, and rapidly growing market with intense competition for marketing spend.” DX1376 at 7; Trial Tr. 1429:5-1430:20.
92. The social commerce industry is “an emerging space, so things can accelerate and decelerate even within weeks and months.” DX1376 at 14. Social commerce today is a highly evolutionary industry. Trial Tr. 194:12-195:8, 224:7-21, 249:10-16. The social commerce industry is a rapidly evolving industry that involves “many different players and technologies and models that are all being explored at various times.” Moog Tr. 97:15-98:11; Trial Tr. 524:3-22, 1429:5-1430:20.
93. Because the social commerce industry is at an early stage of development, rapidly evolving, fragmented, and subject to potential disruption by technological innovations, the future composition of the industry is unpredictable. DX1802 at 8; Trial Tr. 759:18-25, 1360:23-1361:7.
94. Customers believe that social commerce is an “evolving entity.” Beebe Tr. 11:18-12:3. The social commerce tools that will be available to e-commerce sites in three months cannot be fully detailed “[g]iven how fast things are changing in this environment.” Archambault Tr. 65:8-21.
95. There is pressure on providers of social commerce tools to innovate in order to stay competitive. Wilson Tr. 18:12-19:2; Barton Tr. 143:7-15; Tarkowski Tr. 79:13-80:14; Trial Tr. 759:18-25.

b. The market is conducive to “rapid entry”

96. Section 5.1 of the 2010 Horizontal Merger Guidelines notes that “firms that clearly possess the necessary assets to supply into the relevant market rapidly may also be rapid entrants.”
97. R&R is a data capture and display application sold as a plug-in to the websites of manufacturers and retailers through a “software as a service” (SaaS) delivery model. PFF ¶ 14.

1 98. There are numerous firms offering SaaS-based social commerce applications to
 2 manufactures and retailers. Some currently sell other “data capture and display”
 3 applications (such as “Q&A”) to the customers that purchase R&R. And many
 4 firms have already developed an R&R application for some other purpose.
 DX1433 ¶ 191. Firms such as Amazon, Google, Salesforce.com, Facebook and
 Oracle all have sufficient assets to extend their businesses into R&R.

5 99. Developing an R&R application can be done with minimal resources in a matter
 6 of months.

- 7 • R&R solutions are faster, cheaper, and easier to develop today. This is
 8 due to the availability of cheaper infrastructure (e.g. server capacity), the
 9 availability of libraries of high-quality source code (obviating the need to
 10 hire programmers to write every line of code), and the availability of e-
 11 commerce platforms that incorporate features that make development
 12 easier (e.g. built-in databases). Trial Tr. 1070:25-1071:5, 676:6-677:5,
 13 1454:6-1455:24, 1496:14-1497:13; DX1432 at 46, 65-68; DX1735 at 38.
- 14 • The code needed for an R&R solution is non-proprietary. Trial Tr.
 15 1350:23-1351:15, 1454:6-1455:20, 1495:25-1496:4, 1496:14-19; DX1432
 16 at 46.
- 17 • The SaaS infrastructure necessary to operate an R&R platform is in place
 18 at numerous firms supplying similar products to the same customer-base
 19 that uses R&R. Trial Tr. 1455:25-1456:4, 1496:14-1497:13.
- 20 • [REDACTED]
 21 DX0021 at BV-VOL-000000944; DX1391; Hodapp Tr. 63:9-13; Cobb Tr.
 22 50:23-51:18; Friedland Tr. 22:22-23:16; Fernandez Tr. 19:22-25. Trial Tr.
 23 1173:24-1174:8, 1070:25-1071:5.

24 100. The testimony of social commerce vendors underscores that entry is objectively
 25 easy.

- 26 • [REDACTED] Eberstadt Tr. 188:4-23.
- 27 • An individual developed Rating System’s initial R&R software by
 28 working part-time on the code for six months. PFF ¶ 363.
- [REDACTED] PFF ¶ 324.

101. Gigya, [REDACTED] and Adobe are examples of rapid entrants that have
 extended their product lines to include R&R without much investment in the last
 few years. PFF ¶¶299, 339, 324, 275-278, 140.

102. The number of firms offering R&R solutions today compared with two years ago demonstrates that the technology necessary to develop a commercially acceptable R&R product is widely available and entry is objectively easy. As is reflected in the Gartner reports, the number of R&R providers has increased over the period from 2011 to 2013. Trial Tr. 1471:14-1474:15; DX1882; GX2071; GX0646.

103. The Government has identified no intellectual property rights that would impede entry or expansion.

i. Amazon is a “rapid entrant”

104. Amazon has tremendous resources and skill, could easily expand its R&R offering, and has demonstrated its willingness to enter burgeoning industries. DX1735 at 32; Trial Tr. 661:7-662:1, 1625:18-1626:1.

105. Amazon noted it “almost daily” considers entry into the commercial supply of R&R. Trial Tr. 1625:18-1626:1. And while it has no plans “at this time,” Amazon stated that its business decisions are constantly reevaluated. Trial Tr. 1625:18-1626:1.

106. Bazaarvoice fully understands the threat Amazon presents. Amazon has “hundreds of millions of visitors,” “a lot of data” and “a lot of capabilities.” Trial Tr. 791:20-792:3. Amazon itself believes it has “one of the largest corpuses of data for product opinions ... [Amazon] has a single place that brings in opinions or allows opinions on a very wide variety of products and services. It’s not just a narrow product line niche that [Amazon] offer[s] reviews for.” Trial Tr. 1619:24-1620:14.

107. Nothing prevents Amazon from readily entering the R&R business in competition against Bazaarvoice and other commercial vendors [REDACTED] Ahmed Tr. 89:1-3.

108. Amazon clearly has the technology. Amazon could very easily “unbundle” its R&R solutions and offer them as merchant R&R solutions to customers. Trial Tr. 1783:17-1784:16. Amazon already has the capability and the entire technology stack to provide a stand-alone R&R solution to retailers and manufacturers. Trial Tr. 824:10-825:6.

109. Amazon already has the reputation as the leading e-commerce retailer. Sell Tr. 37:6-14. Retailers view Amazon as a competitive threat; nevertheless, most admit they distribute their products through or partner with Amazon and derive benefit from that relationship. Trial Tr. 1166:14-1167:12.

110. Amazon already has strong relationships with both brands and retailers. Trial Tr. 1784:20-1785:10. Syndication would be a cinch. Trial Tr. 1784:20-1785:10, 1412:25-1413:5. [REDACTED]

Ahmed Tr. 28:13-19, 82:9-18.

1 111. Mr. Goldberg noted that [REDACTED]
 2 [REDACTED] Trial Tr. 1511:15-1512:4, 1513:10-13;
 3 Ahmed Tr. 89:1-3.

4 ii. TurnTo is a “rapid entrant”

5 112. Dr. Shapiro admits that capacity is not a constraint on Amazon’s expansion. Trial
 6 Tr. 1095:9-10.

7 113. [REDACTED]
 8 PFF ¶ 413.

9 114. [REDACTED]
 10 [REDACTED] DX1293.

11 iii. Viewpoints is a “rapid entrant”

12 115. Viewpoints is a social commerce vendor with approximately 25 employees. It
 13 was founded in 2006. Moog Tr. 9:22-10:6. Viewpoints.com is a product ratings
 14 and reviews website built using “custom software” to collect users “reviews of
 products that they’ve used.” Moog Tr. 12:2-13:16.

15 116. Viewpoints previously licensed its R&R platform to third parties, labeled
 16 Viewpoints Technology Platform. Moog Tr. 20:2-23; 31:7-14. At one time,
 17 Viewpoints counted major retailers as its customers, including Sears. Massuda
 18 15:18-16:1. If prices for R&R solutions were to increase, Viewpoints would
 begin selling its advanced VTP system again. Moog Tr. 72:13-73:3, 94:11-22.
 Viewpoints could introduce a commercially viable R&R product in approximately
 “[s]ix months to a year.” Moog Tr. 74:11-24.

19 iv. Google is a “rapid entrant”

20 117. Google has social media and customer engagement software for online retailers
 21 and brands. DX1433 at ¶ 191; Trial Tr. 1792:16-1793:14. In July 2012, Google
 22 acquired Wildfire, a social media advertising firm, for over \$300 million.
 DX1433 at ¶ 191.

23 118. Google has a R&R functionality. Trial Tr. 1793:2-14. Google allows users to
 24 write reviews and rate products directly on Google Shopping. Trial Tr. 1515:15-
 25 22, 1519:16-23; 1791:23-1792:10. R&R providers syndicate reviews to Google
 to drive traffic to their customers’ sites. Trial Tr. 1791:11-22.

26 119. Google could easily establish a syndication network. Google does business with
 27 retailers and brands, and syndicates content to retailer and brand sites. Trial Tr.
 28 1792:14-1793:14.

1 120. Google has the features, the functionality, the capabilities, the business
2 relationships and the software expertise to provide an R&R solution. Trial Tr.
1793:15-19.

3 v. Facebook is a “rapid entrant”

4 121. Facebook currently offers the ability to have Facebook product-specific
5 comments and like buttons on retailers’ product detail pages, and provides
6 numerous marketing services that target ads and analyze UGC. DX1433 at ¶ 194.

7 122. Recently, Facebook has begun to test and roll out a number of action features on
8 its Open Graph applications, including “review” for books, movies, TV shows,
and other content, as well as “rate” allowing users to provide star ratings for
content. DX1433 at ¶ 195.

9 123. Bazaarvoice executives have expressed concern that Facebook could potentially
10 develop product page plug-ins and a product catalog for easy and free integration
11 of a Q&A or R&R program. DX1433 at ¶ 196; DX0180.

12 124. A further move into commercializing and marketing a R&R solution would not
13 require substantial effort from the company; such a solution could be developed in
approximately six months. DX1433 at ¶ 197.

14 vi. Oracle is a “rapid entrant”

15 125. Oracle sells software through a SaaS business model. Oracle has relationships
16 with many e-commerce sites, including customers of Bazaarvoice. DX1433 at ¶
279. Given its relationships with many e-commerce sites, it could easily establish
17 a syndication network.

18 126. Oracle also offers various social engagement tools, consumer data and analytics
products. DX1736 at ¶ 286.

19 127. Oracle entered the e-commerce software space in November 2010 when it
20 acquired Art Technology Group (“ATG”). DX1433 at ¶ 189. ATG is a popular
e-commerce platform, and could easily integrate an R&R solution. DX1433 at ¶
21 172.

22 128. Given the investment and programming requires to develop an e-commerce
23 platform, the additional undertaking to develop an R&R solution would be
minimal. DX1433 at ¶ 172; DX1432 at 66. Oracle could develop a “full featured”
24 R&R solution in about six months, and a “basic solution” in four to six weeks.
DX1433 at ¶¶ 172, 190; DX1432 at 66; DX1736 at ¶ 156.

25 129. Oracle has acquired social commerce firms as part of its effort to become more
26 active in providing social commerce products to its customers. DX1433 at ¶ 189.

27 vii. Salesforce is a “rapid entrant”

28

130. Salesforce sells software through a SaaS business model. Salesforce has relationships with many e-commerce sites, including customers of Bazaarvoice. DX1433 at ¶ 279. Given its relationships with many e-commerce sites, it could easily establish a syndication network.

131. Salesforce recently acquired two social commerce companies, Radian 6 and Buddy Media. DX1433 at ¶¶ 183-185. Salesforce also developed social.com, which is a social media advertising management suite that allows retailers to create highly customized and targeted advertisements and post them across social media channels. DX1433 at ¶186.

132. The various pillars of Salesforce's move into the social marketing space have been acquired or developed. Salesforce could without substantial additional sunk costs, continue this strategy by developing an R&R solution to add to its suite of products. DX1433 at ¶ 187. Salesforce.com could develop a "full featured" R&R solution in about six months. DX1433 at ¶¶ 172, 190; DX1432 at 66; DX1736 at ¶ 156.

c. Significant market trends provide ample supply-side incentives for competitors to develop and sell R&R products

i. The proliferation of "plug-in" features has detrimental effects on website performance and vendor management

133. E-commerce sites increasingly are looking to reduce the number of vendors they rely on order to minimize management costs. [REDACTED]

[REDACTED] Trial Tr. 1465:7-25, 1468:7-20; DX1432 at 18-19; Tarkowski Tr. 17:1-17-18:4; Crickmer Tr. 25:11-26:2; Schuster Tr. 68:12-68:19; Bradshaw Tr. 14:12-17; Traywick Tr. 31:23-32:3; Levin Tr. 94:9-20; Pierson Tr. 38:2-13; DX1173; DX0171; DX0789.

134. Employing multiple vendors introduces multiple points of contact and poses a burden on in-house management of the e-commerce platform. DX1432 at 20; Tarkowski Tr. 17:1-10.

135. Employing multiple vendors requires an IT staff to integrate the disparate software codes, which is costly to integrate and poses a risk of incompatibility across the e-commerce platform and plug-ins. DX1432 at 18; Tarkowski Tr. 17:11-18:4. For certain e-commerce sites, integrating its website with outside vendors "causes more problems than solves them." DX0171 at BZ-00150373. Having only one vendor's source code on a website can improve the quality of experience on the website because it "allow[s] for a user to have a more efficient experience on that website." Tarkowski Tr. 17:21-18:4; Trial Tr. 1468:7-20.

136. Every third-party tool added from a separate vendor lengthens the amount of time it takes to render a webpage on the site. DX1432 at 19. Studies, including those by Amazon, have shown that increasing page load time can result in lost sales. Trial Tr. 1464:21-1465:11; DX1432 at 18-19.

137. Demand for integrated solutions has caused customers that previously purchased best-in-class point solutions to look to “good enough” R&R as part of a larger suite of social commerce tools that offer more functionality, lower risk, and more efficiency at lower cost. DX1735 at 33; Traywick Tr. 24:12-25:4, 33:14-20, 30:3-31:11.

ii. Vendors have reacted by offering product suites that include a wider range of better integrated functionalities, including R&R

138.

[REDACTED]

DX1432 at 18-20; Tarkowski Tr. 17:1-18:4; Crickmer Tr. 25:11-26:2; Schuster Tr. 68:12-19; Bradshaw Tr. 14:12-17; Traywick Tr. 30:3-8, 31:13-21; Levin Tr. 94:9-95:2; Pierson Tr. 38:2-13; DX1173 at GIGYA007438; DX0171 at BZ-00150373; DX0789 at BZ-01865235; Trial Tr. 1202:23-1203:11, 1465:7-25, 1468:7-1469:1.

139. Demand for integrated platforms has caused e-commerce platform providers to add native social commerce features to their platforms, including R&R, so that their customers do not have to purchase products and services from multiple third-party vendors. Trial Tr. 658:12-660:23, 1205:23-24, 1662:13-1663:11, 1466:7-1467:7, 1468:7-1469:1; Cook Tr. 11:22-12:7, 12:19-13:10; Johnson Tr. 37:8-38:4; Davis Tr. 24:22-25:13; Friedland Tr. 34:3-35:2; Parsons Tr. 30(b)(6) 36:2-11; Yukel Tr. 13:1-13; Beale Tr. 27:23-28:8; Doss Tr. 14:11-14, 16:16-22; Tarkowski Tr. 39:21-40:5; Schuster Tr. 79:19-81:18; DX1433 at ¶¶ 72-76, 171-78; DX1735 at 8.

140.

[REDACTED] Tarkowski Tr. 15:7-16:25, 20:7-10, 24:18-25:13, 80:11-21; Schuster Tr. 16:12-19, 19:18-20:7, 76:11-77:15; Crickmer Tr. 20:12-23, 24:19-25:10, 27:6-28:19, 31:1-32:8, 116:19-117:21; DX1620; Trial Tr. 1468:7-1469:1, 1205:23-25.

•

[REDACTED] Crickmer Tr. 12:12-20, 26:8-27:5.

[REDACTED] Crickmer Tr. 24:19-25:10.

[REDACTED] Crickmer Tr. 24:19-25:10.

- Gigya’s single suite solution is attractive for customers looking to reduce the number of vendors it deals with. Tarkowski Tr. 17:1-10. Customers of Gigya can streamline vendor management and website development. Tarkowski Tr. 17:1-10. Gigya’s solutions “work together seamlessly

already, whereas individual technologies oftentimes require additional work to make . . . multiple technologies work together or talk together seamlessly.” Tarkowski Tr. 17:11-20.

- Lithium’s added R&R to its social commerce platform because it wanted to “create a bigger presence and story in the marketplace beyond only discussing value after point of purchase.” Schuster Tr. 26:9-19. [REDACTED]

[REDACTED] PFF ¶ 324.

141. Suppliers such as Bazaarvoice, Reevo, and Rating-System which began as point-solution R&R vendors, have added more social commerce features to their platforms to better compete against other integrated social commerce platforms. Trial Tr. 1305:7-10; Collins 30(b)(6) Tr. 27:7-31:25; Hurt Tr. 101:15-23, 103:8-22; Godfrey Tr. 30(b)(6) 70:17-71:11; Barton Tr. 142:18-143:6, 262:18-263:6; Wilson Tr. 18:12-19:2; Gallagher Tr. 21:19-22:7; DX0574 at BZ-01171168; DX0807.

142. The industry’s move towards competition in “bundles” or “suites” has and will continue to induce entry. In the recent past, firms that offer suites have added R&R functionality to their offering. Schuster Tr. 25:22-26:19; DX1575. This trend towards vendors offering more functionality will continue. DX1432 at 21; DX1735 at 45; Trial Tr. 1202:23-1203:11, 1468:7-1469:1.

d. Market trends have made in-house an increasingly attractive option for websites of all types

143. Several dynamics are making in-house R&R a more attractive option for e-commerce sites.

144. Developing an internal solution is easy, and has become easier in the last few years.

- It has become “technically easier [and] less capital intensive to offer a product exactly like ratings and reviews and similar products.” Trial Tr. 667:2-667:18, 668:4-668:7.
- Lower cost technology and recent innovations have made it “easier and faster to develop Web applications.” Now “any retailer has this capability” to develop an internal R&R solution. Trial Tr. 670:17-671:1.
- The “typical e-commerce development team” could develop a “basic” R&R solution in about four to six weeks, and could develop a “full featured” R&R solution that could outperform off-the-shelf solutions in about six months. DX1432 at 46, 66-68. Many companies, large and small, have the resources necessary to develop an acceptable R&R feature. Almost all website operators have the IT resources to write and maintain an internal R&R solution. DX1432 at 14, 46, 66-67.

145. It is easier for search engines like Google to crawl R&R hosted on an e-commerce platform, providing a site with more search traffic, than it is for search engines to crawl reviews hosted on a third-party server such as one from Bazaarvoice. Trial Tr. 1463:13-1464:20, 1578:5-13.

146. Customers also testified that in-house solutions are easier and less expensive to develop today. PFF ¶¶226-256.

147. Because e-commerce has become an increasingly important part of retailers' and brands' overall operations, brands and retailers are investing substantial sums in improving the quality of their e-commerce websites, and differentiating themselves from their competitors. This has led to expanding IT departments and investment in in-house solutions, including social commerce tools. PFF ¶86.

- Developing a proprietary e-commerce platform provides e-commerce websites more control over the look and feel of their website which allows them to offer their customers a differentiated shopping experience. DX1432 at 14; Trial Tr. 1458:24-1459:18.
- In-house e-commerce platforms also assist e-commerce sites to make their sites faster, with fewer points of failure, and allows them to customize the appearance of the reviews and develop unique functionality to differentiate their sites from their competitors. Trial Tr. 1493:1-1494:13; DX1432 at 18, 65-67.

148. Retailers, including Wal-Mart, Staples, Target, Nordstrom, and Zappos, are increasingly developing their own labs to build technology for their websites. Trial Tr. 1459:19-1461:4. Sites like Moosejaw and Gamefly have developed their own unique features on their websites by developing their own ratings and review platforms. Trial Tr. 1494:14-1495:24.

149. These trends will persist and will keep internal R&R solution a vital alternative for e-commerce sites. Trial Tr. 1498:19-1499:17.

150. Dr. Shapiro's testimony reveals that he incorrectly discounts expansion of in-house solutions. Dr. Shapiro ignores that in-house development has become easier. Trial Tr. 1070:25-1071:5. Dr. Shapiro does not account for concrete examples of customers such as Wayfair going in-house in a short period of time with few resources. Trial Tr. 1069:8-1071:5.

e. Dr. Shehadeh's entry and expansion analysis is correct

151. Dr. Shehadeh correctly concludes that historic entry patterns are not informative because they do not demonstrate what would happen in the event of a price increase. Trial Tr. 1778:24-1779:24.

152. Dr. Shehadeh correctly concludes that there has been significant entry, expansion, and repositioning since the time of the merger. Trial Tr. 1779:25-1782:16; DX1433 at 27-68; DX1736 at 67.

153. Dr. Shehadeh correctly concludes that Amazon is an existing competitor through Amazon.com, Amazon Marketplace, and Amazon Webstore, as well as a potential rapid entrant into the commercial supply of R&R. Trial Tr. 1783:17-1787:25;
154. Dr. Shehadeh properly accounts for expansion of smaller suppliers like Yotpo and Rating Systems. Trial Tr. 2085:21-2086:23.
155. Dr. Shehadeh properly accounts for the entry of international suppliers like Reevo and eKomi. Trial Tr. 2019:17-23; DX1736 at ¶¶ 211-220.
156. Dr. Shehadeh correctly accounts for the fact that IR500 sites using in-house solutions were growing more rapidly than IR500 sites using PowerReviews and in-house has become a more effective competitive constraint than PowerReviews. Trial Tr. 1868:16-1871:4, 1874:15-1875:18, 2090:4-2091:1; DX1901; DX1736 at 54-56; DX1897 at 36.
157. Dr. Shehadeh correctly concludes that customers of all sizes can go in-house and any customer can credibly threaten to do so. Trial Tr. 1871:5-1874:14; DX1736 at 54-56; DX1897 at 38.
158. Dr. Shehadeh correctly observes that syndication does not create network effects rising to the level of a barrier to entry because most customers do not use it and it is not an essential component of the R&R product. Trial Tr. 1765:24-1775:3, 2018:24-2019:16; DX1736 at ¶¶ 146-152; DX1433 at ¶¶ 206-235; DX1897 at 25.
159. Dr. Shehadeh correctly accounts for the expansion of stand-alone syndication products. Trial Tr. 2088:12-2089:12; DX1417; DX1736 at ¶¶ 230-31.
160. Dr. Shehadeh accounts for strategies deployed [REDACTED] to establish reputation through partnerships [REDACTED] and firms [REDACTED] [REDACTED] can leverage existing customer relationships to overcome reputational concerns. Trial Tr. 1775:5-1778:21, 2087:1-2088:10; DX1009; DX1736 at ¶ 142; DX1433 at ¶ 135; DX1897 at 32.
161. Dr. Shehadeh properly accounts for rapid entry by Google, Oracle, and other potential entrants. Trial Tr. 1790:18-1796:2, 1864:8-1868:5, 2022:21-2023:3; DX1736 at ¶¶ 280-295; DX1433 at ¶¶ 183-197; DX1897 at 33.
162. Dr. Shehadeh correctly concludes e-commerce platforms like SAP/hybris have incentive to pre-integrate R&R functionality in light of competition among such platforms. Trial Tr. 1788:1-1790:14; DX1736 at ¶¶ 268-275; DX1433 at ¶¶ 171-178.

f. The government's putative entry barriers are illusory

163. The DOJ cites to several "barriers to entry" that would inhibit a company from making investments to enter the market. But none of these barriers have inhibited companies like Gigya, Lithium, and Adobe from adding R&R to their offerings. In the face of these examples of firms easily expanding their product offerings to include R&R, entry barriers are non-existent. PFF ¶¶100, 140.

164. Record evidence establishes that none of the three barriers to entry - reputation, customer switching costs, and syndication - identified by Dr Shapiro actually have prevented or would prevent existing competitors from expanding or new competitors from entering the sale of PRR platforms. DX1736 at ¶¶ 141-52 and Exhibits 5, 6(a), and 6(b).
- i. Switching costs are not an entry barrier: there are ample opportunities for firms to enter and grow
165. The switching costs associated with trying to win business from an incumbent provider will not deprive a new entrant of sufficient market opportunities to enter.
166. There is no evidence that migrating the data from one R&R solution to another is a switching cost. The customer owns the R&R content generated on its website and can readily transfer the reviews to a new vendor in the event the customer switches R&R providers. Kwok Tr. 29:19-30:9; Mueller Tr. 15:24-16:4; Friedland Tr. 15:6-18; Beebe Tr. 30:2-11; Trial Tr. 1174:13-25, 1192:17-1193:1.
167. New entrants can overcome switching costs by making attractive economic offers. Reevoov has employed this strategy. Giannoni Tr. 30:20-32:9; DX1545. [REDACTED] DX1460 at 14; DX1490; DX1525 at 19; DX1619; DX1737.
168. For customers of some e-commerce platforms such as Demandware, the platform comes pre-built with “cartridges” which allow seamless switching between one R&R provider and another. World Kitchen described switching from Bazaarvoice to Gigya on Demandware to be as easy as “flipping a switch.” Trial Tr. 1290:7-22.
169. There are many e-commerce sites which do not currently use a commercial R&R provider. These customers would incur no switching costs in selecting an R&R solution for the first time. Bazaarvoice internally calculated that it had a small share of the total addressable market. PFF ¶¶881-895. Dr. Shehadeh also confirmed through economic analysis that Bazaarvoice had a small share of the total addressable market. He calculated that Bazaarvoice’s share (including PowerReviews legacy solutions) of all customers Bazaarvoice estimated are in its total addressable market that currently implement a social marketing solution was 21 percent. PFF ¶¶881-895; DX1736 at ¶ 16. Nearly 25 percent of the 2013 IR500 has yet to adopt an R&R solution. GX0983 at Exhibit 5.
170. In addition, re-platforming presents an opportunity for e-commerce sites to switch R&R providers with minimal incremental switching costs. Trial Tr. 1534:25-1535:18.
- A significant number of e-commerce sites will switch to another e-commerce platform sometime in the next two years. DX1735 at 38, 44-45. Close to 50% of large e-commerce sites surveyed said they would re-platform in the next 24 months. DX1735 at 38, 44-45.

- An e-commerce website may consider numerous third-party products, including R&R, when it re-platforms. DX1432 at 69; Kwok Tr. 25:24-29:13; Yukel Tr. 13:1-13, 13:21-14:11; Beale Tr. 29:22-30:7.
- Because changing e-commerce platforms is disruptive and expensive, the incremental cost of changing vendors for social commerce features like R&R is not significant. DX1735 at 44-45.
- An e-commerce website is more inclined to switch R&R vendors during a re-platform, especially if the new platform vendor offers an internal solution, or if a vendor offers a solution that combines various functionalities. Trial Tr. 1534:25-1535:18, 1662:7-21; DX1432 at 69; Kwok Tr.25:24-29:13; Yukel Tr. 13:1-13, 13:21-14:11.
- For example, after Bazaarvoice lost an opportunity at Sony Europe to Reevo, the customer noted “that there might be another opportunity to review the business again with the global replatforming that is being run out of the U.S.” DX0673 at BZ-015535536.

171. Upgrading one’s e-commerce platform also presents an opportunity to switch R&R providers with minimal switching costs. DX1735 at 38; Trial Tr. 1534:25-1536:1. As Mr. Goldberg testified, the pace at which e-commerce platforms upgrade has accelerated, increasing opportunities for customers to reevaluate their R&R options. DX1735 at 38; Trial Tr. 1534:25-1536:1.

172. The government’s expert testified that he was not aware of any proof that switching costs have increased as a result of the acquisition. Trial Tr. 1062:21-23. Similarly, there is no evidence that the cost of switching from Bazaarvoice or PowerReviews to another commercial supplier is higher than switching from PowerReviews to Bazaarvoice or switching from Bazaarvoice to PowerReviews. DX1735 at 45.

173. Dr. Shapiro has not closely analyzed switching costs, and the evidence shows such costs are not sufficient to prevent meaningful entry. Trial Tr. 1062:21-1065:18, 1762:12-1765:8.

ii. Reputation has not been a barrier to successful entry and repositioning

174. The DOJ has not offered evidence that reputation is a barrier to entry that would inhibit the company from making the investments to enter the market. Dr. Shapiro improperly treats “reputation” as a barrier to entry rather than a consequence of vigorous competition. GX0983 at 72-73; DX1736 at ¶ 142-143; Trial Tr. 1009:20-1010:7.

175. Reputation is an outcome of competition, not a barrier to entry, and firms have multiple avenues to overcome any deficit in reputation. Trial Tr. 1775:5-1778:21.

176. Indeed, the reputation of Bazaarvoice’s competitors have been sufficient to win significant R&R and social commerce customers. PFF ¶ 342 [REDACTED] PFF ¶¶

315-17 (Gigya), PFF ¶ 385 (Reevoo), PFF ¶ 322 [REDACTED] PFF ¶ 373 (Rating System), PFF ¶ 354, 358 (Practical Data), and PFF ¶ 442, 445-46 (e-commerce).

177. These competitors have been able to establish relationships with major clients for the provision of other social commerce tools that lend credibility for use of their R&R tool.

- [REDACTED] DX1704; DX1779.
- [REDACTED] DX0344 at BZ-00518831; DX0461 at BZ-00840875; Schuster Tr. 19:18-21.
- Gigya has approximately [REDACTED] and provides or has provided social commerce to customers including Pepsi, Honda, Microsoft, Mobil, FedEx, Intel, General Mills, L'Oreal, HP, DirecTV, Kohler, LG, Cars.com, Beats Audio, Ask.com, Angie's List, Allstate, Adobe, Chrysler, Clorox, 7-11, Verizon, and VMware. Tarkowski Tr. 72:12-15; DX1451 at 2.

178. In addition, these competitors have been able to strike relationships with major e-commerce platforms. These partnerships have further bolstered the reputations of these competitors.

- [REDACTED] Crickmer Tr. 98:13-19; DX1730 at 5. [REDACTED] Crickmer Tr. 98:20-25. [REDACTED] Crickmer Tr. 100:14-101:9.
- In early 2013, Reevoo integrated its solution with IBM's e-commerce platform. Being able to integrate its R&R solution with IBM's Smarter Commerce offering was a "big deal." Reevoo believed this was significant "[b]ecause IBM has a lot of clout within the industry . . . [which] would make it easier to both get into the accounts, initially, and probably close the deal." Giannoni Tr. 131:7-132:24.

- [REDACTED] DX1518.

- Yotpo is available to customers using Magento, Volusion, Big Commerce, and Shopify e-commerce platforms. DX1400 at ¶ 7.

iii. Syndication is not a barrier to entry and repositioning

179. Syndication is the ability to collect a review of a particular product or service on one website and display the same review on a relevant page of a different website. DX1432 at 41; Trial Tr. 787:12-20.

180. Syndication typically involves the collection of reviews on manufacturer websites that are then transmitted and displayed on retailer websites that sell products of that manufacturer, allowing for a wider distribution of such reviews. DX1432 at 41.

181. The DOJ has not offered evidence that syndication is a barrier to entry that would inhibit a company from making the investments to enter the market.

a. *Syndication can have negative effects*

182. Syndication is not always beneficial for e-commerce sites.

- Syndication can reduce a website's search engine rankings because the duplication of reviews on multiple sites (i.e., the manufacturer site and the retailer sites) undermines the SEO benefits of the content given that search engines prefer unique content. DX1433 at ¶¶ 217-222; GX0984 at 21, fn. 34; DX1432 at 42; Davis Tr. 26:23-27:21, 42:12-44:10; Trial Tr. 1525:20-1527:2. For e-commerce sites concerned with their rankings in Web Searches, Google's "Webmaster Guidelines" warn against duplicative content. DX1433 at ¶ 217, fn. 487. The "Bing Webmaster Guidelines" similarly warn websites to avoid "duplicated content." DX1433 at ¶ 217, fn. 489.

- Mr. Goldberg testified that Bazaarvoice's October 2013 blog post asserting that syndication has not lead to reports of harm to SEO was misleading because it suggested using a tag that instructs Google to ignore the duplicate content in order to avoid a penalty, but that also means that the site using the tag receives no SEO value from that content. Trial Tr. 1590:8-1593:4.

- E-commerce sites also may not want syndication from a manufacturer that has different standards for moderation or does not collect the same information from its reviewers that the retailer collects. Trial Tr. 1527:3-11.

b. *Most customers, especially retailers, do not want or need syndication*

183. Syndication is not a barrier to entry and repositioning because most customers of R&R do not want or need syndication services. PFF ¶¶184, 186. Even the government's economic expert acknowledges that some retailers "do not need syndication, presumably because they have enough content on their own or are more interested in unique content for SEO purposes." GX0984 at 21, fn. 34; Trial Tr. 1061:19-1062:8, 1769:14-1770:1.
184. Syndication is not widely used by Bazaarvoice and PowerReviews retailers or brands. Trial Tr. 813:1-814:9. Four percent of PowerReviews customers used syndication. DX1736 at ¶ 147; Trial Tr. 813:1-12, 1058:18-1061:18, Trial Tr. 1766:6-1767:14. Less than ten percent of PowerReviews enterprise customers used syndication. DX1736 at ¶ 147. Of the 1,133 customers (combining retailers and manufacturers) of Bazaarvoice's R&R solution, 826 (or 81.5%) do not use Bazaarvoice for any syndication service. DX1433 at ¶ 216; Trial Tr. 813:1-12. Less than twenty percent of Bazaarvoice retailers used syndication. DX1433 at ¶ 222. Less than 43 percent of manufacturers that use Bazaarvoice R&R maintain active syndication relationships. DX1433 at ¶222. Even brands that use syndication generally have few connections with retailers. Trial Tr. 1770:4-1772:13.
185. Syndication may not fit some customers' business models or needs, especially retailers. Trial Tr. 442:17-21. Some sites may have sufficient reviews, and thus no need for additional reviews provided by other sites. Trial Tr. 1170:4-24. This is true especially of retailers who have sufficient content generated on their own sites. Jolitz Tr. 36:18-37:1. And a brand might not distribute any goods through any retailer. [REDACTED] May Tr. 44:19-45:14; Targett Tr. 22:23-23:3.
186. Several customers have undercut the value of syndication, or testified that syndication is not important for their business model:
- [REDACTED]
 - [REDACTED]
 - The Bon-Ton Stores is not "executing or driving any kind of syndication of any sort of social media content." Fernandez Tr. 30:25-31:11.
 - Broadcast Supply does not use any syndication. Roalkvam Tr. 38:3-4.
 - Build.com does not see the "value in the syndication." Friedland Tr. 14:13-15:2; Trial Tr. 1170:25-1171:2.
 - Cabela's only uses syndication "in limited cases" for "products that are new to the market or new to our product line" to "help fill that gap while our own customers are just starting to purchase it." Uhler Tr. 18:24-19:7.
 - Chico's does not sell its products on websites that are not owned by Chico's, and as such does not syndicate R&R to other websites. Kelley Tr. 15:25-16:8, 16:25-17:4.

- 1 • Crabtree & Evelyn did not consider syndication in its selection of an R&R
2 provider. G. Green Tr. 18:23-25.
- 3 • Dick's Sporting Goods has considered syndication "multiple times and
4 have chosen not to do it multiple times." Marraccini Tr. 30:10-16.
- 5 • eBags doesn't engage in syndication as it has "just never felt like it's a
6 true benefit [], or worth paying for." Cobb Tr. 31:18-25.
- 7 • Gamefly is "not really in the syndication business" and has "never really
8 taken any steps to engage in it." Hodess Tr. 40:14-17.
- 9 • Syndication is "not a have to have for [Hunter Fan], especially since the
10 ratings and reviews portion of [the] site has not been our highest priority."
11 Doss Tr. 31:15-24.
- 12 • Hydro-Photon is not using syndication at this time. Archambault Tr.
13 23:23-24:13.
- 14 • Syndication is not something "[iHerb has] ever talked about before." Rose
15 Tr. 20:17-21.
- 16 • Ink Technologies considers the "jury is still out" regarding syndication
17 and has "shied away from syndication because [it is] looking for unique
18 content on [its] website." Davis Tr. 26:23-28:9.
- 19 • "There aren't a lot of places to syndicate [La-Z-Boy's] ratings and reviews
20 for a company like [La-Z-Boy]." Targett Tr. 22:23-23:3.
- 21 • Syndication is not relevant to New Era Publishing's needs. D. Green Tr.
22 61:17-21.
- 23 • Overstock has sufficient reviews for its products that it does not need
24 syndicated reviews. Jolitz Tr. 36:18-37:1.
- 25 • Perform Better is not interested in syndication. Bradshaw Tr. 21:15-16.
- 26 • Princess Cruises has no plans to syndicate R&R. Mansukhani Tr. 96:1-4;
27 Trial Tr. 1647:3-7.
- 28 • Wine.com is not interested in syndication because it prefers not to share its
reviews. Smalling Tr. 43:8-20.
- Syndication is "not part of [Redbox's] strategy." Patel Tr. 26:14-18.
- Signal Group does not syndicate content. Chapman Tr. 25:24-26:16.
- Systemax does not use syndication. B. Matthews Tr. 26:18-23.
- Syndication is of no significance to The Buckle. Pierson Tr. 40:15-20.
- Nutri-Health Supplements does not engage in syndication. Callahan Tr.
13:6-8.
- OneStopPlus Group does not use syndication. Tanini Tr. 28:15-17.
- Wayfair is not currently syndicating R&R through any means. Macri Tr.
51:2-7.

187. Competitors have recognized that syndication may not be important to some customers.

- [REDACTED] Crickmer Tr. 215:16-216:11.
- [REDACTED] Giannoni Tr. 25:13-26:9, 138:14-139:3.

188. Competitors to Bazaarvoice have sought to offer different features to attract customers beyond syndication. Trial Tr. 261:13-24. Syndication is but one way to provide additional value to customers. Trial Tr. 261:13-24.

c. Syndication does not prevent a customer from using a non-Bazaarvoice R&R solution

189. Customers of non-Bazaarvoice R&R solutions can easily syndicate their content even if they choose an alternative R&R solution.

190. Bazaarvoice customers own the rights to their R&R, and can syndicate them to whatever sites they choose. Trial Tr. 1605:18-25, 672:17-674:2; DX0252 at BZ-00287830. This would allow Bazaarvoice brands to syndicate their content to non-Bazaarvoice retailers. DX1433 at ¶ 230. Bazaarvoice cannot inhibit customers from syndicating their content outside Bazaarvoice's network. Trial Tr. 515:11-516:2; DX1433 at ¶ 230.

191. Customers are aware of viable alternatives for the syndication of R&R content apart from Bazaarvoice. Levin Tr. 48:22-49:10; Cadmus Tr. 55:11-56:25; Friedland Tr. 95:22-97:16.

192. There are several different ways in which non-Bazaarvoice customers can syndicate or receive syndicated content:

- Bazaarvoice routinely syndicates content between non-Bazaarvoice sites and Bazaarvoice customers. [REDACTED] Crickmer Tr. 171:4-10; DX1432 at 42. And Bazaarvoice syndicates R&R to Sears, which uses an internally developed R&R solution. Massuda Tr. 51:14-52:1.
- Non-Bazaarvoice customers can use firms like Stibo, Merchantry and Webcollage to syndicate reviews. Trial Tr. 1527:17-1529:24, 1071:6-2, 1072:14-1073:2, 1767:15-1769:13; DX1432 at 42; DX1735 at 42. Such firms have established connections to a large network of retailers which facilitates the sharing of information between manufacturers and retailers. DX1432 at 41-43; Trial Tr. 1527:17-1529:24. Webcollage already syndicates video reviews and R&R and they have the ability to syndicate more. S. Matthews Tr. 6:20-7:14; Trial Tr. 1243:16-21. Webcollage syndicates content from 778 brands, owned by approximately 300 companies, including large companies such as Procter & Gamble, Sony,

and Samsung. S. Matthews Tr. 10:11-21. [REDACTED]

[REDACTED] Trial Tr. 1562:14-16, 2088:24-2089:12; DX1417. Merchantry “frequently” includes review data when syndicating other content between manufacturers and retailers. DX1735 at 42.

- Retailers and brands may perform the syndication themselves. Retailers have strong relationships with manufacturers that sell through their websites and can leverage those relationships to syndicate content. Friedland Tr. 95:14-20. Among other things, retailers and brands share content, such as product descriptions, between their websites. Holden Tr. 14:21-15:5; DX1432 at 42. For example, Bass Pro Shops and Advanced Auto Parts have developed in-house solutions to exchange data with manufacturers. DX1432 at 42. Both these companies could leverage their data exchanges to syndicate R&R. Brands can also to pursue direct syndication deals with retailers and to cut out the “middleman” of BV. Trial Tr. 672:17-674:2; DX252 at BZ-00287830. Using these existing relationships a brand or retailer could share R&R content amongst themselves, without involving Bazaarvoice. Cadmus Tr. 55:11-25; Friedland Tr. 95:22-97:16.
- R&R content can also be syndicated as part of the information exchange related to “drop shipping” arrangements. Drop shipping refers to the exchange of data between manufacturers and retailers sites which enable manufacturers to fulfill sales by the retailer site. Syndicated R&R data can be shared along with the other information. DX1432 at 42; DX1735 at 42.

193. Competitors can and have developed solutions that would allow their customers to syndicate or receive syndicated content.

- [REDACTED] Crickmer Tr. 47:23-48:25.
[REDACTED] Crickmer Tr. 49:21-50:14. [REDACTED]
[REDACTED] Crickmer Tr. 62:7-11.
- Reevo has “a better syndication model” than Bazaarvoice. Giannoni Tr. 97:3-94:18. Reevo is the only company that syndicates Q&A content, in addition to R&R, and that functionality “drives a high -conversion factor.” Giannoni Tr. 97:3-94:18.
- Gigya has the ability to offer a customized syndication service. May Tr. 30:16-31:5.
- [REDACTED] PFF ¶ 414.

iv. Moderation is not a barrier to entry or expansion

194. The DOJ has not offered evidence that moderation is a barrier to entry that would inhibit the company from making the investments to enter the market.

195. Dr. Shapiro does not describe moderation as a barrier to entry, and it is not a barrier because it can be done at relatively low cost. Trial Tr. 1758:2-1762:11.

196. In the context of social commerce tools like R&R, moderation refers to the monitoring and curating of content before it is displayed on a website. DX1432 at 43. Obscene, fake, or otherwise inappropriate reviews can be deleted from what is displayed on a website. DX1432 at 43; Hodess Tr. 28:3-12.

197. [REDACTED] DX1432 at 43; Ahmed Tr. 79:18-80:11; Trial Tr. 1083:17-21. Manual moderation is performed by people reviewing the content. DX1432 at 43. Alternatively, automated software can perform “rules based” moderation that operates using “content signals,” such as “language.” May Tr. 32:1-7; Cobb Tr. 29:6-14. [REDACTED] Ahmed Tr. 79:18-80:11; Trial Tr. 1168:16-24.

198. [REDACTED] Evons Tr. 25:17-24; Heverley Tr. 70:24-71:23; Trial Tr. 796:15-797:19, 1083:17-21. Even Bazaarvoice’s customers have different preferences relating to moderating services, including whether to do moderation in-house or not. Trial Tr. 796:15-798:5. [REDACTED] Crickmer Tr. 41:12-24; Trial Tr. 797:20-798:4

- Astral Brands has decided to implement an in-house moderation because moderators “need to be very intricately involved with the company and the products” and the company “[does not] want to just open [moderation] up to anybody.” Hughes Tr. 105:11-106:9.
- AutoZone handles UGC moderation in-house, even though the service is offered by Pluck, AutoZone’s social commerce platform provider and its R&R provider. AutoZone has chosen in-house moderation because it is “very careful with AutoZone’s voice to the consumer and want to make sure that we own that.” In addition, AutoZone “wanted to make sure that people that are most familiar with AutoZone and how we communicate with our customers had visibility to the moderation and participated in that.” Traywick Tr. 39:7-20; Trial Tr. 1336:4-1337:5
- Coldwater Creek, which moderates its reviews in-house, is satisfied with the development team handling the moderation since “the system is simple, and it fulfills the needs of what our marketing folks have requested for the site.” Williams Tr. 39:19-20, 40:23-41:1.
- Drums on Demand handles moderation in-house and believes it is “a must” for companies selling products that are “very specialized and specific,

because you need to know about the product to know whether it's a legitimate review or not." Randle Tr. 22:7-11, 22:16-23:6.

- iHerb is unsure whether it would trust a third party to provide moderation services for its R&R; it prefers to moderate using in-house resources. Rose Tr. 39:6-13.
- Ink Technologies chose not to use Rating System's moderation services because it prefers to have its own customer service team perform the moderation. Davis Tr. 35:9-21. Ink Technologies believes that moderation from a third-party provider is "not a very valuable service, if you have a customer service team." Davis Tr. 52:2-5.
- BJ's Wholesale receives first-pass moderation services from PowerReviews, and then moderates reviews in-house before publishing the reviews on its website. Cunningham Tr. 44:15-45:19; Trial Tr. 465:20-466:7.
- eBags uses a technological "sniffer" that looks for specific words, such as swear words, to filter out and delete them. eBags does not perform human moderation of its reviews. Cobb Tr. 29:6-14.

- [REDACTED]

199. [REDACTED] Crickmer Tr. 37:8-19; Tarkowski Tr. 27:14-20.

200. Each element of the moderation process can easily be performed by a new entrant, e-commerce site or outsourced to a third-party provider of moderation services.

- [REDACTED] Tarkowski Tr. 27:21-28:15; Friedland Tr. 17:6-13; DX1432 at 43; Ahmed Tr. 102:15-18. There has been a proliferation of UGC (including comments sections, forums and Q&A and reviews) which has created a demand for outsourced moderation services and lowered the costs of such services. DX1432 at 43; Trial Tr. 106:18-21. [REDACTED] PFF ¶ 308.

- Moderation through a technical filter or by rules-based filtering can easily be integrated into an R&R solution. Friedland Tr. 34:6-35:2. Some e-commerce platforms, such as Magento, have begun offering an integrated moderation tool with its platform. Trial Tr. 1168:16-22.
- Third-parties can provide the technical filters for user generated content. For example, the fraud-based component of Bazaarvoice's technical solution is provided by a third-party. Trial Tr. 104:3-105:10.

- Digital marketing agencies have the ability to offer human moderation. DX1432 at 43-44.

201. It is not a requirement of human moderation that the moderators be located in the United States. Trial Tr. 106:7-13.

v. Analytics functionality is not a barrier to entry or repositioning

202. The DOJ has not offered evidence that analytics is a barrier to entry that would inhibit the company from making the investments to enter the market.

203. [REDACTED] DX1432 at 16-17; Tarkowski Tr. 31:10-20; Crickmer Tr. 42:9-21. Although sites that utilize R&R often use analytics to determine how users interact with R&R and other parts of their site, those analytics can be obtained from many sources. DX1432 at 50, 54, 58; Tarkowski Tr. 30:4-32:4; Sell Tr. 12:13-15; Cook Tr. 8:10-18; Masciola Tr. 43:8-44:10; May Tr. 33:3-34:15; Ahmed Tr. 17:7-10; Mueller Tr. 33:15-34:2. As noted below, some customers use an internal analytics solution; others use the analytics provided by their R&R vendor and yet others use analytics provided by non-R&R vendors including Google and Omniture. Customer testimony reflects that analytics are not a “must have” feature, customers can leverage other analytics tools and apply them to R&R, and preferences for analytics vary by customer.

- Blinds.com believes Bazaarvoice’s analytics offering was commoditized, in part, because there are several providers of web analytics that were equal to, or better than, Bazaarvoice’s analytics tools. Cotlar Tr. 46:13-25.
- Build.com stated that while Bazaarvoice has been pressing its social commerce analytics, “so does every other vendor.” Friedland Tr. 53:18-54:2. Build.com noted that “every other analytics vendor,” including Adobe, Coremetrics (owned by IBM), and a number of startups offer social analytics capacity. Friedland Tr. 54:3-8. Build.com testified that it would not need analytics from its R&R provider because its existing analytics platform, Adobe, can provide social analytics. Friedland Tr. 38:20-40:4.
- CableOrganizer testified that while PowerReviews provides a dashboard of analytics, it does not “look at it too often” because it relies on the analytic data that it develops internally and through the use of Google analytics. Ribero Tr. 32:3-33:14.
- Alternative Apparel was not offered any analytics as part of its agreement with Bazaarvoice, but uses Google analytics for reporting and analytic capabilities. Kwok Tr. 45:15-20.
- Systemax utilizes an in-house R&R solution and it uses Coremetrics and Google Analytics to receive analytics. B. Matthews Tr. 20:12-20.

- Nature's Path has an in-house R&R solution that provides standard analytics and reports of its R&R data. Emmer-Aanes Tr. 25:9-15.
- Coldwater Creek utilizes an in-house R&R solution and utilizes Coremetrics and Google Analytics which provide analytics relating to "customer paths" and customer use of its website. Williams Tr. 42:1-43:13.
- Dillard's testified that it does not utilize the social measurement analytics functionality that it is provided by PowerReviews. Hodapp Tr. 51:19-52:14.
- eHobbies stated that it did not review the analytics offered by PowerReviews, and that analytics functionality was not important to eHobbies. Kikkawa Tr. 42:12-43:3
- eBags stated that analytical tools are of insufficient benefit to purchase from a vendor. Cobb Tr. 30:8-31:6.
- World Kitchen stated that it has "basic" analytics needs, and that it uses the Google analytics platform because it is free and the "value is outstanding." Bausch Tr. 44:16-21.

204. Entrants can easily develop an analytics feature for their R&R solution. [REDACTED] DX1433 at ¶ 171; DX1432 at 16; Tarkowski Tr. 14:11-24, 31:10-20; Crickmer Tr. 42:9-21. And social commerce providers that offer R&R functionality often also offer analytics as a feature. DX1432 at 50, 54, 58; Tarkowski Tr. 30:4-32:4; Schuster Tr. 34:3-14; Cook Tr. 8:10-18; Masciola Tr. 43:8-25; May Tr. 33:3-34:15; Ahmed Tr. 17:7-12; Sell Tr. 12:13-16; Mueller Tr. 33:15-34:2. [REDACTED] Tarkowski Tr. 30:4-32:4, 39:20-40:5; Crickmer Tr. 42:9-45:18, 44:25-45:19; May Tr. 37:17-38:18; Katz Tr. 43:22-44:21.

205. Entrants and e-commerce sites can also leverage the powerful analytics tools of large firms like Oracle, IBM, Adobe, salesforce.com, and hybris. Those firms currently offer analytics for social commerce. DX1432 at 21, 58-59; Schuster Tr. 79:19-81:19. [REDACTED] Schuster Tr. 79:19-81:19.

g. *New competitive products are emerging and gaining acceptance at the expense of Bazaarvoice R&R*

206. There are a myriad of places on the Internet where consumers can express and read opinions about products beyond the R&R posted on a manufacturer's or retailer's website.

- Amazon continues to lead in R&R, and is a starting point for many consumers' online shopping experience. Trial Tr. 1515:15-1517:25.
- Google Shopping offers consumers the ability to read and write their own reviews using Google's review technology. Trial Tr. 1515:15-1519:23.
- Facebook's launch of new APIs allows better integration with e-commerce sites; Facebook content such as "likes" and comments can now be placed on a product detail page in the same manner as R&R. Trial Tr. 1504:17-1505:17.
- Threadless has Facebook "likes" and "comments" on the product detail page in place of R&R. Trial Tr. 1506:17-1507:9. Sites like Threadless.com use a firm called Olapic that finds pictures on Instagram and renders them on e-commerce pages, which serves as a form of social proof and helps with SEO ranking when users search for images on search engines. Trial Tr. 1506:17-1507:9.
- Pinterest launched "Rich Pins" earlier this year. Rich Pins allow (in addition to various elements of social proof) price and availability information to be included in a "pin," together with click-through capability to a retailer's product page where the product can be purchased. Trial Tr. 1504:21-1506:14.
- Pinterest's Rich Pins also show how many other people have "pinned" the product and that serves as another form of social proof. Trial Tr. 1509:2-20.
- Facebook recently launched pages where users can write a review and provide star ratings for things like hotels and video games. Facebook also recently launched new mobile pages for businesses that allow consumers to provide R&R about the business. Trial Tr. 1507:10-1508:15.

207. A plethora of additional tactics have recently emerged for e-commerce sites to leverage UGC including: social shares, social sign-in, social content on e-commerce sites, idea exchanges, social merchandising, questions and answers, surveys, discussions, comments, forums, gamification, and tags. DX1432 at 26-35. These tools are gaining popularity. For example, Q&A is becoming more prevalent on e-commerce sites. Trial Tr. 1513:24-1514:21.

208. The government's industry expert identified many forms of social commerce tools that are used by retailers and brands: R&R, forums, question and answer, blogs, microblogs (like Twitter), social networks (like Facebook), social tagging, polls, testimonials, YouTube, and Pinterest. Dellarocca Tr. 65:21-66:12; DX0986 at 3, 7, 8, 10, 11, 13.

8. Post-Merger Evidence of Competition Demonstrates No Competitive Harm.

- 1 209. In this dynamic marketplace, suppliers of R&R have flourished, and customers
2 have acknowledged the numerous options available to them. Together, these
3 abundant sales opportunities have replaced, if not eclipsed, the lost competitive
4 significance of PowerReviews since Bazaarvoice's acquisition. PFF ¶¶221-583.
- 5 210. Post-merger competition includes internal solutions, commercial vendors of R&R
6 and social commerce tools, e-commerce platform vendors, and rapid entrants.
7 PFF ¶¶221-475.
- 8 211. Each competitor stands out in its product offerings and competes vigorously to
9 win business against Bazaarvoice and others. PFF ¶¶221-475.
- 10 212. There is no evidence that PowerReviews possessed any unique technology,
11 product, service or relationships that cannot be or has not been replaced by
12 another competitor since the merger. Each competitor possesses the same, if not
13 greater, R&R functionality and other product and service features as
14 PowerReviews. PFF ¶¶221-475.
- 15 213. Customers have confirmed the viability and sufficiency of the competitive
16 alternatives that have replaced PowerReviews. Approximately 100 current,
17 former and potential Bazaarvoice and PowerReviews customers testified that the
18 acquisition has not and will not negatively impact their business. PFF ¶¶477-577.
- 19 214. Jason Goldberg, the only industry expert to testify at trial, opined that competitors
20 have entered and repositioned themselves to become viable replacements for
21 PowerReviews (if not superior alternatives) and worthy of recommendation to
22 customers for R&R. Trial Tr. 1472:3-1492:20. The government did not offer
23 contrary industry evidence. PFF ¶ 34.
- 24 215. The customers testified that they have not been harmed and are unlikely to be
25 harmed because they have multiple equally competitive options for their R&R
26 needs besides PowerReviews. PFF ¶¶477-583.
- 27 216. The customers were knowledgeable about the competitive options available to
28 them, and had the incentives to investigate the alternatives, negotiate the best
price and select the best solution for their companies. PFF ¶¶586-592.
217. No customer testified that they have been harmed by the merger. The government
and its economist could not identify a single customer that had been harmed by
the merger.
218. The customers relied upon by the government do not, in fact, view the acquisition
as anticompetitive. PFF ¶¶991-1002.
219. Appendix A hereto summarizes the testimony of each customer who testified at
trial or by deposition.
220. Appendix B is a list of the trial witnesses that testified either live or by video.

1 *a. Multiple competitors offer customers equally competitive options as PowerReviews*

2 221. Dr. Shapiro admits that the relevant issue for competitive effects and entry is
3 whether the market will replace the competitive constraint previously provided by
4 PowerReviews. GX0983 at 68. Trial Tr. 1058:13-17.

5 222. There are multiple sources of viable competitive alternatives to PowerReviews
6 that customers can and have accessed. Competition to Bazaarvoice today
7 includes (i) internal solutions, (ii) commercial R&R and social commerce vendors,
8 (iii) e-commerce platforms, and (iv) rapid entrants. PRR ¶¶ 221-475.

9 223. Among commercial R&R vendors alone, the number of suppliers reported in
10 industry reports has grown from two to seven since 2011. Gartner, a leading
11 industry research firm, identified PowerReviews and Bazaarvoice as the leading
12 R&R suppliers in 2011. GX271 at BZ-00068730. For 2013, Gartner identified
13 seven R&R suppliers: Bazaarvoice, Gigya, Lithium, Mzinga, ReadyPulse,
14 Reevo and Yotpo. DX1882 at 19. Gartner neglected to mention Pluck, which
15 also sells a R&R solution.

16 *i. Internal Solutions are viable competitive threats*

17 224. Internal solutions are a significant and credible competitive threat to Bazaarvoice
18 and its commercial competitors for virtually every customer opportunity. Trial Tr.
19 1396:23-1397:22. Bazaarvoice board member, Tom Meredith, considers in-house
20 Bazaarvoice's "biggest competitor" since most customers "have the capacity and
21 the teams capable of doing that which Bazaarvoice does." Trial Tr. 1396:23-
22 1397:22.

23 225. Dr. Shapiro fails to give sufficient weight to in-house solutions as a competitive
24 constraint on Bazaarvoice. DX1736 at ¶¶ 135-140 and Exhibits 3(a), 3(b), and 4.

25 *a. Internal solutions are easy to develop*

26 226. Internal solutions have become even more significant today because of the ease
27 with which customers can develop an internal solution. R&R solutions are faster,
28 cheaper, and easier to develop today due to the availability of more robust
infrastructure capabilities, such as server capacity, the availability of libraries of
high-quality source code, which obviates the need to hire programmers to write
every line of code, and the availability of e-commerce platforms that have
features that make such development easier, like built-in databases. Trial Tr.
1454:6-1455:24, 1496:14-1497:13, 1070:25-1071:5, 670:17-671:1; DX1432 at 46,
65-67; DX1735 at 38.

227. Abercrombie & Fitch believes that "the ability to build your own solution today is
considerably easier today than it was four years ago." May Tr. 13:8-13.

228. A web design agency built an R&R solution for Johnsonville Sausage for between
[REDACTED] Mueller Tr. 14:21-15:8.

- 1 229. Signal Group developed its R&R for approximately \$3,000 in employee time.
2 Chapman Tr. 20:18-21:6. Signal Group built its own R&R with “15 to 20 hours”
3 of work by a single programmer. Chapman Tr. 19:22-20:2.
- 4 230. The “typical e-commerce development team” could develop a “basic” R&R
5 solution in about four to six weeks, and could develop a “full featured” R&R
6 solution that could outperform off-the-shelf solutions in about six months.
7 DX1432 at 46, 67-68.
- 8 231. Coldwater Creek’s in-house R&R solution was built by approximately three
9 people over 1-2 months, working 80% of a 40-hr work week. Williams Tr. 35:19-
10 36:9.
- 11 232. eBags’ in-house solution took four software programmers between one to two
12 months to build. Cobb Tr. 37:21-38:18.
- 13 233. Gamefly’s in-house R&R solution was built with “a pretty simple development
14 effort” that was not “lengthy or expensive.” Hodess Tr. 24:19-25:1.
- 15 234. HSN’s in-house R&R solution was developed by three to four people over four
16 weeks. Reilly Tr. 28:1-18.
- 17 235. Sierra Trading Post built its own in-house R&R solution using four employees
18 working part-time on the project over several months. Newlin Tr. 24:14-23.
19 Sierra Trading Post believes that the R&R tool could have been developed in less
20 time if they had “focused on it with no distractions from other projects.” Newlin
21 Tr. 26:8-13.
- 22 236. Using one engineer, Wayfair’s in-house R&R solution took “two to three months”
23 to go live on its website. Trial Tr. 1605:7-17.
- 24 237. Almost all website operators have the IT resources to write and maintain an
25 internal R&R solution. DX1432 at 46, 67-68. Retailers, including Wal-Mart,
26 Staples, Target, Nordstrom, and Zappos, are increasingly developing their own
27 labs to build technology for their websites. Trial Tr. 1459:19-1461:4.
- 28 238. Many website operators develop a proprietary e-commerce platform rather than
purchase an off-the-shelf solution so that they have full control of the e-commerce
platform’s customizability and offer their customers a differentiated shopping
experience. DX1432 at 14; Trial Tr. 1458:24-1459:18, 1492:21-1494:13.

b. Internal solutions are easy to maintain

239. Technical support for an internal solution is minimal. Customers that have
implemented an in-house solution attest to the minimal costs associated with
upkeep of their solution. eBags (Cobb Tr. 36:4-15); iHerb (Rose Tr. 31:17-32:7);
Shoebuy (Keller Tr. 76:14-22) (more cost effective to run an in-house R&R
solution than an external solution); Signal Group (Chapman Tr. 20:3-7) (takes one
programmer “an hour a week” to maintain the system); Wine.com (Smalling Tr.
45:16-23) (spent “maybe a month” working on its in-house R&R solution over the

past three years); Zappos.com (DX1396 at ¶¶ 3-4) (internal solution “requires no material upkeep” and it “essentially runs itself”).

c. Internal solutions can moderate and obtain analytics on their own

240. [REDACTED] DX1432 at 43; Ahmed Tr. 79:18-80:11. Trial Tr. 1083:17-21, 1530:19-1531:5; May Tr. 32:1-7; Cobb Tr. 29:6-14. [REDACTED] Ahmed Tr. 79:18-80:11; Trial Tr. 1168:13-24.

241. Moderation can easily be done internally by an e-commerce site, using only a few people. Cotlar Tr. 71:17-25 (Blinds.com); Rose Tr. 13:24-14:7 (iHerb); Keller Tr. 60:9-61:5 (Shoebuy); Chapman Tr. 24:20-25:7 (Signal Group); B. Matthews Tr. 25:17-26:12, 36:25-37:15 (Systemax); Trial Tr. 1294:25-1295:10 (World Kitchen); DX1396 at ¶ 5 (Zappos); DX1432 at 43-44.

242. [REDACTED] Tarkowski Tr. 27:21-28:15; Friedland Tr. 17:6-13; DX1432 at 43-44, fn. 64; Ahmed Tr. 102:15-18; Trial Tr. 1175:9-19. Digital marketing agencies have the ability to moderate content for e-commerce sites. DX1432 at 43-44. For example, eModeration provides R&R moderation services for Gigya. Trial Tr. 612:4-10.

243. It is not necessary that human moderation be performed in the United States. Human moderators must simply be conversational language speakers to understand nuances in the content. Trial Tr. 106:7-13.

244. Even customers who use a commercial vendor for R&R solutions choose to moderate their reviews in-house for various reasons including control over their message. [REDACTED] Crickmer Tr. 41:12-24; Astral Brands (Hughes Tr. 105:11-106:9. Trial Tr. 1348:3-19); AutoZone (Traywick Tr. 39:7-20. Trial Tr. 1336:4-1337:5); Coldwater Creek (Williams Tr. 39:19-41:1).

245. Analytics can be obtained from many sources. DX1432 at 50, 54, 58; Tarkowski Tr. 30:4-32:4; Cook Tr. 8:10-18; Masciola Tr. 43:8-25; May Tr. 33:3-6; Ahmed Tr. 17:7-10; Sell Tr. 12:13-16; Mueller Tr. 33:15-34:2. Some customers use an internal analytics solution; others use the analytics provided by their R&R vendor, and yet others use analytics provided by non-R&R vendors including Google and Omniture. B. Matthews Tr. 20:12-20; Williams Tr. 41:2-23; Masciola Tr. 43:8-25.

d. Customers widely embrace internal solutions

246. The 2012 IR500 rankings indicate that, excluding Amazon, 28.4% of companies that utilize R&R used an in-house R&R solution. GX1062; DX1579.

247. Of the approximately 100 customers who testified in this case, 21 have implemented in-house R&R solutions rather than a commercial vendor solution. These customers are: Barnes & Noble (Rowland Tr. 23:6-15); Blue Nile (Sainsbury Tr. 18:3-15); Coldwater Creek (Williams Tr. 34:3-15); Drugstore.com (Jeske Tr. 90:20-24); eBags (Cobb Tr. 15:1-4); Gamefly (Hodess Tr. 22:11-13); HSN (Reilly Tr. 27:15-23); iHerb (Rose Tr. 12:9-16); Johnsonville Sausage (Mueller Tr. 11:6-11:18); Market America (Brady Tr. 16:8-13); Nature's Path (Emmer-Aanes Tr. 19:2-8); Onlineshoes.com (Grams Tr. 13:20-14:1); Overstock.com (Jolitz Tr. 18:12-17); Sears (Massuda Tr. 13:15-14:1); Shoebuy (Keller Tr. 33:19-24); Shoplet (Scharf Tr. 22:16-23:6); Signal Group (Chapman Tr. 12:3-6); Sierra Trading Post (Newlin Tr. 24:10-25:10); Systemax (Matthews Tr. 23:1-8); Wayfair (Macri Tr. 14:10-11); and Wine.com (Smalling Tr. 17:17-21).

248. Of the approximately 100 customers who testified in this case, an additional 20 customers testified that they could build or would consider building an in-house solution as an alternative to a commercial vendor solution. Abercrombie & Fitch (May Tr. 52:23-53:3), Alternative Apparel (Kwok Tr. 40:19-41:4), American Eagle (Holland Tr. 23:10-24:4), Footsmart (Gallagher Tr. 14:23-15:4), [REDACTED] Blinds.com (Cotlar Tr. 31:10-25), The Bon-Ton Stores (Fernandez Tr. 28:17-29:3, 38:8-39:6), The Buckle (Pierson Tr. 28:14-24), Build.com (Friedland Tr. 23:21-24:22, 43:10-23), Cabela's, (Uhlir Tr. 31:24-32:23) Columbia Sportswear (Evons Tr. 24:18-25:4), Green Mountain Coffee (Cadmus Tr. 38:11-15), Ink Technologies (Davis Tr. 24:5-21), Karmaloop (Knisely Tr. 29:13-21), L.L. Bean (Wilson Tr. 16:23-25), OneStopPlus (Tanini Tr. 21:17-22:25, 23:23-24:9), Skechers (DX1792 at ¶ 9), Southwest Airlines (Bruns Tr. 40:16-22), Under Armour (Parzianello Tr. 14:18-15:11) and Vitamin Shoppe (Beebe Tr. 28:9-17; Trial Tr. 1375:18-1376:2).

249. There is no defining characteristic that makes in-house solutions more viable for some customers and not others. Customers of varying sizes, resources, products and website audiences all use an internal solution:

- Zappos.com, Inc. is an online shoe retailer and subsidiary of Amazon.com and uses an in-house R&R solution. As part of Amazon.com, Zappos is number one on the 2012 IR500 list. DX1396; DX1579.
- Blue Nile, an online jeweler, is number 71 on the 2012 IR500 list and built its own in-house R&R solution in 2002 or 2003. Sainsbury Tr. 18:3-15; DX1579.
- GameFly, a video game rental service, is number 150 on the 2012 IR500 list and uses an in-house R&R solution. Hodess Tr. 22:11-13; DX1579.
- Wine.com, an specialty online retailer, is about 248 on the IR500 in 2012 and has used an in-house R&R solution since 1998. Smalling Tr. 17:17-21; DX1579.

e. Internal solutions are as good as if not better than commercial R&R

- 1 250. Customers have testified that an internal solution meets or exceed their needs for
 2 R&R. Blue Nile considers its internal R&R solution to be superior to
 3 Bazaarvoice's. Sainsbury Tr. 22:16-24. Blinds.com (Cotlar Dep. 30:19-31:9,
 68:11-24) and Overstock.com (Jolitz Tr. 31:11-19) have the same view.
- 4 251. Coldwater Creek is satisfied with its in-house solution for R&R because it is
 5 simple, it integrates with the customer so Coldwater Creek is able to track reviews
 6 back to customer sentiment, it gives feedback where feedback is needed, and it
 7 helps the customer to make an informed purchase decision. Williams Tr. 44:18-
 45:1.
- 8 252. eBags' in-house R&R solution offers "flexibility" and "open text boxes" that
 9 eBags finds "more engaging, more revealing, and more interesting" than
 10 PowerReviews. Cobb Tr. 36:4-9. eBags' in-house solution allows customers to
 11 sort product reviews, and to review different product criteria including
 12 Appearance, Durability, Organization, and Price/Value. Cobb Tr. 24:9-25:3,
 28:24-29:5.
- 13 253. HSN's in-house R&R solution "hits the mark" because HSN has been positioned
 14 to make focused enhancements internally with minimal effort. Reilly Tr. 43:21-
 44:9.
- 15 254. Sierra Trading Post installed an in-house R&R solution because it wanted to
 16 incorporate additional features, including improved search engine optimization to
 17 "get more of its questions and answers and reviews out there to increase its reach
 18 in the search engines," "usability improvements," and "improve[ments] customer
 19 service with [its] own in-house solution by allowing for the instantaneous posting
 20 of reviews, questions, and answers." Newlin Tr. 26:14-27:17. Sierra Trading
 21 Post views building an in-house R&R solution as a better alternative than
 22 PowerReviews or Bazaarvoice. Newlin Tr. 45:8-14.
- 23 255. Signal Group believes that its in-house R&R solution is "tailored to fit" their
 24 business and, therefore, "it works better." Chapman Tr. 20:14-17.
- 25 256. Wayfair built an in-house R&R solution and Q&A solution that "immediately saw
 26 an improvement in the percent of reviews captured." Macri Tr. 16:6-12, 65:15-21.
 Trial Tr. 1606:1-5.

27 *f. Competition from internal solutions impacts Bazaarvoice and benefits customers*

- 28 257. Internal solutions are a viable threat that provide substantial competitive pressure
 on Bazaarvoice. The ability for any potential client to move to an internal
 solution has an impact on Bazaarvoice pricing because if Bazaarvoice's price is
 too high, customers will build it themselves for "far less." Trial Tr. 671:4-671:19,
 229:18-21, 231:18-24.
258. In response to a proposed price increase by PowerReviews, Broadcast Supply
 informed PowerReviews it would look into other vendors or building R&R in-
 house. Roalkvam Tr. 23:18-24:20. In response, PowerReviews offered Broadcast
 Supply PowerReviews Express [REDACTED] Roalkvam Tr. 23:18-24:20.

1 259. In surveys conducted by Bazaarvoice, the single biggest factor in prospects
 2 choosing not to go with Bazaarvoice is a decision to build an R&R solution
 3 themselves. Internal solutions are considered Bazaarvoice's biggest competitor.
 Trial Tr. 528:4-13.

4 260. From July 2012 to May 2013, in-house R&R solutions were identified as
 5 competing in over 20% of Bazaarvoice's customer opportunities. GX1082.

6 [REDACTED]
 7 [REDACTED] DX0032 at BZ-0025955;
 8 DX0038 at BZ-00029828; DX0042 at BZ-0034896.

9 261. Bazaarvoice has competed against an in-house R&R solution when pursuing
 10 several different types of customers [REDACTED]
 11 [REDACTED]
 12 DX1809 at BZ-0095940; DX0668.

13 262. Bazaarvoice lost Overstock.com to an in-house R&R solution. DX0033; DX0171.
 14 Bazaarvoice lost Sears as a potential customer to an in-house R&R solution.
 15 DX0289 at BZ-00354156. PowerReviews lost Wayfair (CSN Stores) as a
 16 customer, and Bazaarvoice lost Wayfair as a potential customer, to an in-house
 17 R&R solution. DX0287. PowerReviews lost [REDACTED] as a potential
 18 customer. DX0089. PowerReviews lost [REDACTED] as a potential
 19 customer. DX0396.

20 263. PowerReviews competed against an in-house R&R solution when pursuing
 21 several customers, [REDACTED]

22 [REDACTED]
 23 [REDACTED] DX0091, DX0328, DX0149, DX1812, DX1813, DX1814, DX1816,
 24 DX1817, DX1818, DX1819, DX1820, DX1821, DX1822, DX1823, DX1825,
 25 DX1826, DX1827, DX1828, DX1836, DX1837, DX1838, DX1839, DX1840,
 26 DX1841, DX1842, DX1811, DX1824, DX1829, DX1830, DX1831, DX1832,
 27 DX1833, DX1834, DX1835, DX0350. PowerReviews lost many of these
 28 opportunities to an in-house solution.

29 264. [REDACTED]
 30 [REDACTED] Giannoni Tr. 55:11-25, 66:13-25.

31 265. [REDACTED]
 32 [REDACTED]
 33 Crickmer Tr. 78:2-81:4.

266. [REDACTED] DX1844.

267. [REDACTED]
[REDACTED] DX1846.

268. The government concedes that in-house solutions are in the relevant market, demonstrating that commercial vendors could not raise prices successfully because customers could turn to an in-house solution in sufficient numbers to defeat the attempt to successfully raise prices. Complaint ¶ 39.

g. *The documents DOJ uses to claim that in-house solutions are not viable alternatives are simply marketing materials*

269. The DOJ cites three documents that it claims support the contention that Bazaarvoice can distinguish between customers who can implement an in-house solution and those that cannot. Pltf's Obj. and Resp. to 5th Rogs, Rog 22.

270. These three emails are marketing materials aimed at convincing those customers considering an in-house solution to implement Bazaarvoice. GX0365; DX0149; DX0384.

ii. Commercial vendors are growing competitive threats

271. Compared with 2005 when Bazaarvoice and PowerReviews were the primary merchant vendors for R&R functionality, today there are many options for R&R, including commercially developed solutions offered by vendors including Reevo, Pluck, Gigya, Rating System, Lithium, Practical Data, ReadyPulse, Feefo, Viewpoints, Yotpo, and various e-commerce platforms.

272. [REDACTED]
[REDACTED] Tarkowski Tr. 15:7-16:25, 20:7-10, 24:18-25:23, 80:11-21; Schuster Tr. 16:12-19, 19:18-20:7, 68:12-24, 76:11-77:15, 119:3-24; Crickmer Tr. 20:12-23, 24:19-25:10, 27:6-28:19, 31:24-33:24, 116:19-117:21.

273. Dr. Shapiro concedes Reevo, Pluck, Gigya, and Lithium are competing "aggressively" for Bazaarvoice accounts. Trial Tr. 1075:21-1077:2.

274. Bazaarvoice perceives Pluck, Gigya, Lithium, and Reevo as credible threats post-merger. Trial Tr. 1077:23-1078:6; DX1012.

a. *Adobe*

275. Adobe has integrated R&R and other functionality into its social commerce suite.

276. Adobe is one example of a firm aggregating many capabilities into a single suite of products to mitigate multiple party risks. The Adobe Marketing Cloud includes (as the result of adding incremental functionality over time) Content

Management, Analytics, Social, Personalization, On Site Search, Recommendations, Testing, Universal Tag Management, Video, Rich Media, R&R, and Product Information Management. DX1432 at 20.

277. The latest version of Adobe Experience Manager 5.6 includes a complete R&R solution. DX1432 at 58-59.

278. Given the customization available within the Adobe Experience Manager, and because so many other components in the Adobe Marketing Cloud are used by Razorfish clients, Jason Goldberg is now “actively recommending that clients implement ratings and reviews using the Adobe AEM functionality.” DX1432 at 59. Some customers choose a reviews solution that may not be “best-in-class” in order to take advantage of a vendor’s other benefits. DX1735 at 33. Mr. Goldberg has recommended Adobe review solutions to clients because those providers “typically support many other social commerce features.” DX1735 at 33.

b. Expo Communications

279. Expo Communications (“Expo”) was founded in 2004. Hildebolt Tr. 7:17-18. Expo operates a system for product-related video reviews called Expo TV. Expo TV generates, manages, and distributes video reviews of products. Hildebolt Tr. 7:24-8:17. Expo has “a community” of reviewers that generate product reviews. Hildebolt Tr. 7:24-8:9. Expo then licenses that content to its clients. Hildebolt Tr. 7:24-8:9. Expo provides a video platform to manage and distribute the content created by its community of users. Hildebolt Tr. 7:24-8:9. Expo also offers management services to help in the collection and redistribution of content created by a client. Hildebolt Tr. 7:24-8:17.

280. Video product reviews are highly sought by retailers and “52% of consumers say that watching product video makes them more confident in their online purchase decisions.” DX1655.

281. Retailers use video product reviews because they “lead[] to higher loyalty, return visits, engagement, all these metrics which either directly or indirectly are going to lead to the higher conversion rate, then the higher conversion rate, being the ultimate metric, leading to higher sales.” Hildebolt Tr. 13:1-21.

282. Video reviews help to educate consumers because they “combine the language and the words of a text review with the visual cues that are only available in a video.” Hildebolt Tr. 25:10-26:7. Video reviews cause consumers to spend more time on a website, which is helpful in generating sales. Hildebolt Tr. 13:22-15:10.

283. Expo’s video reviews give brands and retailers “all the power of” text R&R “and more.” Hildebolt Tr. 25:10-27:13.

284. Video reviews are becoming increasingly important as more social commerce is consumed on mobile devices. Hildebolt Tr. 19:3-20:25. The trend towards mobile social commerce has “accelerated over the past three years,” and “to the extent you can put the right video in front of the right person at the right time [on

mobile], you can actually get tremendous engagement.” Hildebolt Tr. 18:7-20:25; DX1656.

285. Video has a number of important advantages over text in the mobile realm, because “when you’re scrolling text, you’re often trying to scroll to the place you want, you’re trying to use your fingers dexterously to expand and contract and maybe click different links and you fat-finger the links and click the wrong one.” Hildebolt Tr. 19:3-20:25.

286. Expo provides moderation of all of its videos. Hildebolt Tr. 24:18-25:9.

287. Expo “[has] the capability to capture photos and text ratings and reviews,” using technology that the company built for itself. Hildebolt Tr. 27:21-29:6. Expo is currently providing text-based R&R for some of its customers. Hildebolt Tr. 29:3-6.

288.

DX0038 at BZ-00029788.

DX1478 at 3.

289. Expo provided social commerce services, including text reviews, to some Procter and Gamble brands that previously used Bazaarvoice. DX0066 at BZ-00049454. The customer selected Expo in part because Procter & Gamble had been “paying way too much like more than \$500 per text review.” DX0066 at BZ-00049454.

c. Feefo

290. Feefo is a provider of R&R technology based in England. Feefo has a number of customers including Charles Tyrwhitt, Fat Face, and Lands’ End UK. DX1433 at Appendix H.

291. Feefo has threatened Bazaarvoice at well-known customers such as Expedia. DX0842. Bazaarvoice considered Feefo’s partnership with Expedia to be a competitive “threat to [Bazaarvoice’s] relationship,” because Feefo was “collecting reviews on the overall Expedia UK booking process and site.” DX0842 at BZ-01970277.

DX0901.

DX0880 at BZ-02083446.

Giannoni Tr. 55:6-

25.

d. Gigya

292. **Background.** Gigya, a provider of social commerce functionality, was founded in 2007. Tarkowski Tr. 9:17-22. Gigya defines social commerce as “allowing a

website audience to be able to engage with that website in some way, shape or form.” Tarkowski Tr. 10:17-25.

293. Gigya sells its R&R technology to retailers, brands, and “any [other] company who would like to purchase it.” Tarkowski Tr. 58:3-8, 60:19-61:4. This includes “media, publishers, retail, e-commerce, travel hospitality and brands,” as well as hotels, airlines, online booking engines, customers in the “entertainment vertical,” and automobile manufacturers. Tarkowski Tr. 60:19-64:10, 78:20-79:12.

294. Gigya believes that there are more than 5,000, and “perhaps” more than 10,000 customers that can purchase and deploy Gigya’s technology, including its R&R functionality. Tarkowski Tr. 53:17-55:4.

295. [REDACTED] Tarkowski Tr. 9:23-10:4. In June 2012, Gigya received additional venture capital funding. DX0900.

296. **Gigya’s customers.** Gigya has approximately [REDACTED] of its overall solution, approximately [REDACTED] of which are outside of the United States. Tarkowski Tr. 72:6-15. The provision of Gigya’s social suite outside of the United States is not different from the provision of the social suite in the United States. Tarkowski Tr. 72:16-73:1. The same is true for R&R technology as a standalone application. Tarkowski Tr. 72:16-73:1.

297. As of June 2013, Gigya had numerous current customers who had implemented its R&R solution, and many more projects “In Progress.” DX1728. [REDACTED]
[REDACTED] Tarkowski Tr. 65:9-17, 84:6-85:6; D. Green Tr. 32:4-33:2; Levin Tr. 93:21-95:2; DX0374 at BZ-00607547; DX1194 at GIGYA067789.; Trial Tr. 1201:1-8.

298. Gigya counts numerous high profile brands and retailers among its social commerce customers, including Verizon, Pepsi, Mobil, L’Oreal, 7 Eleven, New Balance, J Brand, Crocs, Dell, and Barneys New York. DX1895 at 4; DX1547 at 1 (Verizon).

299. **Gigya offers a robust social suite product.** Gigya began as a social sign-on vendor, but has expanded its offering to include R&R. May Tr. 13:2-13:23; Tarkowski Tr. 12:20-22. Gigya refers to its bundle of social commerce functionality as a social suite. Trial Tr. 609:4-5. Today, Gigya’s social suite includes social log-in, sharing, comments, R&R, activity feed, chat, and gamification. Trial Tr. 609:4-610:3.

300. The purpose of Gigya’s R&R solution is “twofold.” Tarkowski Tr. 12:23-13:2. The “consumer purpose” allows the consumer audience to see other consumers’ perspectives about the quality or capability of a particular product. The “business purpose” allows the consumer audience to give feedback to the business about the product it is selling. Tarkowski Tr. 12:23-13:9. Gigya’s “search-friendly” R&R solution, introduced in July 2011, is comprised of three parts: “social log-in, reviews, and gamification-for maximum ROI.” DX1453; DX1454; DX1575.

301. Gigya's tools allow UGC to be created, the ability to comment on a website, the ability to chat on a website, the ability to share content from a website, and the ability to see what others are doing on that website. Tarkowski Tr. 12:6-17.

302. [REDACTED] Tarkowski Tr. 24:18-25, 37:14-38:13; DX1169 at GIGYA004724. Gigya's target audience "tend[s] to want to single source technology purchases with one vendor versus multiple vendors. So with [Gigya's] suite approach, [it has] gone to market allowing . . . that product to be available and to differentiate from competitors." Tarkowski Tr. 16:10-25.

303. Gigya's single suite solution is attractive for customers looking to reduce the number of vendors it deals with. This allows customers to streamline vendor management and website development. Tarkowski Tr. 17:1-10. It is more efficient to use website code from one vendor because "these technologies work together seamlessly already, whereas individual technologies oftentimes require additional work to make . . . multiple technologies work together or talk together seamlessly." Tarkowski Tr. 17:11-20. In addition, having only one vendor's source code on a website can improve the quality of experience on the website because it "allow[s] for a user to have a more efficient experience on that website." Tarkowski Tr. 17:21-18:4.

304. Customers value Gigya's social suite. Trial Tr. 610:4-611:21.

305. **Gigya's competitive advantages.** Gigya's social suite is competitive with Bazaarvoice's and other social commerce competitors' offerings. Gigya believes that its social suite is a competitive differentiator against Bazaarvoice and PowerReviews and has enabled Gigya to win business against Bazaarvoice. Trial Tr. 606:23-607:5; Tarkowski Tr. 20:1-14.

[REDACTED] DX1194 at GIGYA067789.

[REDACTED] DX1168; Trial Tr. 611:10-611:21, 613:19-614:10. Gigya also competes against "Facebook, Google, Twitter, Janrain, 8thBridge, Social Annex, Reevo, Life Fire, Disqus." Trial Tr. 606:23-607:2.

306. Bazaarvoice perceives Gigya's advantages, commenting, "[w]e've been playing this price vs. value game since the beginning, but our competitors are getting a wider breadth of capabilities this time around." DX0807 at BZ-0189116.

307. Gigya believes it has many competitive advantages against Bazaarvoice, including:

- [REDACTED] DX1169 at GIGYA004724.
- Gigya's social log-in tool for a single point of authentication is a competitive advantage over Bazaarvoice. Tarkowski Tr. 38:10-13. It

facilitates a “more efficient or seamless user experience.” Tarkowski Tr. 24:18-25:7.

- [REDACTED] Tarkowski Tr. 34:24-35:20; DX1169 at GIGYA004724.
- [REDACTED] DX1169 at GIGYA004724. Gigya’s reporting and analytics can be “integrated with more robust website analytics technologies” than Bazaarvoice. Tarkowski Tr. 39:21-40:5.
- [REDACTED] Tarkowski Tr. 34:24-35:20, 35:9-20; DX1169 at GIGYA004724. One customer told Bazaarvoice that the annual cost of a bundle of Gigya’s services (including R&R) was “less than our annual cost with Bazaarvoice” for R&R alone. DX1404.
- Gigya’s gamification functionality helps customers “maximize the investment that they make.” Tarkowski tr. 25:8-23. Bazaarvoice does not offer this functionality. Tarkowski Tr. 25:8-26:1.
- [REDACTED] DX1169 at GIGYA004724. [REDACTED] Tarkowski Tr. 38:14-39:9; DX1169 at GIGYA004724.
- [REDACTED] Tarkowski Tr. 34:24-35:20; DX1169 at GIGYA004724.

308. Gigya believes that it offers a very competitive R&R product that is well-positioned to compete effectively against Bazaarvoice. Tarkowski Tr. 80:2-81:6. Gigya offers many of the same features as Bazaarvoice and PowerReviews including:

- the ability to offer a “customized” syndication service. May Tr. 30:15-31:5.
- moderation services for R&R, including human moderation services through its partner eModeration, which uses Gigya’s moderation technology and eModeration staffers. Tarkowski Tr. 27:14-28:15. eModeration also uses its staff to provide moderation services for vendors other than Gigya. Tarkowski Tr. 28:16-23.
- a comments plug-in, which allows users to give feedback similar to that obtained through its R&R tool by sharing a comment on a webpage. Tarkowski Tr. 13:22-14:4.

- reporting and analytics that allow “a website owner or operator to understand what their audience is doing on that website; so how they perhaps use technologies or view products, or the length of time with which they spend on a page, the number of web pages that they view.” Tarkowski Tr. 14:11-24. Gigya’s analytics provide “quantitative and qualitative data around the engagement that users have with the Gigya plug-ins,” including R&R. Tarkowski Tr. 30:4-11.
- Gigya’s Identity Access, a standard part of its suite, allows customers to segment their user data based on users engaging with the Gigya plug-ins or the client’s website. Tarkowski Tr. 30:16-32:4; DX1659.

309. **Competition from Gigya impacts Bazaarvoice and benefits customers.** Bazaarvoice and Gigya view each other as significant competitors in the social commerce industry, and continue to compete vigorously post-merger. Tarkowski Tr. 50:8-20.

310. [REDACTED] DX1176. Gigya stated that its ability to offer a social suite has helped Gigya win business against Bazaarvoice. Tarkowski Tr. 20:7-10.

311. Bazaarvoice and Gigya documents illustrate healthy competition between the two providers. DX0374 at BZ-00607547; DX0821; DX0269; DX0608 at BZ-01291865; DX0916; DX0837; DX0196; DX0900; DX0919; DX0513 at BZ-00917869; DX0371 at BZ-00603592.

312. Customers are using Gigya as leverage post-merger. Trial Tr. 1058:8-12.

313. Bazaarvoice has offered to adjust the parameters of potential deals after learning that customers were considering Gigya. Trial Tr. 611:19-611:21, 619:1-619:10, 622:22-622:24; DX0391. In March 2013, Bazaarvoice noted that, “Gigya is now present in every new deal and making it painful for [Bazaarvoice] in existing clients too . . .” DX0371. In June 2012, Gigya was “getting more competitive,” and “underpricing us on deals jut [sic] as PR has historically done.” DX0853 at BZ-0197734. Bazaarvoice described Gigya as its “enemy” and said they were “becoming increasingly problematic for us in sales cycles.” DX0853 at BZ-01977386; DX0889 at BZ-02090790.

314. [REDACTED]

DX1192.

DX1175.

Tarkowski Tr. 48:8-50:20; DX1175.

315. Gigya has competed successfully for former Bazaarvoice customers including Pacific Sunwear, New Era Portfolio, and The Clorox Company. Trial Tr. 1201:1-8; DX0900; Tarkowski Tr. 65:1-66:6; D. Green Tr. 32:12-34:8; Levin Tr. 94:9-95:2; DX0374 at BZ-00607547. Gigya competed with Bazaarvoice for business from Barnes & Noble, [REDACTED] World Kitchen, Ink Technologies, InterContinental Hotel Group. Trial Tr. 1358:17-1359:7, 1288:25-1289:9; Davis Tr. 14:23-15:22; Tarkowski Tr. 75:9-76:1; Rowland Tr. 25:8-16; Morgan Tr. 11:1-12:18; DX0249; DX0335; DX0370; DX0593; DX0821; DX0608; DX0823; DX0837; DX0900; DX0285.

316. Several other brands and retailers testified to having considered using Gigya's R&R solution, including David's Bridal, Astral Brands and The Buckle. Trial Tr. 1345:1-21; DX1432 at 56; Pierson Tr. 39:22-40:7, 37:10-38:13.

317. Several current Bazaarvoice customers, such as Hayneedle, The Vitamin Shoppe and B&H Photo, testified that they consider Gigya to be a viable R&R alternative and would consider using them. Trial Tr. 1631:18-23, 1634:19-1635:6, 1636:12-17; Beebe Tr. 33:3-33:12; Meisels Tr. 20:21-21:15, 39:19-40:5.

e. Lithium

318. **Background.** Lithium, founded in 2001, provides social commerce software. Schuster Tr. 16:10-19. [REDACTED] Schuster Tr. 16:20-17:3.

319. [REDACTED] DX0191.

320. [REDACTED] Schuster Tr. 16:12-19, 110:4-11. Lithium's platform includes "forums and blogs and ideas and Q&A and contests, tribal knowledge base, [R&R], and rich media sharing." Schuster Tr. 19:18-20:7.

321. [REDACTED] Schuster Tr. 106:15-108:1.

322. Lithium has approximately [REDACTED] using its Social Commerce Platform, which have included The Home Depot, Sephora, AT&T, Verizon, BestBuy, Lenovo, Staples, and Barnes & Noble. DX0344; DX0461 at BZ-00840875-78; Schuster Tr. 19:18-21.

323. **Lithium's competitive advantages.** Customers use Lithium's platform because it creates UGC that is used to "reduce cost of customer service delivery" and "increase top-line revenue." Schuster Tr. 58:12-20. Customers also benefit from Lithium's platform because it allows end users "to make the best possible product decisions." Schuster Tr. 70:19-71:4.

1 324. Lithium's platform includes a competitive R&R solution. Lithium introduced
2 R&R because it wanted to "create a bigger presence and story in the marketplace
3 beyond only discussing value after point of purchase." Schuster Tr. 26:9-19.

4 [REDACTED] Schuster Tr. 76:11-77:15;
DX1335 at USDOJ-TP-00000164.

5 325. [REDACTED] DX1550 at 1.

6 [REDACTED]
7 [REDACTED] DX1550 at 1; DX1206 at LITH0803.

8 326. [REDACTED] DX1206 at 3.

9 [REDACTED]
10 [REDACTED] Schuster Tr. 68:12-24.

11 [REDACTED] DX1206 at
12 LITH0803.

13 327. Lithium's R&R module [REDACTED]
14 (Schuster Tr. 25:19-21), and offers a wide range of functionality, including:

- 15 • Integration with the broader Lithium platform, which allows users to build
16 reputations that are visible on their profiles and that establishes those users
as credible when they write reviews. Schuster Tr. 94:19-95:10, 72:3-25.
- 17 • Integration with Adobe SiteCatalyst, a web analytics tools that measures,
18 among other data, unique visitors' page views, and click paths. Schuster
Tr. 80:4-82:24.
- 19 • Sorting of reviews by most helpful, least helpful, and most recent.
20 Schuster Tr. 66:3-67:9.

21 328. Lithium's social commerce product is competitive with Bazaarvoice's and other
22 competitors' social commerce solutions. Lithium believes it has a broader set of
capabilities than Bazaarvoice, which Lithium refers to as a "one-trick pony."
23 Schuster Tr. 119:3-24.

24 329. Lithium has developed specific reasons why customers should choose Lithium
25 over Bazaarvoice. Lithium advises customers that Lithium offers R&R as part of
a larger social commerce platform that includes Lithium's forums and
26 gamification products which are not offered by Bazaarvoice. Schuster Tr. 88:24-
90:14.

27 330. **Competition from Lithium impacts Bazaarvoice and benefits customers.**

28 [REDACTED] Schuster Tr. 67:5-9, 69:23-70:1, 70:7-14.

331. Lithium competes with Bazaarvoice and other social commerce solutions in numerous accounts. Trial Tr. 1331:9-16 (AutoZone considered Bazaarvoice, PowerReviews, Pluck, Lithium, and Jive for an R&R engagement); Heverley Tr. 27:8-22 [REDACTED]

[REDACTED] DX0094 at BZ-00075487 (GuitarCenter considered Lithium); Archambault Tr. 38:4-15 (Hydro-Photon considered social commerce tools from Pluck, Lithium, Yotpo, Storify and Reevo); DX1512 [REDACTED]

332. B&H Photo, an electronics retailer with \$1 billion to \$2 billion in annual sales in 2012, is in the process of evaluating Lithium for some of its social and community-based initiatives. Meisels Tr. 8:25-9:6, 20:12-20:20. B&H Photo is aware that Lithium offers “ratings and reviews amongst many other social capacities.” Meisels Tr. 20:12-20, 21:16-22:15, 39:19-23.

333. [REDACTED] DX0262 at BZ-00319567.

334. [REDACTED] DX0262; DX0624 at BZ-01328375 (Lithium “battle card”); DX0651 at BZ-01455665 (Lithium identified as one of “top competitors” in financial services sector); DX0594 at BZ-01268098 (Lithium’s new round of financing would permit it to make a “harder competitive run” at Bazaarvoice); DX0269 at BZ-00324735 (Lithium “making a bigger run at brands”); DX0344 (Bazaarvoice identified that the “[k]ey competitive issue” with Lithium’s release of a “powerful new ratings and reviews module” was that “Lithium is the community platform in dozens of [Bazaarvoice’s] accounts like Home Depot, Sephora, AT&T, Verizon, BestBuy, Lenovo, and many others.”).

f. Pluck

335. **Background.** [REDACTED]

[REDACTED] Crickmer Tr. 12:2-20, 26:8-27:5.

[REDACTED] Crickmer Tr. 20:12-23.

336. [REDACTED] Crickmer Tr. 23:23-24:6; DX1618 at 3; DX1460 at 16.

337. [REDACTED] Crickmer Tr.

1 24:19-25:10. [REDACTED]

2 [REDACTED] Crickmer Tr. 116:19-

3 117:2. [REDACTED]

4 [REDACTED] Crickmer Tr. 116:19-117:25.

5 338. [REDACTED]

6 [REDACTED] Crickmer Tr. 37:5-23, 40:5-43:15.

7 339. [REDACTED]

8 [REDACTED] Crickmer Tr. 33:25-36:23.

9 340. [REDACTED]

10 [REDACTED] DX1490; DX1501 at 2; DX1525 at 19; DX1619;
11 DX1737.

12 341. [REDACTED]

13 [REDACTED] Crickmer Tr. 21:18-23:7.

14 [REDACTED] Crickmer Tr. 22:11-23:7.

15 342. [REDACTED]

16 [REDACTED] Giannoni Tr. 92:25-93:18;

17 Crickmer Tr. 14:16-15:10, 27:24-28:19, 62:23-63:3, 69:3-71:21, 73:2-20, 74:3-23,
18 87:17-24, 94:8-97:6, 96:13-97:6, 104:1-15, 105:3-22, 106:8-107:4, 111:13-112:10,
19 113:13-20; G. Green Tr. 16:25-17:3; DX0380 at BZ-00620986; DX1412 at 1;
20 DX1445 at 2-3; DX1487 at 1-2; DX1497; DX1503 at 1; DX1617 at 14.

21 343. [REDACTED]

22 [REDACTED] Crickmer Tr. 108:24-110:2, 111:9-12.

23 [REDACTED] Crickmer Tr. 108:24-110:2.

24 [REDACTED] Crickmer Tr. 111:9-12.

25 344. [REDACTED]

26 [REDACTED] Crickmer Tr. 97:22-

27 [REDACTED] 99:17; DX1730 at 5. [REDACTED]

Crickmer Tr. 99:10-17; DX1730.

Crickmer

Tr. 98:13-99:9.

345. **Pluck's competitive advantages.**

Crickmer

Tr. 27:6-27:23.

Crickmer Tr. 31:24-32:14.

- [REDACTED] Crickmer Tr. 232:3-10; and

Crickmer Tr. 232:12-233:1.

346.

Crickmer Tr. 25:11-26:2,

129:6-130:1.

Crickmer Tr.

24:19-26:2, 129:6-130:23.

347. **Competition from Pluck impacts Bazaarvoice and benefits customers.**

Crickmer Tr. 130:2-23.

Crickmer Tr. 66:7-14.

Bazaarvoice has also made concessions to win the business of customers that threatened to switch to Pluck, including Crate and Barrel, Golfsmith, [REDACTED] Seebeck Tr. 31:9-14; Maki Tr. 21:18-24:18; DX1512 at 4; Trial Tr. 1215:22-25.

- B&H Photo considers Pluck to be a viable option for R&R. Trial Tr. 1856:19-21. Pluck's focus on a "broader" solution set resonated with B&H Photo, because as B&H Photo recognizes, customers are changing their behavior and sharing feedback more instantaneously than before. Trial Tr. 1855:3-1586:6.
- [REDACTED] DX1477.
- Golfsmith is "very impressed" with Pluck's R&R solution. Golfsmith feels that Pluck is stronger than Bazaarvoice in some areas, particularly in

1 tying all of the different tools together and offering “one unified
 2 experience” for the user. Maki Tr. 19:15-25; Trial Tr. 1214:20-1215:19.
 3 Bazaarvoice discounted Golfsmith’s price by over 25% after learning
 4 Golfsmith was considering Pluck. Trial Tr. 1216:1-3.

- 5 • [REDACTED]
 6 [REDACTED]
 7 [REDACTED] DX0321.
- 8 • Princess Cruises believes that, with respect to R&R functionality, it is hard
 9 to differentiate between Bazaarvoice and Pluck. Mansukhani Tr. 77:11-16.
 10 Princess Cruises ultimately picked Pluck over Bazaarvoice. Trial Tr.
 11 1750:4-11. Princess Cruises believed that the “robustness of [Pluck’s]
 12 platform . . . was better.” Mansukhani Tr. 73:10-19.
- 13 • Southwest currently uses Pluck’s R&R solution on its Travel Guide site,
 14 and TripAdvisor reviews on its Southwest.com site. Bruns Tr. 13:6-7,
 15 15:6-12; Trial Tr. 1674:16-1675:3, 1675:23-1676:4. Southwest selected
 16 Pluck over Bazaarvoice because “everything [Southwest] needed” was
 17 included in the Pluck platform, and because it came at a “reasonable cost.”
 18 Trial Tr. 1676:5-11.
- 19 • In 2013, Crate and Barrel, a Bazaarvoice customer, indicated it was
 20 “seriously considering” leaving Bazaarvoice and going with Pluck as a
 21 provider of R&R. Seebeck Tr. 29:20-30:24. Bazaarvoice gave Crate and
 22 Barrel [REDACTED] in order to keep its business. DX0921 at BZ-
 23 02229296.
- 24 • [REDACTED]
 25 [REDACTED] DX1512.
- 26 • [REDACTED]
 27 [REDACTED] Trial Tr. 2088:1-10; DX1009; Crickmer Tr. 74:3-23.
- 28 • [REDACTED]
 [REDACTED] DX1432 at 54.

348. [REDACTED]

Internally, Bazaarvoice recorded information about competitive threats in

documents termed “battle cards.” Svatek Tr. 54:15-18. Bazaarvoice’s battle card for Pluck recognized that Pluck’s “[r]eviews UI [“User Interface”] and functionality seems to be robust – includes trust multi-attribute ratings, social sharing, multimedia support, comments, voting and scoring, and some other things.” DX0624 at BZ-01328379.

349. In October 2012, Bazaarvoice learned that Pluck was “making a much bigger push back into Retail, even reemphasizing the Pluck name and talking about going after [Bazaarvoice] clients unhappy with the PowerReviews acquisition. Steve Semelsberger has new power and a mandate to be successful in retail.” DX0729.

g. Practical Data

350. Practical Data, founded in 2002, offers a social commerce platform that has features such as customer rewards and loyalty, R&R, Q&A, and specific solutions targeted at retailers that sell through Yahoo! Stores. Jimenez Tr. 5:20-22, 6:13-22. Practical Data’s customers seek multiple features from a single vendor so that “they’re not dealing with five different vendors for five different features.” Jimenez Tr. 27:12-28:2.

351. Practical Data has a “robust” R&R solution. Jimenez Tr. 11:3-5. Practical Data’s R&R solution features search engine friendly content, Google rich snippets, automated product review invitations, customer submits product ratings and reviews, buyer verification, administration/moderation, featured reviews, reviews sharing, merchant response, all of which integrate with Practical Data’s My Rewards system. DX1753 at 2.

352. Practical Data was profitable in 2011 and 2012. Jimenez Tr. 31:24-32:4.

353. Practical Data has a “very wide range of customers. The smallest are mom-and-pop shops that . . . maybe do a couple hundred thousand dollars a year in a store. The largest are . . . doing maybe 40 million a year.” Jimenez Tr. 48:17-49:1. Practical Data has several R&R customers from the IR500, including Jomashop.com, Mattress USA, PureFormulas.com, and Rock Bottom Golf. Jimenez Tr. 23:6-24:20; DX1631.

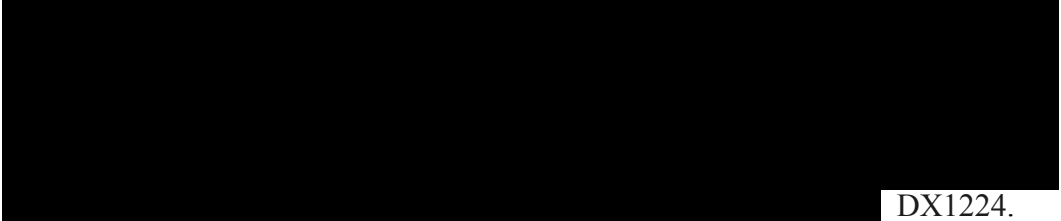
354. Practical Data’s customers are pleased with its products, including R&R. Jimenez Tr. 14:17-15:19; DX1755. For example, XO Group, number 393 on the IR500 in 2012, uses Practical Data for R&R on its Groomsmen’s Gifts site. Openshaw Tr. 20:15-18; DX1579. XO Group considers Practical Data’s R&R solution to be “excellent.” Openshaw Tr. 27:3-16. Practical Data’s R&R solution suits XO Group’s needs. Openshaw Tr. 54:8-14. XO Group would consider Practical Data’s R&R solution for its other e-commerce properties. Openshaw Tr. 54:8-18.

355. [REDACTED] DX1224. Practical Data considers PowerReviews to be its primary competitor. Jimenez Tr. 16:10-18. Practical Data’s R&R solution and PowerReviews’ R&R solution are “similar products in a lot of ways.” Jimenez Tr. 16:25-17:11. The “primary

differentiator” between itself and PowerReviews is that Practical Data has 20 different modules in its platform that work together. Jimenez Tr. 18:25-19:24.

356. Practical Data has a lower-priced R&R solution than PowerReviews, which helps it win customers against PowerReviews. Jimenez Tr. 21:7-13.

357.  DX1220 at PD00104; Jimenez Tr. 28:22-29:22.

358.  DX1224.

359. Practical Data also competes with Bazaarvoice and customers have switched from Bazaarvoice to Practical Data. Jimenez Tr. 16:19-24, 51:23-52:1.

h. Rating-System

360. **Rating-System.** Rating-System is an e-commerce software company that offers R&R, Q&A and other functionality. Trial Tr. 1305:7-1308:18. Rating-System was founded in 2008 by Sergiy Bruksha. Trial Tr. 1304:19-20.

361. Rating-System is operated by Mr. Bruksha, who also works as a director of engineering at Men’s Warehouse. Trial Tr. 1304:14-18. Rating-System does not have any full-time employees. From time to time, Mr. Bruksha employs part-time employees and contractors based in the Ukraine. Trial Tr. 1325:2-21.

362. Rating System is profitable. Trial Tr. 1313:11-24; DX1410.

363. Rating-System’s R&R was easy to develop and monetize. Mr. Bruksha developed Rating-System’s R&R software by working part-time on the code for six months. Trial Tr. 1305:14-23.

364. On May 2, 2013, a search on Google for “ratings and reviews software” displayed a link to Rating System as the first unpaid result. DX1699.

365. Rating-System offers content moderation, detailed reporting and analysis, follow-up email functionality, review tags, key words, abusive word filter, and shopping cart integration, among other services. Trial Tr. 1306:11-1308:9. Rating-System also offers SEO-friendly R&R functionality. Ink Technologies, a Rating-System customer, has been impressed with the “SEO friendly” nature of the Rating-System’s R&R solution, and with how quickly the Rating System solution allowed Ink Technologies to accumulate a “critical mass” of reviews. Davis Tr. 33:21-35:4, 22:9-23:17.

- 1 366. Rating-System will customize its R&R solution based on specific client requests.
2 Trial Tr. 1313:6-10.
- 3 367. Rating-System has continued to develop features to its R&R platform since it was
4 launched in 2008. Trial Tr. 1304:21-1305:10. Rating-System regularly innovates
5 new features for its R&R solution. Trial Tr. 1305:7-10. Rating-System intends to
6 continue offering its R&R solution, and to develop new and additional features.
7 Bruksha Tr. 69:17-25.
- 8 368. **Rating-System's competitive advantages.** Rating-System's R&R functionality
9 "match[es] completely" with Bazaarvoice. DX1410; Hughes Tr. 56:24-57:3,
10 58:3-8 (Astral Brands believes that Rating-System provides the same
11 functionality as Bazaarvoice for R&R and Q&A).
- 12 369. Customers switch from PowerReviews or Bazaarvoice to Rating-System because
13 Rating System offers a better price. Trial Tr. 1309:11-1310:8; Hughes Tr. 56:24-
14 57:3, 58:3-8 (Astral Brands believes that Rating-System offers a "comparable
15 product" to Bazaarvoice for Astral Brands' purposes, "but at a lower price");
16 Davis Tr. 15:7-15:18 (Ink Technologies chose Rating-System for R&R because it
17 had the "core features" Ink Technologies was looking for "at the lowest price for
18 that particular functionality").
- 19 370. Rating-System provides clients with different pricing options, ranging from a free
20 plan to a platinum plan for \$150 per month. Rating-System's free R&R solution
21 allows its customers 20,000 page views as well as moderation and seamless
22 customization. Bruksha Tr. 30:14-31:2; Trial Tr. 1308:18-1309:7. Rating-
23 System also offers a silver plan for \$30 a month, a gold plan for \$65 a month, and
24 a platinum plan for \$150 a month. Each plan has each of the features and benefits
25 of the more basic plan and also additional features and benefits. Bruksha Tr.
26 36:15-37:12.
- 27 371. Customers can convert from the basic free plan to a different plan at anytime.
28 Trial Tr. 1309:1-4. On more than one occasion, a Rating-System customer using
the free R&R solution has subsequently become a paid subscriber. Trial Tr.
1308:23-1309:4. Rating-System's customers do not have annual contracts and can
cancel their subscription to the service at any time. Davis Tr. 22:2-8.
372. **Competition from Rating-System impacts Bazaarvoice and benefits
customers.** B&H Photo, a current PowerReviews customer, has met with Rating-
System to discuss its R&R and other functionality. Trial Tr. 1853:22-1854:14.
B&H Photo would consider switching from PowerReviews to Rating-System and
customizing Rating-System's functionality to meet B&H Photo's specific needs.
Trial Tr. 1857:20-1858:9.
373. Rating-System has more than 50 paying clients as of April 2012. DX1388. As of
that date, Rating-System listed 30 "Featured Clients" on its website, including
pet-super-store.com, Woolovers, Dentisoft, KitchenAid, Ink Technologies,
BUDK, Promega, Fitness Superstore, and Hermes. DX1713. Rating-System also

provides R&R to Astral Brands, pet-super store, Wheelchairs, Cosmedix, and Purminerals. Hughes Tr. 31:11-32:11, 63:18-23; Trial Tr. 1309:11-25.

374. Rating-System's customers are satisfied with its R&R solution and highly recommend it. Bruksha Tr. 69:6-12; Trial Tr. 1343:5-8 (Astral Brands has been satisfied with Rating-System as a provider of R&R and Q&A); Davis Tr. 20:17-20:19 (Ink Technologies is satisfied with Rating-System as a provider of R&R).

375. Rating-System's client roster has facilitated its acquisition of new customers. Astral Brands selected Rating-System, in part, because it has a number of recognizable brands as customers. Hughes Tr. 75:5-76:4.

i. Ready Pulse

376. ReadyPulse, founded in 2010, is a social content marketing platform that offers four different products: social promotions, social testimonials, social reviews and social analytics. O'Malley Tr. 6:21-23, 7:18-8:6.

377. [REDACTED] DX1518.

378. [REDACTED] DX1518.

379. [REDACTED] DX0732 at BZ-01705086.
[REDACTED] DX1718.

j. Reevo

380. **Background.** [REDACTED]
Giannoni Tr. 8:4-6, 52:17-22.
[REDACTED]
Giannoni Tr. 8:20-25, 52:17-22.

381. [REDACTED] DX1432 at 51-53;
Yudin Tr. 21:19-21; Masciola Tr. 43:8-25.

382. Reevo markets itself as an "independent third party," impartial reviews provider, versus being more a white label, "like a typical Bazaarvoice solution." Giannoni Tr. 94:18-97:2.

383. Gartner, a third-party research firm, named Reevo a "cool vendor" in 2013, which was a substantial recognition for Reevo. Giannoni Tr. 130:9-131:6.

384. [REDACTED] Giannoni Tr. 54:11-16. [REDACTED]

1 [REDACTED] Giannoni Tr. 54:17-
2 55:2.

3 385. [REDACTED]
4 [REDACTED] Masciola Tr. 57:9-17; Giannoni Tr. 41:7-16, 42:8-43:8, 45:7-17,
5 84:7-85:6, 85:16-86:5; DX0654 at BZ-01460575; DX0777 at BZ-01850284;
6 DX0673.

7 386. **Reevoo has an R&R solution equal to if not better than PowerReviews.**
8 [REDACTED]
9 [REDACTED] DX1267 at ReevooCID-07561.

10 387. Customers like CableOrganizer and Hayneedle consider Reevoo's solution similar
11 or "superior" to PowerReviews' solution. Ribero Tr. 36:23-37:6; Trial Tr.
12 1635:17-20. Similarly, B&H Photo describes Reevoo "doing a good job on
13 reviews." Reevoo's "differentiation point," according to B&H Photo, is that it is
14 "very innovative on how to get customers to respond to reviews" and "share their
15 experiences." Trial Tr. 1856:22-1857:16.

16 388. Reevoo believes it has "a better syndication model" than Bazaarvoice. Giannoni
17 Tr. 94:18-97:21. [REDACTED]
18 [REDACTED] DX0686 at BZ-
19 01597172, BZ-01597182.
20 [REDACTED] DX1161 at 16.

21 389. Bazaarvoice documents show that the Company considered Reevoo's positioning
22 regarding syndication "a serious threat," particularly for brands "that don't have a
23 healthy amount of volume on their own site." DX0775 at BZ-01848009.

24 390. Reevoo is the only company that syndicates Q&A content, in addition to R&R,
25 and that functionality "drives a high conversion factor." Giannoni Tr. 94:18-
26 97:21.

27 391. [REDACTED]
28 [REDACTED] Giannoni Tr. 25:13-26:9, 138:14-139:3.

392. Bazaarvoice learned through a competitive assessment that "[c]ustomers find it
difficult to differentiate between [Bazaarvoice] and Reevoo, on the face of it, the
features appear extremely similar. If pitched feature to feature, Bazaarvoice is not
extremely likely to win." DX0806 at BZ-01887569.

393. Bazaarvoice believed that Reevoo's strengths include: "[a]ffordable entry price";
"[e]ase of installation/implementation (very lightweight, almost completely web
service with just the drop of JS code)"; "[s]implicity of the presales process (due
to the simplicity of implementation)"; "[e]ase to syndicate content." DX0806 at

BZ-01887569. Other Bazaarvoice documents note Reevo as a “Direct Competitor.” DX0624 at BZ-01328382.

394. **U.S. Expansion.** Reevo sells its products “around the globe” [REDACTED] Giannoni Tr. 40:5-23. [REDACTED] Giannoni Tr. 84:16-85:23. Reevo considers a United States account to be one in which “the decision process was primarily made here, as well as the actual signature.” Giannoni Tr. 90:5-14. [REDACTED] Giannoni Tr. 84:10-85:3.
395. Until summer 2012, Reevo operated primarily in Europe, where Bazaarvoice saw it as its main competitor. DX0878 at BZ-02075908; DX0701 at BZ-01649497. In August 2012, Reevo announced that it would be opening offices in the United States and Australia. DX0377; DX0711.
396. Reevo expanded its sales operations to the United States in September 2012 by opening an office in Miami, after Bazaarvoice acquired PowerReviews. Giannoni Tr. 8:2-19; DX1741 at 1; DX0711 at BZ-01675541. Reevo hired Gary Giannoni (a former PowerReviews employee) in September 2012 to “[s]tart up the U.S. sales and marketing efforts.” Giannoni Tr. 8:2-19. [REDACTED] Giannoni Tr. 73:12-18, 74:25-75:5.
397. [REDACTED] Giannoni Tr. 32:22-33:5, 34:21-24. [REDACTED] Giannoni Tr. 81:22-83:22. [REDACTED] Giannoni Tr. 61:18-62:21. [REDACTED] DX1267 at ReevoCID-07561.
398. [REDACTED] Giannoni Tr. 41:7-16.
399. In early 2013 Reevo partnered its R&R solution with IBM Smarter Commerce, which facilitates integration of Reevo solutions with the IBM e-commerce platform. The integration with IBM is a “big deal” because “IBM has a lot of clout within the industry” and “make[s] it easier” for Reevo to “get into” customer accounts and “close the deal.” Giannoni Tr. 131:7-134:7. Reevo exhibited its R&R functionality at the IBM Smarter Commerce Summit in Nashville, Tennessee in May 2013. DX1432 at 51.
400. **Competition from Reevo impacts Bazaarvoice and benefits customers.** [REDACTED] Giannoni Tr. 13:16-19, 55:6-10. [REDACTED]

1 [REDACTED] and Bazaarvoice and
 2 PowerReviews business documents reflect ongoing concern about the competitive
 3 threat from Reevo. DX0711; DX1012; DX0853 at BZ-01977386; DX0624;
 DX1160.

4 401.

5 [REDACTED] Giannoni Tr. 75:23-25, 76:9-77:18.

6 [REDACTED]
 7 [REDACTED] Giannoni Tr. 30:20-32:9.
 8 [REDACTED]

9 [REDACTED] DX1767.

10 402.

11 [REDACTED] Giannoni Tr. 30:20-32:9; DX1545.

12 403. Bazaarvoice recognized they were “in a dog fight [with Reevo] and need to face
 13 the Reevo dog head on.” Bazaarvoice recognized that “Reevo [was] in a very
 14 strong position,” and Bazaarvoice “ha[d] an uphill battle to climb.” DX0263 at
 BZ-00320976-77. In documents from October 2012, Bazaarvoice acknowledged
 that Reevo began “aggressively targeting [Bazaarvoice’s] client base.” DX0775
 at BZ-01848010.

15 404. From August to September 2012, like Menlogeddon before it, Bazaarvoice
 16 prepared training materials to help the Bazaarvoice sales teams compete against
 17 Reevo. The documents show that the Bazaarvoice training materials “go in-
 18 depth about Reevo’s products, how they position themselves (both in the EU and
 19 in the US so far), and how to deal with them.” DX0711 at BZ-01675541;
 20 DX0377. In October 2012, Bazaarvoice analyzed Reevo’s North American
 activity and determined that “[a]ll accounts should be considered threatened.”
 DX0718 at BZ-01682474. Bazaarvoice was concerned that Reevo was “trying
 to give things away for free to take our customer base.” DX0743.

21 405. Bazaarvoice outlined a plan to defend its business against Reevo. DX0719.

22 [REDACTED] DX0692 at BZ-

23 016081866.

24 [REDACTED] DX0712 at BZ-01676975.

25 406.

26 [REDACTED]
 27 [REDACTED] DX0654; DX0673; DX0263; DX0853; DX0352 at BZ-
 28 00555386; DX0777; DX0795; DX1229; Masciola Tr. 57:9-17; Davis Tr. 14:23-

15:6; Morgan Tr. 11:1-12:18; Trial Tr. 1359:2-1360:11; Yudin Tr. 43:6-44:24; DX1159; DX0681; DX0686; DX0816; DX1433 at ¶ 117; DX090; DX0713.

407.

Masciola Tr. 26:1-12, 58:18-59:2; Callahan Tr. 24:14-17; DX1738 at ReevoocID-00006543.

408.

Bazaarvoice has made concessions to current or potential customers in response to Reevoos competitive presence. These customers include: Yudin Tr. 17:13-21:3; DX1433 at ¶ 124; DX0691; DX0654 at BZ-01460575; DX0353; DX0715.

409.

Many customers acknowledge Reevoos as an alternative option for R&R, including Blinds.com, Build.com, The Clorox Company, Jockey, B&H Photo, CableOrganizer, Hayneedle, Hydro-Photon, OneStopPlus, IHG, Cotlar Tr. 95:1-96:6 (Blinds.com); Friedland Tr. 21:8-21 (Build.com); Trial Tr. 315:1-9 (The Clorox Company); Smith Tr. 25:5-26:2 (Jockey); Meisels Tr. 22:2-9 (B&H Photo); Ribero Tr. 36:7-37:6 (CableOrganizer); Trial Tr. 1631:18-23, 1635:17-1636:17 (Hayneedle); Tanini Tr. 17:16-19:5 (OneStopPlus); Archambault Tr. 38:4-17 (Hydro-Photon); Trial Tr. 1359:17-1360:11 (IHG);

410.

Giannoni Tr. 55:6-25, 63:9-64:2, 66:13-25; 72:22-73:11, 92:25-93:18; DX1153 at DOJ-BV00004586.

411.

Giannoni Tr. 67:6-9. Giannoni Tr. 67:25-68:22.

412.

DX1153 at DOJ-BV00004586. Giannoni Tr. 56:9-18. DX0820 at BZ-01897184; DX0861 at BZ-01988525.

k. TurnTo

413.

Eberstadt Tr. 10:5-6, 13:6-9. In November 2012, TurnTo announced the launch of three major enhancements to its Social Q&A platform for online retailers: Checkout Chatter, Brand & Store Experts, and Mobile Site Support. DX1572.

- 1 414. [REDACTED] Eberstadt Tr. 148:13-18.
 2 [REDACTED] Eberstadt Tr. 148:13-149:21.
- 3 415. TurnTo founder George Eberstadt has described social commerce as follows:
 4 “after 10 years of very modest innovation in e-commerce, all of a sudden, the
 5 innovation level is just exploding - new business models, new shopping tools,
 6 better shopping experiences . . . the macro trend is innovation. . .” DX1403 at 5.
- 7 416. [REDACTED] Eberstadt Tr. 171:9-13, 172:7-
 8 12; DX1293.
 9 [REDACTED] DX1293.
 10 [REDACTED] Eberstadt 39:16-
 11 18, 171:9-13; DX1295 at 1.
- 12 417. TurnTo’s social commerce offering is competitive with Bazaarvoice’s and other
 13 competitors’ social commerce solutions. Following the acquisition, the
 14 documents show that PowerReviews was “starting to see Gigya, TurnTo, 500
 15 Friends, and 8th Bridge more.” Bazaarvoice observed that the acquisition “has
 16 fueled the fire for others.” DX0269 at BZ-00324735.
- 17 418. [REDACTED] DX1126 at BZ-02432863. TurnTo won in competition
 18 against Bazaarvoice for business from [REDACTED]
 19 DX0876; Beebe Tr. 14:4-8. [REDACTED] DX1493 at 3.
- 20 419. [REDACTED] DX1512 at 4.
- 21 420. [REDACTED]
 22 [REDACTED]
 23 DX1846 at TT-00005403.
- 24 421. W.W. Grainger, one of Bazaarvoice’s customers, met with TurnTo and was
 25 “impressed by their ability to proactively reach out to people who had purchased
 26 the product in the past to solicit answers for unanswered & answered questions.”
 27 The customer asked Bazaarvoice to add similar functionality to its product.
 28 DX0761 at BZ-01764232.
422. Brands and retailers such as Lovesac and Blinds.com have reviewed TurnTo’s
 social commerce tools, and consider them a viable social commerce provider.
 Johnson Tr. 37:8-24 (Lovesac); Cotlar Tr. 28:2-11 (Blinds.com).

1 *l. Viewpoints*

- 2 423. Viewpoints is a social commerce vendor with approximately 25 employees and
3 was founded in 2006. Moog Tr. 9:22-10:6. Viewpoints had approximately \$4.5-
4 \$5 million in revenues in 2012, and was profitable. Moog Tr. 15:21-23, 16:6-7.
- 5 424. Viewpoints has an R&R offering. DX1433 at ¶¶ 131, 133-34. Viewpoints.com is
6 a product R&R website built using “custom software” to collect users’ “reviews
7 of products that they’ve used.” Moog Tr. 12:2-7; 12:23-13:6, 89:10-20; DX1804.
- 8 425. Viewpoints social commerce product is competitive with Bazaarvoice and other
9 social commerce tools vendors. Moog Tr. 35:25-36:16. Viewpoints successfully
10 competed to replace Bazaarvoice on several websites operated by Sears. Moog Tr.
11 25:11-26:2, 27:6-25; DX1804. Viewpoints replaced Bazaarvoice R&R on
12 Sears.com, Kmart.com and Craftsman.com with the Viewpoints solution.
13 Viewpoints provided Sears with R&R, SEO, syndication, and other commerce
14 features. Moog Tr. 25:11-26:2, 27:6-25. When Viewpoints implemented its
15 R&R solution for Sears, Bazaarvoice executives commented “I want us to pay
16 close attention to this competitor . . . this is going to be one of our tougher ones to
17 beat.” DX0226 at BZ-00228101.
- 18 426. Viewpoints licensed VTP to Overstock.com, JC Whitney, and Inc. Magazine.
19 Moog Tr. 35:25-36:24; DX1804. Bazaarvoice offered to give JC Whitney R&R
20 solution “for free to prevent them from switching.” Moog Tr. 35:25-36:24,
21 39:13-40:5; DX1804
- 22 427. Viewpoints also competed with Bazaarvoice for many retail clients including
23 Petco, Dell, Hayneedle, The Home Depot, and Overstock. DX1343; Trial Tr.
24 1629:14-23.
- 25 428. Viewpoints competed with Bazaarvoice, who “were pricing well below what we
26 were attempting to sell our solution for.” Moog Tr. 41:4-12; DX1804 at BZ-
27 0079569. Prior to its acquisition of PowerReviews, Bazaarvoice observed that
28 “[c]ompetitive pressures [we]re shifting towards Viewpoints and Reevo and
 away from PowerReviews.” DX0426. Bazaarvoice described Viewpoints as a
 competitive threat on three levels: 1. Search, 2. SNA/ActiveProfiles/Integrated
 Social Shopping, 3. Interaction Suite. DX0525 at BZ-00982316.
429. Viewpoints competed with PowerReviews for other retail clients, including
 Drugstore.com, Brookstone, and Walgreens. DX1343. Viewpoints competed
 with Bazaarvoice, Pluck, and Reevo for Crate & Barrel. Seebeck Tr. 24-10-15.
430. Viewpoints competed with in-house R&R solutions, including from Cooking.com
 and Orbitz.com. Cooking.com decided to develop R&R technology in-house.
 Moog Tr. 88:5-89:9.
431. Viewpoints could easily reintroduce its “Cadillac” R&R platform today. If prices
 for R&R solutions were to increase, Viewpoints would begin selling its advanced
 VTP system again. Moog Tr. 72:13-73:9, 94:11-22. Viewpoints could introduce

a commercially viable R&R product in approximately “[s]ix months to a year.” Moog Tr. 74:11-24.

432. Viewpoints has an API that allows syndication of reviews from Viewpoints.com to other sites. Moog Tr. 50:6-51:25; DX1804; DX1433 at ¶ 134. Viewpoints.com contains approximately 450,000 reviews, which are available for syndication. Moog Tr. 80:23-81:11.

m. Yotpo Ltd. (“Yotpo”)

433. Yotpo is an R&R provider based in Israel. DX1400 at ¶¶ 1, 3. Yotpo describes itself as a “thriving” “plug-and-play social ratings and reviews solution ... for small to medium sized e-commerce websites.” DX1400 at ¶ 3. In 2012, Yotpo received \$1,400,000 in financing. DX1400 at ¶ 6.

434. Yotpo’s R&R “enables shoppers to read and write trusted social reviews, get automatic reminders to write reviews, and have an automatic review loyalty program.” DX1400 at ¶ 4. Yotpo’s R&R solution integrates with and is available as a plug-in for “most major eCommerce platform, including Magento, Volusion, Shopify and BigCommerce.” DX1400 at ¶ 7; DX1433 at ¶ 171; Arbogast Tr. 11:3-21.

435. Yotpo has over 3,000 website customers around the world. DX1400 at ¶¶ 9, 11. Yotpo estimates that it adds about 10-20 websites each day. DX1400 at ¶ 9. Yotpo sells R&R products to U.S. customers. Over half of Yotpo’s customers are based in the United States. DX1400 at ¶ 11. U.S. customers include Birdsafe, Juice Nashville and The Lotus Leaf. Arbogast Tr. 11:3-12; Waring Tr. 11:17-21; DX1433 at Appendix H.

436. In the latter half of 2012, Yotpo took “at least two accounts” away from PowerReviews. DX1400 at ¶ 13. Birdsafe, a former PowerReviews’ customer, uses Yotpo for R&R. Arbogast Tr. 9:16-10:4, 11:3-21.

437. When choosing Yotpo as its R&R vendor, Drums on Demand was aware of Bazaarvoice as an alternative. Randle Tr. 31:6-32:9. Drums on Demand selected Yotpo because it was free for companies of Drums on Demand’s size, because of its social media features, and because of its advanced review ranking that prioritizes verified buyers, customers, and reviewers. Randle Tr. 18:20-19:9, 20:4-25.

438. Yotpo’s customers are satisfied with its R&R solution. Randle Tr. 14:3-16:19 (Drums on Demand is “very pleased” with Yotpo’s R&R solution); Waring Tr. 21:9-14 (Juice Nashville thinks Yotpo’s reviews are high quality, and Yotpo has “done an excellent job”).

iii. E-Commerce Platforms are growing competitive threats

a. Amazon Webstore

439. Amazon has an e-commerce product called Amazon WebStore. The Amazon WebStore platform includes built-in R&R functionality that is offered to customers for free. Sell Tr. 15:16-18, 42:22-43:1; Trial Tr. 1466:1-14, 660:3-23; DX1735 at 32; DX1432 at 48; DX1433 at ¶ 171; DX1350 at 1; DX1356 at 1. Amazon WebStores's built-in R&R functionality provides a "subset of the rating and review functionality that's on Amazon.com." Sell Tr. 21:17-25. The WebStore functionality is "based on the best practices . . . seen on Amazon.com." Sell Tr. 21:15-24, 22:14-20.

440.

Sell Tr. 25:6-10.

Sell Tr. 49:19-23.

441.

Sell Tr. 32:13-17, 36:9-17. Customers range from "companies that could be as small as one person to large companies." Sell Tr. 17:11-17.

442. Amazon WebStore's customers include Rite Aid, Alternative Apparel, Fruit of the Loom, Spalding, Black & Decker, Samsonite, Unionbay, Bang & Olufsen, Cracker Barrel, Remington, Fit Couture, and Marks & Spencer Outlet. Sell Tr. 43:2-7; DX1355; Trial Tr. 1751:7-16; Kwok Tr. 23:9-20; Krebs Tr. 31:11-24; DX801.

443. Alternative Apparel switched from Bazaarvoice to Amazon WebStore in 2012. Alternative Apparel does not pay additional fees to receive R&R functionality from Amazon Webstore. Kwok Tr. 26:11-27:2, 41:18-24. Alternative Apparel has been "pretty satisfied" with its decision to use Amazon WebStore for R&R. Kwok Tr. 37:17-38:9.

444. Fruit of the Loom switched from PowerReviews to Amazon Webstore for R&R functionality in August 2012. Krebs Tr. 31:11-24. Fruit of the Loom switched because the functionality was included with the Amazon WebStore for free, and because Fruit of the Loom customers were complaining about its R&R from PowerReviews. Krebs Tr. 32:8-15.

445. Amazon WebStore offers a "whole suite of e-commerce tools" besides R&R. Sell Tr. 30:18-20. Amazon WebStore believes offering tools in a comprehensive suite, rather than "piecemeal" affords customers operation and cost efficiencies. Sell Tr. 30:18-31:9.

b. Ektron Content Management ("Ektron")

446. Ektron is a Content Management System ("CMS System"). A CMS System is a "licensed software that provides a platform to host and display a public's [sic] website." In addition to hosting and display, a CMS System allows users to "easily edit, change, and publish content..." Beale Tr. 28:11-29:5. Ektron offers a

wide variety of functionality, including a native R&R module. DX1433 at ¶ 171; DX1432 at 14; Beale Tr. 27:23-28:8.

447. Ektron is a “good option” from a content management perspective, while “offering additional functionality like [] ratings and reviews.” Beale Tr. 29:25-30:7. Because Ektron offers R&R as an integrated tool, customers who select Ektron for content management and also R&R can have one vendor rather than two vendors, which creates efficiencies and cost savings for the customer. Beale Tr. 29:25-30:22.

448. Ektron has won business away from Bazaarvoice because it offers a CMS System with additional functionality such as R&R. First Tennessee Bank switched from Bazaarvoice to Ektron in May 2012 so that it could use Ektron for both content management and also R&R. Beale Tr. 27:13-28:8. Because R&R is integrated into the Ektron platform, First Tennessee Bank does not need to pay additional fees for the R&R service. Beale 34:14-35:3.

449. First Tennessee Bank is satisfied with Ektron’s services. Beale Tr. 37:3-10. First Tennessee Bank views Ektron’s R&R functionality as an alternative to Bazaarvoice’s R&R functionality. Beale Tr. 39:6-9. First Tennessee Bank believes that the basics of Ektron’s R&R functionality are similar to that of Bazaarvoice. Beale Tr. 36:9-14.

450. Hunter Fan, a manufacturer of home environment products, has used Ektron’s R&R functionality since 2009. Doss Tr. 16:16-17:2. In 2011, Hunter Fan looked at Bazaarvoice for R&R, but decided to stay with Ektron. Doss Tr. 16:16-22, 19:1-17. Hunter Fan has never had to pay any additional fees for the Ektron R&R solution. Doss Tr. 17:23-18:4. Hunter is exploring the option of customizing Ektron’s offerings to add additional functionality around R&R. Doss Tr. 20:17-21:17. Developing this custom functionality for the Ektron platform would cost Hunter Fan approximately \$28,000. Doss Tr. 22:19-23:9.

c. Magento

451. **Background.** Magento is a subsidiary of eBay that provides e-commerce solutions based on open-sourced technology. DX1433 at ¶ 171. Magento is one of the “most highly regarded platforms for e-commerce sites.” DX1432 at 14.

452. Magento offers an R&R solution included as part of its base package. Yukel Tr. 14:25-15:3; Trial Tr. 1168:1-7, 1662:7-11. Magento’s R&R is “a free widget” that customers “can literally just go into their settings and turn on.” DX0818 at BZ-0896240.

453. Magento offers built-in tools and plug-ins that provide automated moderation. Trial Tr. 1168:13-22. Magento offers its built-in moderation tools “at a much lower rate” than Bazaarvoice. Friedland Tr. 34:3-35:2.

454. Magento has also developed a e-commerce application marketplace called Magento Connect. Magento Connect nbrings together developers who can sell applications to be used in conjunction with the Magento e-commerce platform.

Currently, there are enhanced review solutions that customers can purchase, in addition to the native functionality that Magento offers for R&R. Some are free, like Yotpo; others, like Advanced Product Reviews, are paid. DX1432 at 64.

455. **Competition from Magento impacts Bazaarvoice and benefits customers.** Magento competes against Bazaarvoice, PowerReviews and other social commerce providers to provide R&R services. For example,

- Big Dot of Happiness switched from PowerReviews to Magento's R&R for bigdotofhappiness.com in February 2013. Trial Tr. 1661:1-10 Big Dot of Happiness switched to Magento for the bigdotofhappiness.com website in part because the Magento platform had R&R built-in, so the functionality was free. Trial Tr. 1662:3-21.
- [REDACTED] a discount perfume retailer, chose Magento over Bazaarvoice for R&R functionality. DX0782 at BZ-01855334.
- K-Swiss switched from Bazaarvoice to Magento for R&R in July 2012. Ogle Tr. 12:5-9, 13:3-5. K-Swiss selected Magento for R&R because it was offered as an integrated application with K-Swiss' product catalog application on Magento. Ogle Tr. 14:12-17
- [REDACTED] terminated its contract with Bazaarvoice in favor of Magento's R&R. DX0223 at BZ-00217452; DX0656 at BZ-01465091; DX0818.
- [REDACTED] Giannoni Tr. 67:25-68:17.

456. Bazaarvoice has dropped its price in order to keep customers from switching to Magento for R&R. In February 2013, Native Remedies informed Bazaarvoice that it intended to terminate its contract and switch to the Magento R&R solution. Bazaarvoice discounted the annual services fees fifty percent from [REDACTED] DX1433 at ¶ 200

457. Magento's R&R functionality suits customers' needs. Yukel Tr. 20:11-12, 28:4-7 (Magento's R&R functionality fulfills the needs of Big Dot of Happiness); Ogle Tr. 16:18-20 (Magento's R&R functionality suits the needs of K-Swiss). Big Dot of Happiness believes that the Magento R&R solution is a viable alternative to the Bazaarvoice R&R offering. Yukel Tr. 20:11-12, 28:4-7.

458. Magento services customers located outside of the United States using servers and other assets located in the United States. Trial Tr. 1168:1-7. Build.com uses Magento's R&R functionality for its websites based in Canada and the United Kingdom, Build.ca and Build.co.uk, respectively. Friedland Tr. 22:22-23:8; Trial Tr. 1168:1-7.

d. RedPrairie

459. RedPrairie is an all-channel commerce software provider that offers productivity solutions for companies in workforce, inventory and transportation. DX1433 ¶

171. One of the company's solutions is the RedPrairie Commerce Suite, which connects retail stores with online commerce. The RedPrairie Commerce Suite offers an array of social marketing features, including native R&R functionality. DX1433 at ¶ 171; DX1432 at 14.

460. RedPrairie has won business away from Bazaarvoice with its native R&R features. DX1433 at ¶ 47. For example, DR Power has decided to abandon Bazaarvoice as its R&R provider for www.drpower.com in favor of the R&R functionality offered by Red Prairie, its e-commerce provider. DX1433 at ¶ 47. DR Power Equipment plans to use its call service center to moderate its website R&R content and to use either its call center or its live-chat functionality to provide Q&A content. DX1433 at ¶ 47.

e. ShopVisible

461. ShopVisible is an e-commerce platform used by retailers, brands and manufacturers. Cook Tr. 7:10-16. [REDACTED] Cook Tr. 6:23-6:24, 7:10-8:1. [REDACTED] Cook Tr. 7:17-8:1.

462. Relative to other e-commerce platform vendors, ShopVisible has among the broadest set of capabilities. Cook Tr. 13:19-14:5. ShopVisible sells its whole e-commerce platform as a single bundle rather than as individual parts. "[C]lients have access to all the features, whether they use them or not." Cook Tr. 23:24-24:4. The comprehensive nature of ShopVisible's e-commerce platform is a "selling point" with customers. Cook Tr. 15:24-16:2, 22:1-5.

463. ShopVisible's "powerful set of tools" includes R&R as part of the technology ShopVisible provides its clients. Cook Tr. 18:5-6, 18:24-19:13. ShopVisible has likened its R&R product to Bazaarvoice's R&R in sales pitches to potential clients. Cook Tr. 58:17-20.

464. [REDACTED] Cook Tr. 40:8-13, 58:21-23. [REDACTED] Cook Tr. 45:2-17

465. Tempur-Pedic selected ShopVisible as its e-commerce platform and R&R provider because of "[t]he set of functionality" that ShopVisible provided. Tempur-Pedic perceived that ShopVisible's offering was "flexible" and "configurable" to fit Tempur-Pedic's needs. Tempur-Pedic also considered other factors, such as "price," "service level" and "reliability." Varni Tr. 20:15-20. Among other functionality, ShopVisible's R&R solution allows Tempur-Pedic to generate ratings based on individual attributes of a product, in addition to the overall rating. Varni Tr. 19:9-22.

466. ShopVisible perceives that e-commerce has changed since the company's founding in 2006. ShopVisible stated that "[i]t's constantly changing. The internet is a constantly evolving space . . . [i]t's probably changed since last

month.” Cook Tr. 10:23-11:9. ShopVisible explained that “all social commerce features are constantly evolving and “all technologies that we’re using, I think they’re subject to continually change.” Cook Tr. 36:4-15.

467. ShopVisible believes that it “develop[s] and deploy[s] faster than [its] competition.” DX1278 at SV00037. Innovation is crucial to ShopVisible’s survival and “a key part of the value proposition” that it markets. Cook Tr. 13:6-10. ShopVisible regularly adds new features and functionality to its platform to help clients “stay current with best practices in order to sell their products.” Cook Tr. 11:22-12:7. ShopVisible introduces new features across its e-commerce platform every 10 weeks. Cook Tr. 14:24-15:9. [REDACTED] Cook Tr. 24:11-25:15.

iv. Other commercial providers are growing competitive threats

468. **eKomi.** eKomi is a foreign competitor which has said they will expand operations into the US. Trial Tr. 1907:5-25. It could easily replace the competitive significance potentially lost by the acquisition of PowerReviews. Trial Tr. 1949:23-1950:1.

469. **Jive.** Bazaarvoice views Jive as a competitor. Bazaarvoice’s battle card for Jive shows that Jive “positions themselves as delivering ‘Social Networking for the Enterprise’, and refers to their offering as a ‘social platform’ that enables their customers to . . . Engage Employees [], Engage the Social Web [and] Engage Customers.” DX0624 at BZ-01328372. Bazaarvoice worried that customers would perceive that Bazaarvoice’s “community toolset is very limited” as compared to Jive. DX0624 at BZ-01328372. Jive’s “marquee clients” as of August 31, 2011 include Nike, VM Ware, Cisco, NetApp, EMC, Schwab, HP, SAP, T-Mobile and UBS. DX0624 at BZ-01328372.

470. **Sociable Labs.** Bazaarvoice views Sociable Labs as a competitor. Bazaarvoice created a battle card for Sociable Labs. DX0724. The battle card shows that Sociable Labs “test, iterate, and launch robust, hosted, Facebook Connect enabled social features” on an e-commerce store, which is “designed to drive referral traffic and sales.” DX0724. The battle card shows that Sociable Labs’s “[s]ample marquee clients” include Chegg, Active.com, Disney, Macy’s and Tinyprints. DX0724. Sociable Labs’ “[s]weetspot is [g]roup buying scenarios (e.g. creating a group of purchasers in a time limited window[,] like Chegg, Rue La La, etc.).” DX0724.

471. **Zuberance.** Bazaarvoice views the e-commerce platform Zuberance as a competitor. Bazaarvoice created a battle card for Zuberance. DX0813. The battle card shows that Zuberance’s “biggest value-add and core competency is generating reviews on Amazon, TripAdvisor, Yelp, etc.” DX0813.

- Zuberance’s Social Publishing product “[a]llows Advocates to publish reviews directly to 3rd party shopping and reviews sites (e.g. Amazon, CNET, TripAdvisor, Yelp, BestBuy).” DX0813. The battle card shows that Zuberance’s Advocacy Apps product “[i]ncludes modules for

Reviews and Answers.” Advocav App is “directly competitive” to Bazaarvoice’s Conversations (i.e., content syndication) products. DX0813.

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DX1129.

DX1129.

472. **AlaTest.** Bazaarvoice views AlaTest as a competitor. Bazaarvoice created a battle card for competitor AlaTest. DX0552. The battle card shows that AlaTest “is an aggregator of reviews and comparison shopping data, very similar to Reevoo, with operations in multiple countries and languages.” DX0552. AlaTest is based in Sweden with offices in the United States and other countries. DX0552. AlaTest “provides reviews from 2000+ sources . . . in 15 languages and uses them to come up with its own proprietary score.” DX0552. AlaTest “generates revenue by charging companies to send reviews they’ve scraped for display on the client site.” DX0552. AlaTest influences “300 million consumers per month,” aggregates “13 million reviews,” and utilizes “2000+ review sources.” DX0552. AlaTest customers include SonyEricsson, www.redcoon.de, kelkoo, billiger.de, telenor, and Philips. DX0552.

473. **Buddy Media.** Bazaarvoice views Buddy Media as a competitor. Bazaarvoice created a battle card for Buddy Media. DX0624 at BZ-01328368. The battle card shows that as of October 20, 2011, Buddy Media “focus[es] solely on manager brands Facebook pages and Buddy doesn’t port that content to .com.” DX0624 at BZ-01525305. Buddy Media’s Conversation Buddy product “[p]ublishes content to company’s Facebook wall and Twitter stream.” DX0624 at BZ-01328368. Bazaarvoice was concerned customers believe Buddy Media’s products are “flashy and allow design flexibility.” DX0624 at BZ-01328369.

474. **Clarabridge.** Bazaarvoice views Clarabridge as a competitor. Bazaarvoice created a battle card for competitor Clarabridge. DX0661. Clarabridge is a “sentiment and text analytics solution that is deployed on top of existing data sets in a highly customized manner.” DX0661. Bazaarvoice identified Clarabridge as a “Direct Competitor” for CI (“Customer Intelligence,” also known as “Bazaarvoice Intelligence”). DX0661. Bazaarvoice is concerned potential customers will perceive Bazaarvoice’s data as having “limited value” compared to Clarabridge’s data, because Bazaarvoice “only leverages Customer Reviews.” DX0661.

v. Rapid entrants

475. Rapid entrants such as Amazon, Google, Facebook, Oracle and Salesforce provide the same competitive constraining impact on Bazaarvoice. PFF ¶¶104-132.

b. Customers have multiple equally competitive options to PowerReviews

i. Customers testified that they have competitive options and are not harmed by the merger

476. Approximately 100 customers testified at trial, by deposition or by declaration that they were not harmed by the merger because they have sufficient equally competitive alternatives to PowerReviews.

477. **Abercrombie & Fitch Co.**, an apparel retailer and number 45 on the 2012 IR500, does not currently have R&R. May Tr. 16:2-5; DX1579. [REDACTED]

[REDACTED] May Tr. 43:22-44:10, 13:2-13. The deponent, who has spent the last 10+ years in e-commerce, thinks there are a number of different options for R&R and UGC. May Tr. 25:14-26:8. The acquisition has not affected Abercrombie & Fitch. May Tr. 25:14-17.

478. **Abe's of Maine**, an internet electronics retailer, uses Bazaarvoice's R&R functionality. Yudin Tr. 12:11-19. In December 2012, Abe's of Maine informed Bazaarvoice it was considering Reevo, and demanded a price decrease. Yudin Tr. 17:13-18:20. Bazaarvoice agreed to lower its price [REDACTED] a price that was "on par" with the price offered by Reevo. Yudin Tr. 18:17-23, 19:19-21:3. Abe's of Maine is "not concerned" about the acquisition, and the acquisition has not harmed Abe's of Maine. Yudin Tr. 23:14-22.

479. **Acer Inc.**, a computer and electronics manufacturer, [REDACTED] Masciola Tr. 26:1-12, 58:18-59:2. Acer considered both Bazaarvoice and alaTest for R&R functionality before deciding upon Reevo. Masciola Tr. 46:25-47:16. Acer believes that Bazaarvoice's acquisition of PowerReviews does not affect its business at all. Masciola Tr. 67:9-13.

480. **Alternative Apparel**, an apparel company, uses Amazon Webstore's R&R functionality. Kwok Tr. 25:24-26:5, 26:11-27:2. Alternative Apparel selected Amazon Webstores because it was easy to implement, it was a low financial investment, and it is powered by Amazon, which is "best in class." Kwok Tr. 28:24-29:13. If Alternative Apparel became unhappy with Amazon Webstores' R&R, it could switch to an alternate provider such as Pluck or possibly build R&R in-house. Kwok Tr. 40:19-41:8. Alternative Apparel believes this lawsuit is "unfounded" and Bazaarvoice does not have "a monopoly on [R&R] by any means." Kwok Tr. 40:1-11.

481. **American Eagle Outfitters**, an apparel retailer and number 65 in the 2012 IR500, uses Bazaarvoice's R&R functionality. Holland Tr. 17:11-16; DX1579. American Eagle would consider building an in-house R&R solution if it were faced with a price increase for R&R. Holland Tr. 23:10-24:4. American Eagle does not believe Bazaarvoice's acquisition of PowerReviews has had an effect on American Eagle's ability to post R&R on its website. Holland Tr. 27:3-12.

- 1 482. **Astral Brands**, a retailer of natural skin care and makeup, uses Rating-System's
2 R&R and Q&A functionality. Hughes Tr. 51:12-22. Astral Brands switched from
3 Bazaarvoice to Rating-System for R&R functionality because Rating System
4 offers a "comparable product" to Bazaarvoice "but at a lower price." Hughes Tr.
5 56:24-57:3, 58:3-8. Astral Brands has also considered using Gigya for R&R
6 because it has a contract with Gigya for other social commerce tools, and adding
7 R&R would be free. Hughes Tr. 59:2-60:16. Astral Brands believes that
8 "nothing changed" following the acquisition. Hughes Tr. 72:25-73:2, 73:5-19.
- 9 483. **Autozone**, an automobile parts retailer and number 121 in the 2012 IR500, uses
10 Pluck's R&R functionality. Traywick Tr. 17:7-14; Trial Tr. 1330:24-1331:3;
11 DX1579. Pluck provides "everything" Autozone needs, including R&R, "for the
12 same price or less that Bazaarvoice charged." Traywick Tr. 34:4-12; Trial Tr.
13 1334:2-11. Autozone is highly satisfied with Pluck's R&R offering. Trial Tr.
14 1334:19-24. Autozone does not think the acquisition has an impact on Autozone,
15 nor does Autozone believe it will be harmed by the acquisition. Trial Tr.
16 1337:25-1338:11.
- 17 484. **B&H Photo Video Audio ("B&H Photo")**, a retailer of photography,
18 videography and entertainment equipment, is ranked number 165 in the 2012
19 IR500. Meisels Tr. 6:20-24; DX1579. In 2012, B&H Photo's annual revenues
20 were between \$1 and \$2 billion, the majority of which were online revenues.
21 Meisels Tr. 8:25-9:9. B&H Photo has been looking into alternatives to
22 PowerReviews for the past six months. B&H Photo believes it has viable
23 alternatives to PowerReviews for R&R, including Pluck, Rating-System, Reevo
24 and TurnTo. Trial Tr. 1853:22-1854:6, 1854:11-14, 1858:22-25. B&H Photo
25 would also "definitely consider" building R&R in-house if it could not find a
26 satisfactory commercial solution. Trial Tr. 1859:1-15. B&H Photo does not
27 believe the acquisition has harmed B&H Photo. Trial Tr. 1860:12-14.
- 28 485. **Barnes and Noble**, a book retailer and number 32 on the 2012 IR500, uses an in-
house R&R solution. Rowland Tr. 22:4-6; DX1579. Barnes & Noble also signed
a deal with Pluck to support R&R for Barnes & Noble and a new international
Nook site. Rowland Tr. 21:3-24, 22:7-13; DX1433 at ¶ 202; DX1736 at ¶ 58.
Barnes & Noble selected Pluck because Pluck's offering is "much more extensive
than just [R&R]" and meets all of Barnes & Noble's needs, including blogs,
forums, profiles, gamification, and the future growth that Barnes & Noble expects
to achieve. Rowland Tr. 26:12-22, 43:14-22. Barnes & Noble has not given any
thought to and has no opinion of the acquisition. Rowland Tr. 32:11-20.
486. **Belk**, a department store retailer and number 221 in the 2012 IR500, uses
Bazaarvoice's R&R functionality. Chin Tr. 10:3-8, 14:4-6; DX1579. Belk never
considered using PowerReviews for R&R before the acquisition, and would not
have done so absent the acquisition. Chin Tr. 17:7-11, 17:18-18:10. Belk and
Bazaarvoice renewed their agreement in August 2012. The renewed agreement
included R&R, among other services. Belk's price for the bundle of Bazaarvoice
solutions declined by more than 50 percent. DX1433 at ¶ 93. Belk believes the
acquisition "was not a concern" and had "no effect on Belk." Chin Tr. 21:17-22:3.

487. **Benchmark Brands**, an online retailer of shoes and number 176 on the 2012 IR500, uses Bazaarvoice's R&R functionality. Gallagher Tr. 9:3-12, 13:6-13:10; DX1579. Benchmark Brands considered a number of providers for R&R at its most recent contract renewal with Bazaarvoice in March 2012, but it did not regard PowerReviews as a viable option. Gallagher Tr. 24:1-11. Benchmark Brands "feel[s] that there are other options in the market" post acquisition, including "freeware applications" and "build it yourself." Gallagher Tr. 14:23-15:4, 17:18-24. Benchmark Brands believes the acquisition has had no negative impact on its business, nor has it affected its negotiation leverage with Bazaarvoice. Gallagher Tr. 17:6-24.
488. **Big Dot of Happiness**, an online party supplies retailer, replaced PowerReviews with Magento's R&R functionality for its e-commerce site bigdotofhappiness.com. Yukel Tr. 13:21-24, 16:3-22; Trial Tr. 1661:7-15. Big Dot of Happiness believes that the Magento R&R solution is a viable alternative to the PowerReviews R&R offering. Trial Tr. 1666:4-10. The acquisition has not harmed Big Dot of Happiness. Trial Tr. 1666:11-14.
489. **Big Fish Games**, a gaming developer and number 159 on the 2012 IR500, [REDACTED] Heverley Tr. 16:4-18, 24:7-19, 49:8-12; DX1579. [REDACTED] Heverley Tr. 76:24-77:19; 102:23-103:17. [REDACTED] Heverly Tr. 96:24-97:16.
490. **Birdsafe**, an online pet supply retailer, [REDACTED] Arbogast Tr. 11:7-21. [REDACTED] Arbogast Tr. 16:7-17. [REDACTED] Arbogast Tr. 27:10-14.
491. **BJ's Wholesale Club**, a wholesale club and number 244 on the 2012 IR500, uses PowerReviews' R&R functionality. Cunningham Tr. 25:13-16; DX1579. Prices under BJ's agreement with PowerReviews have not changed in any way. Trial Tr. 467:1-6. BJ's believes it has not been harmed by Bazaarvoice's acquisition of PowerReviews. Trial Tr. 467:18-20.
492. **Blinds.com**, an online retailer of window treatments and number 220 on the 2012 IR500, uses Bazaarvoice's R&R functionality. Cotlar Dep. 8:16-18, 19:21-20:7; DX1579. Blinds.com never seriously considered PowerReviews for R&R functionality. Cotlar Dep. 50:4-15. Blinds.com believes that in the "post merger world," the company has "lots of options" for R&R including Pluck, Reevo, Rezu, Bloom and building R&R in-house. Cotlar Tr. 95:1-96:6, 28:2-7.
493. **Blue Nile**, an online jewelry retailer who is number 71 on the 2012 IR500, uses an in-house R&R solution that it developed in 2002 or 2003. Sainsbury Tr. 16:21-17:7, 18:3-15, 20:19-23; DX1579. Blue Nile is satisfied with its in-house R&R

solution and considers it to be superior to the R&R functionality provided by Bazaarvoice. Sainsbury Tr. 22:16-24. Blue Nile believes that the acquisition has had “no impact on Blue Nile.” Sainsbury Tr. 34:20-23.

494. **The Bon-Ton Stores**, a department store retailer and number 460 on the 2012 IR500, uses Bazaarvoice’s R&R functionality. Fernandez Tr. 24:14-18; DX1579. The Bon-Ton Stores believes that, because R&R software is “not all that difficult to replicate,” there are likely “new vendors starting up today” and that this is not “a market that’s drying up.” Fernandez Tr. 49:5-15. The Bon-Ton Stores could build a R&R solution in-house as a viable alternative to Bazaarvoice. Fernandez Tr. 28:17-29:3, 38:8-39:6. The Bon-Ton Stores was “not aware” of the acquisition harming Bon-Ton Stores in any way. Fernandez Tr. 35:16-19, 35:19-36:4.

495. **Broadcast Supply Worldwide**, a retailer of radio equipment, uses PowerReviews’ R&R. Roalkvam Tr. 12:12-20, 23:1-6. In 2012, Broadcast Supply resisted a price increase by informing PowerReviews it would look into other vendors or building R&R in-house. Roalkvam Tr. 23:18-24:13. Broadcast Supply believes that the acquisition “doesn’t appear to have had any negative effect” on Broadcast Supply. Roalkvam Tr. 28:25-29:6.

496. **The Buckle, Inc.**, a specialty clothing retailer and number 211 on the 2012 IR500, uses Bazaarvoice’s R&R functionality. Pierson Tr. 27:4-6; DX1579. The Buckle believes that they have options for R&R. Gigya is especially appealing to The Buckle as it offers “single sign-in.” Pierson Tr. 39:22-40:7, 37:10-38:13. The Buckle could also build an in-house R&R solution. Pierson Tr. 28:14-24. The Buckle “didn’t think [the acquisition] really affected [the Buckle] at all.” Pierson Tr. 45:2-9.

497. **Build.com**, an online retailer of home improvement products and number 81 on the 2012 IR500, uses Bazaarvoice’s R&R functionality on build.com, and Magento’s R&R functionality on Build.ca and Homeoutlet.co.uk (soon to be Build.co.uk). Trial Tr. 1167:22-1168:10; Friedland Tr. 11:25-12:2; DX1579. Build.com believes there are many ways to implement R&R, including R&R plug-ins and free review software. Trial Tr. 1170:4-10; Friedland Tr. 36:15-37:2. Build.com could also build R&R in-house. Trial Tr. 1173:16-1174:8. Build.com had no concerns with the acquisition and has not been harmed by the acquisition. Trial Tr. 1174:9-1175:8, 1182:14-25; Friedland Tr. 54:16-23.

498. **Cabelas, Inc.**, an outdoor equipment retailer and number 43 on the 2012 IR500, uses Bazaarvoice for R&R. Uhler Tr. 10:21-11:6, 17:11-18:4; DX1579. If Cabela’s wanted to leave Bazaarvoice, it would investigate other options in the marketplace or look at doing R&R in-house. Uhler Tr. 24:3-13; 31:24-32:23. Cabela’s believes that the merger does not not “affect [Cabela’s] in anyway, positive or negative.” Uhler Tr. 24:19-21, 24:24-25

499. **Cable Organizer**, a retailer of telecom and electrical supplies, uses PowerReviews for R&R functionality. Ribero Tr. 8:13-18, 25:16-26:1. If PowerReviews ever raised prices by 10 percent, Cable Organizer would threaten to move away from PowerReviews, possibly to Reevo. Ribero Tr. 40:18-41:5;

42:7-12. Cable Organizer believes Reevo's solution is superior to what Cable Organizer currently receives with PowerReviews' old implementation. Ribero Tr. 36:23-37:3. Cable Organizer does not think the acquisition will affect Cable Organizer very much. Ribero Tr. 42:1-12.

500. **Chico's FAS Inc.**, a specialty retailer of women's apparel and number 73 on the 2012 IR500, uses Bazaarvoice's R&R functionality. Kelley Tr. 8:6-9, 14:5-14; DX1579. Chico's has not really given any thought to the acquisition. Kelley Tr. 27:17-23. When Chico's heard about the acquisition, Chico's did not believe Bazaarvoice would increase prices to Chico's without any additional features. Kelley Tr. 28:8-12.

501. **The Clorox Company**, a manufacturer of food, chemical and consumer products, uses Bazaarvoice's R&R functionality. Trial Tr. 278:10-17. Clorox evaluated PowerReviews between October 2011 and February 2012 and decided against working with PowerReviews for the majority of its high profile brand websites because it was not able to provide or ensure acceptance of Clorox's syndicated review content by retailers. Trial Tr. 287:2-13, 316:1-22; Levin Tr. 77:11-78:5. When Clorox conducts its next evaluation of R&R vendors, Clorox will look at the vendors in the space at that time, and start the evaluation anew. Clorox will consider Reevo and Pluck, if they are still vendors that provide those services. Trial Tr. 315:1-11.

502. **Coldwater Creek**, a women's apparel retailer and number 133 on the 2012 IR500, uses an in-house solution for R&R functionality. Williams Tr. 20:6-14, 34:3-15. Coldwater Creek is satisfied with its in-house solution because it is simple, it integrates with the customer so Coldwater Creek is able to track it back to customer sentiment, it gives feedback where feedback is needed, and it helps the customer to make an informed purchase decision. Williams Tr. 44:18-45:1. Coldwater Creek had no opinion about whether the acquisition might affect Coldwater Creek. Williams Tr. 46:16-19.

503. **Columbia Sportswear**, an outerwear products manufacturer and number 257 on the 2012 IR500, uses Bazaarvoice for R&R functionality. Evons Tr. 10:2-6, 18:3-6; DX1579. The Columbia deponent John Evons, who has worked as an enterprise e-commerce specialist for Deloitte Consulting, believes that there are vendors that provide the same R&R functionality as Bazaarvoice on the market. Evons Tr. 8:19-9:21, 24:2-17. Columbia Sportswear would either build R&R in-house or switch to another provider if Bazaarvoice increased its prices or if Columbia became unsatisfied with Bazaarvoice. Evons Tr. 22:24-23:14. Columbia has no opinion as to whether the acquisition has had an effect on Columbia Sportswear. Evons Tr. 31:7-11.

504. **Crabtree & Evelyn**, a manufacturer and distributor of personal care products, uses Pluck's R&R functionality. G. Green Tr. 6:19-24, 23:13-18. Crabtree & Evelyn evaluated both Pluck and Bazaarvoice, and determined that Pluck offered the key functionality that Crabtree & Evelyn needed, and appeared to be comparable to Bazaarvoice in those areas. G. Green Tr. 28:23-29:8. Crabtree &

1 Evelyn selected Pluck over Bazaarvoice because Pluck's solution was less
2 expensive. G. Green Tr. 23:13-15.

3 505. **Crate and Barrel**, a housewares and home furnishings retailer and number 59 on
4 the 2012 IR500, uses Bazaarvoice's R&R functionality. Seebeck Tr. 9:6-13,
5 16:11-16; DX1579. In early 2013, Crate & Barrel informed Bazaarvoice it was
6 "seriously considering" switching to Pluck for R&R. Seebeck Tr. 29:20-30:24. In
7 response, Bazaarvoice lowered the price it offered Crate & Barrel. Seebeck Tr.
8 31:9-14. Crate & Barrel renewed its services agreement with Bazaarvoice for
9 [REDACTED] less than half of what it was paying Bazaarvoice
10 previously. Seebeck Tr. 29:7-15; DX1433 at ¶ 111.

11 506. **Dick's Sporting Goods**, a sporting goods retailer and number 101 on the 2012
12 IR500, uses Bazaarvoice's R&R functionality. Marraccini Tr.15:23-16:4;
13 DX1579. Dick's was a PowerReviews customer that switched to Bazaarvoice
14 because "[t]here were inherent limitations in the PowerReviews' platform, and
15 Bazaarvoice had kind of filled the gap in the functionalities" that Dick's was
16 looking for. Marraccini Tr. 34:25-35:9. Dick's believes there are other R&R out
17 there, which it would consider if it was dissatisfied with Bazaarvoice. Marraccini
18 Tr. 20:7-13, 21:19-22:6. Dick's believes that it has not been affected by the
19 acquisition. Marraccini Tr. 22:25-23:3, 23:6-17, 23:20.

20 507. **Drums on Demand**, a manufacturer of computer software for musicians, uses
21 Yotpo's R&R functionality. Randle Tr. 5:23-6:4, 14:3-8. Drums on Demand
22 selected Yotpo for R&R because it is free for companies of Drums on Demand's
23 size, and because of its social media features, SEO functionality and verified
24 buyer technology. Randle Tr. 18:20-19:9, 20:4-25. Drums on Demand believes
25 the acquisition has not had any effect on the company. Randle Tr. 26:8-18.

26 508. **eBags** is an online luggage and handbags retailer that is number 103 on the 2012
27 IR500. Cobb Tr. 7:25-8:22, 10:21-11:13. eBags uses an in-house R&R solution,
28 which it first launched in March 1999. Cobb Tr. 15:1-4. eBags is satisfied with
its in-house R&R solution. Cobb Tr. 45:21-24. eBags believes that the acquisition
has not "harmed [eBags] in any way." Cobb Tr. 49:7-13.

509. **eHobbies**, an on-line retailer of toys and hobbies with online revenues of
approximately \$1 million in 2012, uses PowerReviews for R&R functionality.
Kikkawa Tr. 8:6-12, 13:18-14:14. If PowerReviews raised its prices by five
percent, eHobbies would consider dropping it and looking for another solution.
Kikkawa Tr. 20:25-21:5. eHobbies believes that there has been "no effect" on
eHobbies from the acquisition. Kikkawa Tr. 21:20-23, 22:1-4, 22:6.

510. **First Tennessee Bank**, a financial institution that provides traditional and wealth
management banking services, uses the R&R functionality of its Content
Management System, Ektron. Beale Tr. 12:19-13:9, 27:25-28:8. First Tennessee
Bank believes there are sufficient choices in First Tennessee Bank's selection of
R&R vendors. Beale Tr. 40:13-16. First Tennessee Bank believes that the
acquisition will not harm First Tennessee Bank. Beale Tr. 40:3-12.

- 1 511. **Footlocker**, a sporting apparel company and number 54 on the 2012 IR500, uses
2 Bazaarvoice for R&R across its various websites. Lokes Tr. 20:9-13; DX1579.
3 One of Footlocker's brands, Eastbay, will be developing an in-house R&R and
4 Q&A solution. Lokes Tr. 41:17-42:14. If the Eastbay's in-house solution is
5 successful, Footlocker would consider using an in-house R&R solution on its
6 other sites. Lokes Tr. 46:20-25. The acquisition has not harmed Footlocker.
7 Lokes Tr. 47:16-19.
- 8 512. **Fruit of the Loom**, an apparel manufacturer, uses Amazon WebStores's R&R
9 functionality. Krebs Tr. 31:11-24, 35:18-25. Fruit of the Loom switched from
10 PowerReviews to Amazon Webstore for R&R in Summer 2012 in part because
11 the R&R functionality was included with the Amazon WebStore platform. Krebs
12 Tr. 32:8-15. Fruit of the Loom does not have any concerns about the acquisition.
13 Krebs Tr. 34:17-21; Trial Tr. 1225:18-21. The acquisition has not caused any
14 harm to Fruit of the Loom. Trial Tr. 1225:22-25.
- 15 513. **Gamefly**, a subscription video game rental company and number 150 on the 2012,
16 IR500, uses in-house R&R functionality. Hodess Tr. 9:10-13; 22:11-13; DX1579.
17 Gamefly's in-house R&R solution fits Gamefly's needs for R&R. Hodess Tr.
18 25:22-25. Gamefly believes that the acquisition "currently [] hasn't had any
19 impact on Gamefly." Hodess Tr. 29:5-12.
- 20 514. **Gander Mountain**, an outdoor equipment retailer and number 159 on the 2012
21 IR500, uses PowerReviews for R&R functionality. Hagemann Tr. 11:8-12:11;
22 12:19-12:23; DX1579. Gander Mountain is not concerned about the acquisition.
23 Hagemann Tr. 14:4-5.
- 24 515. **Golfsmith**, a retailer of golf products ranked 209 on the 2012 IR500, uses
25 Bazaarvoice's R&R functionality. Maki Tr. 10:3-9, 13:3-5; DX1579. If
26 Bazaarvoice were to raise its prices, Golfsmith would have credible alternatives
27 for R&R, including Pluck. Trial Tr. 1217:10-13; Maki Tr. 22:4-8. Golfsmith has
28 done a "full investigation" of Pluck's solution, and was "very impressed." Maki
29 Tr. 19:15-23; Trial Tr. 1213:4-13, 1214:4-25. Golfsmith felt that Pluck was
30 stronger than Bazaarvoice in some areas, particularly in tying all of the different
31 tools together for the user. Maki Tr. 19:15-23; Trial Tr. 1214:20-25. Golfsmith
32 does not believe that the acquisition of PowerReviews by Bazaarvoice has harmed
33 Golfsmith in any way. Maki Tr. 29:10-11, 29:14-16; Trial Tr. 1217:4-9.
- 34 516. **Green Mountain Coffee Roasters** is a CPG coffee manufacturer and number 83
35 on the 2012 IR500. Cadmus Tr. 10:18-11:5; DX1579. Green Mountain Coffee
36 Roasters would consider building an in-house R&R tool if the price of R&R
37 became an issue. Cadmus Tr. 38:11-24.
- 38 517. **Guess? Inc.**, an apparel manufacturer and retailer that ranks number 280 in the
39 2012 IR500, is in the process of implementing Bazaarvoice for R&R functionality.
40 Koven Tr. 10:8-13, 17:24-18:8; DX1579 Guess? did not seek a price quote from
41 PowerReviews because Bazaarvoice was "clearly the better choice" based on their
42 technology. Koven Tr. 19:16-20:14. Guess? told Bazaarvoice that it had a "very
43 tight budget," and Bazaarvoice lowered its proposed ASF [REDACTED]

1 [REDACTED] Koven Tr. 22:18-22, 33:12-16, 37:6-38:10. Guess? believes that the
2 acquisition “hasn’t had an effect on Guess?.” Koven Tr. 44:22-25.

3 518. **Hayneedle**, an online home furnishings retailer and number 85 on the 2012 IR500,
4 uses PowerReviews’ R&R functionality. Trial Tr. 1627:19-24, 1628:21-1629:6;
5 DX1579. The deponent, who has worked at least 10 years in e-commerce,
6 “absolutely” believes that new players have entered the R&R space since 2011.
7 Moen Tr. 5:25-8:13; Trial Tr. 1631:3-4. Hayneedle believes there are three to five
8 viable R&R providers today, including Pluck, Gigya and Reevo. Trial Tr.
9 1630:21-1631:2, 1636:12-17. Hayneedle does not believe the acquisition has
10 harmed Hayneedle, nor does it expect the acquisition to cause any harm to
11 Hayneedle. Trial Tr. 1636:20-24.

12 519. **hhgregg Appliances, Inc.**, a retailer of appliances and electronics and number
13 442 on the 2012 IR500, uses Bazaarvoice for R&R. Vitale Tr. 6:1-4, 9:17-21;
14 DX1579. hhgregg can syndicate content to and from more companies since
15 Bazaarvoice’s acquisition of PowerReviews. The fact that hhgregg Appliances
16 can syndicate to and from more companies is beneficial to hhgregg Appliances.
17 Vitale Tr. 12:3-14.

18 520. **The Home Depot, Inc.** is a home improvement products retailer ranked number
19 42 in the 2012 IR500. Yaniv Tr. 13:20-14:6; DX1579. The Home Depot uses
20 Bazaarvoice for R&R functionality. Yaniv Tr. 18:576. The Home Depot did not
21 see PowerReviews as an alternative to Bazaarvoice. PowerReviews did not fit The
22 Home Depot’s needs, because PowerReviews could not syndicate reviews from
23 some of The Home Depot’s major brands. Yaniv Tr. 24:4-14, 26:8-13. The Home
24 Depot believes that the acquisition has not impacted the Home Depot with respect
25 to product management. Yaniv Tr. 31:18-25.

26 521. **HSN, Inc.**, an online retail store and number 26 on the 2012 IR500, uses an in-
27 house R&R solution. Reilly Tr. 8:20-9:12; 18:10-24, 27:20-21; DX1579. HSN’s
28 in-house R&R solution “hits the mark” because HSN has been positioned to make
focused enhancements internally with minimal effort. Reilly Tr. 43:21-44:9.
HSN believes that the acquisition does not impact and will not harm HSN. Reilly
Tr. 45:21-23, 45:25, 48:17-24.

522. **Hunter Fan**, a manufacturer of ceiling fans and other home environment products,
uses an R&R tool provided by Ektron. Doss Tr. 8:18-9:6, 16:6-19. Hunter Fan
has never had to pay any additional fees to use the R&R functionality that is part
of Ektron’s platform. Doss Tr. 17:23-18:4. Hunter Fan has not been affected by
the acquisition. Doss Tr. 27:12-17.

523. **Hydro-Photon**, a manufacturer of portable ultraviolet light water purifiers, uses
a custom R&R plug-in developed by aheadWorks and purchased through the
Magento e-commerce platform. Archambault Tr. 8:10-15, 34:22-35:20, 38:4-39:6.
Hydro-Photon is not concerned about the acquisition as there is viable
competition regardless of the acquisition. Archambault Tr. 51:4-25; 38:4-39:6.

- 1 524. **iHerb**, a retailer of nutritional supplements and number 187 on the 2012 IR500,
2 uses an in-house R&R solution. Rose Tr. 7:25-8:5, 12:9-16; DX1579. iHerb's in-
3 house R&R solution is "suitable" for its needs. Rose Tr. 13:9-15.
- 4 525. **Ink Technologies**, a retailer of printer consumables, with annual revenues of
5 about \$18 million per year, uses Rating System for R&R functionality. Davis Tr.
6 8:9-14, 9:1-16, 13:8-15. Ink Technologies is satisfied with Rating System as a
7 provider of R&R. Davis Tr. 20:17-19. Ink Technologies also believes that R&R
8 can be done in-house and would consider doing it "in a second." Davis Tr. 23:21-
9 24:21. Ink Technologies does not believe that its "options for ratings and review
10 solutions were injured by the acquisition." Davis Tr. 28:21-24, 29:1.
- 11 526. **InterContinental Hotels Group (IHG)**, a hotel chain located in over 100
12 countries, uses Bazaarvoice for R&R functionality. Morgan Tr. 8:22-24, 10:15-25.
13 IHG believes that the "social space" is "changing pretty rapidly." When IHG's
14 contract for R&R expires it will be necessary to look at "a whole variety of
15 vendors because the requirements of what consumers want and the capabilities for
16 what different vendors have in their space probably would have changed
17 dramatically." Trial Tr. 1360:25-1361:7.
- 18 527. **Jockey**, a manufacturer of men's and women's underwear and number 309 on the
19 2012 IR500, uses PowerReviews for R&R functionality. Smith Tr. 8:17-19,
20 22:16-18; DX1579. Jockey would "obviously consider" building an in-house
21 solution if it did not find an acceptable commercial R&R solution. Smith Tr.
22 31:13-24. Jockey is also aware of Reevo and Pluck. Smith Tr. 24:8-25, 25:5-
23 26:2. Jockey has noticed no changes since the merger, and was told that "there
24 would be no plans for any things to change in the effective merger." Smith Tr.
25 42:12-23.
- 26 528. **Johnsonville Sausage**, a producer and retailer of sausage products, uses an in-
27 house R&R solution designed by the web design agency Tech by Design.
28 Mueller Tr. 6:5-9, 11:6-18. Johnsonville Sausage believes the Tech by Design
29 R&R functionality is "comparable" to that of Bazaarvoice. Mueller Tr. 18:24-19:4.
30 Johnsonville Sausage did not believe that the acquisition had affected
31 Johnsonville Sausage. Mueller Tr. 19:23-20:2.
- 32 529. **Juice Nashville**, a seller of cold-pressed juices, utilizes R&R from Yotpo.
33 Waring Tr. 11:17-21. Juice Nashville thinks Yotpo's reviews are high quality, and
34 Yotpo has "done an excellent job." Waring Tr. 21:9-14. Juice Nashville has not
35 given any thought to the acquisition. Waring Tr. 23:11-24:1.
- 36 530. **Karmaloop**, an online retailer of streetwear and number 138 on the 2012 IR500,
37 uses Facebook for reviews functionality. Knisely Tr. 7:3-17, 15:14-16:13;
38 DX1579. Karmaloop replaced PowerReviews with Facebook comments on the
39 Karmaloop.com product page, which gives customers the opportunity to write a
40 comment about the product in a Facebook comment box, which is then
41 subsequently displayed on the Karmaloop.com website, much like R&R. Knisely
42 Tr. 15:23-16:6. Karmaloop does not believe the acquisition has had any effect on
43 Karmaloop. Knisely Tr. 58:5-8.

- 1 531. **K-Swiss** is a footwear and apparel manufacturer. Ogle Tr. 7:8-10. K-Swiss uses
2 its Magento e-commerce platform for R&R functionality. Ogle Tr. 12:2-3. K-
3 Swiss believes that the acquisition has had no effect on K-Swiss. Ogle Tr. 17:9-
4 11.
- 5 532. **L.L. Bean** is a retailer specializing in outdoor goods and apparel and is number
6 18 on the IR500 in 2012. Wilson Tr. 9:3-10:23; DX1579. L.L. Bean uses
7 Bazaarvoice for its R&R functionality. Wilson Tr. 37:6-9. LL Bean always
8 considers the option of building R&R technology in-house. Wilson Tr. 17:3-10.
9 L.L Bean believes it has the technical ability to develop its own in-house R&R
10 functionality today. Wilson Tr. 16:23-25. L.L. Bean believes if Bazaarvoice
11 were to increase prices or slow innovation, other companies would enter the
12 market for R&R and compete. Wilson Tr. 19:14-18. L.L. Bean feels that
13 Bazaarvoice's acquisition of PowerReviews has not had a direct impact on L.L.
14 Bean. Wilson Tr. 18:1-11.
- 15 533. **La-Z-Boy** is a manufacturer and retailer of home furnishings. Targett Tr. 7:19-22.
16 La-Z-Boy uses Bazaarvoice for R&R functionality. Targett Tr. 11:20-24. La-Z-
17 Boy pays for its R&R solution from "the same funds that sit in the same budget as
18 the other social commerce tools," and the direct to consumer budget that La-Z-
19 Boy has internally constrains the tools that it can purchase from Bazaarvoice.
20 Targett Tr. 20:10-21:3, 24:22-25:18. La-Z-Boy believes that the acquisition has
21 not affected La-Z-Boy. Targett Tr. 15:10-13.
- 22 534. **Lord & Taylor**, a department store, uses Legacy PowerReviews for R&R
23 functionality on the Lord & Taylor websites. Merlo Tr. 12:21-13:4. Lord &
24 Taylor, via Hudson's Bay, is number 100 on the IR500 in 2012. DX1579. In
25 March 2013, Lord & Taylor threatened to terminate its contract with
26 PowerReviews. Merlo Tr. 13:12-17, 14:6-15. In response, PowerReviews offered
27 to lower the price of its services and add additional features. Merlo Tr. 13:5-14:1,
28 15:6-16. Lord and Taylor previously paid PowerReviews an ASF [REDACTED]
29 Merlo Tr. 13:5-11. Lord & Taylor renewed its contract with PowerReviews at an
30 ASF [REDACTED] Merlo Tr. 13:18-14:1. Lord & Taylor believes that that the
31 acquisition has not harmed Lord & Taylor. Merlo Tr. 31:19-23.
- 32 535. **Lovesac** is a manufacturer and retailer of high-end bean bag chairs and modular
33 furniture. Johnson Tr. 9:16-24. Lovesac uses Bazaarvoice for its ratings and
34 review functionality. Johnson Tr. 18:16-20. Lovesac is on the Magento e-
35 commerce platform. Johnson Dep. 16:22-25. Prior to switching to the
36 Bazaarvoice R&R solution, Lovesac used R&R functionality that was built into
37 the Magento e-commerce platform. Johnson Tr. 19:9-22. Lovesac believes that
38 there are other viable alternatives including TurnTo, and Magento (who continues
39 to improve its offerings). Johnson Tr. 37:8-24. Lovesac does not believe that
40 "the acquisition has impacted [Lovesac] in any way." Johnson Tr. 38:8-10, 38:12,
41 38:19-21, 38:23-24.
- 42 536. **Market America (Shop.com)** is number 70 on the 2012 IR500 list and uses an
43 in-house R&R solution for its e-commerce site shop.com and PowerReviews for
44 some other sites. Brady Tr. 16:8-13; 36:17-25; DX1579. Market America has

looked at Pluck for R&R in an overall site review and strategy session. Brady Tr. 22:11-25. In the event of a price increase for R&R, Market America would consider building an in-house solution and third-party offerings, including Pluck. Brady Tr. 21:25-22:10; 23:10-18.

537. **Nature's Path** is a certified organic manufacturer of breakfast cereals, granolas, hot oatmeal, waffles, toaster pastries and snack bars. Emmer-Aanes Tr. 8:25-9:3. Nature's Path's revenues are roughly \$250 million. Emmer-Aanes Tr. 10:13-18. Nature's Path originally considered using Bazaarvoice for R&R, and Bazaarvoice initially offered two pricing options, [REDACTED] per year and [REDACTED] per year. Emmer-Aanes Tr. 16:20-17:10. Both options were too expensive for Nature's Path, and Bazaarvoice ultimately lowered its offer [REDACTED] Tr. 17:11-18:14. This price, however, remained too high for Nature's Path. Emmer Aanes Tr. 18:15-18:23. Nature's Path ultimately chose to incorporate R&R functionality built by an agency, FCV, using Drupal. Emmer-Aanes Tr. 19:2-8.
538. **New Era Portfolio** is a publisher of digital artwork. D. Green Tr. 8:12-9:21. Beginning in 2010, New Era Portfolio used Bazaarvoice for R&R and question and answer functionality on its website. D. Green Tr. 29:2-22. In late 2012 or early 2013, New Era Portfolio decided to terminate its relationship with Bazaarvoice for R&R, and switch to Gigya because Gigya offered New Era Portfolio essentially the same service for a lower cost. D. Green Tr. 32:4-33:2. New Era Portfolio is not concerned about Bazaarvoice's acquisition of PowerReviews. D. Green Tr. 42:25-43:6. New Era Publishing believes that "there has been no harm caused" by the acquisition to New Era. D. Green Tr. 43:14-18
539. **Nutri-Health Supplements** is a direct to consumer supplier of nutritional supplements. Callahan Tr. 8:16-18. In 2011-2012, Nutri-Health considered Bazaarvoice, PowerReviews and Reevo for R&R functionality and ultimately selected Reevo. Callahan Tr. 13:15-14:3, 19:22-20:2. Nutri-Health Supplements uses Reevo for R&R and question and answer functionality. Callahan Tr. 13:15-14:3.
540. **OneCall**, a retailer of audio and video systems, and number 228 on the 2012 IR500, uses legacy PowerReviews for its R&R functionality. Weisman Tr. 23:24-24:9; DX1579. OneCall is paying Bazaarvoice twelve percent less following the merger [REDACTED]. DX1736 at ¶ 86. One Call uses Magento's e-commerce platform. Weisman Tr. 32:17-33:6. OneCall believes that Magento's e-commerce platform offers R&R functionality. Weisman Tr. 32:17-33:6. OneCall absolutely believes that there are other vendors who can provide OneCall with R&R services. Weisman Tr. 34:11-14.
541. **OneStopPlus** is a retailer of women's apparel and home furniture and is number 34 on the 2012 IR500. Tanini Tr. 9:13-21, 10:12-18. One StopPlus Group uses legacy PowerReviews for R&R functionality. Tanini Tr. 16:3-6. OneStopPlus has had an "introductory discussion with Reevo" concerning their R&R solution. Tanini Tr. 17:16-24. OneStopPlus will consider building an in-house R&R solution when its current agreement with PowerReviews expires. It believes that

its employees “are developers” and “can basically develop a lot of things.” Tanini Tr. 21:17-22:25, 23:5-12, 23:23-24:9.

542. **Onlineshoes.com** uses PowerReviews to collect the R&R content from customers, and an in-house software to display the content on its website. Grams Tr. 13:20-14:1. Onlineshoes.com believes that the acquisition has not affected Onlineshoes.com to date. Grams Tr. 27:4-5, 27:7-8.
543. **Orchard Supply Hardware** is a retailer of hardware, garden and home improvement products. Abell Tr. 7:24-8:5. Orchard Supply Hardware’s revenues are roughly \$600 million. Abell Tr. 8:16-18. Orchard Supply is a former legacy Bazaarvoice customer that cancelled its R&R functionality in May 2013 after deeming R&R not to be a priority. Abell Tr. 17:1-21, 19:8-10. Orchard Supply uses Facebook, Twitter and Pinterest to interact with its customers. Abell Tr. 22:6-23:6. Orchard Supply Hardware is not concerned in any way with the acquisition. Abell Tr. 27:12-15.
544. **Overstock.com**, an online retailer number 27 on the 2012 IR500 list, uses an in-house R&R solution. Jolitz Tr. 10:20-11:6; 18:12-17; DX1579. Overstock.com believes that Overstock has not been directly affected by the acquisition. Jolitz Tr. 43:8-11.
545. **Pacific Sunwear** sells apparel and accessories to the youth teen market, primarily from action-sport-surf-lifestyle brands. Trial Tr. 1198:6-11. Pacific Sunwear is number 265 on the IR500 in 2012. DX1579. Pacific Sunwear uses Gigya for R&R functionality on its website. Trial Tr. 1201:1-7. In March 2012, Pacific Sunwear considered Gigya, Bazaarvoice, and PowerReviews for R&R functionality. Trial Tr. 1200:7-1201:8. Pacific Sunwear believes that the acquisition has had “no effect” on Pacific Sunwear “whatsoever.” Katz Tr. 25:10-18. Trial Tr. 1206:18-24 Pacific Sunwear does not feel that the acquisition of PowerReviews by Bazaarvoice affects its business and does not feel that the acquisition has had a “material impact.” Trial Tr. 1206:18-1207:5
546. **PayPal**, an online money exchange service, is in the process of implementing Zuberance R&R functionality for the PayPal “Here” product. Castro Tr. 10:15-18. PayPal considered Zuberance and Bazaarvoice for R&R services. Castro Tr. 12:4-7. PayPal (eBay) believes that the acquisition has not harmed PayPal in any way. Castro Tr. 17:9-10, 17:12-14, 17:16-18, 17:20.
547. **Perform Better** specializes in training equipment to help personal trainers and strength coaches. Bradshaw Tr. 7:17-21. In April 2013, Perform Better considered implementing R&R functionality on its website. Bradshaw Tr. 13:11-15. Perform Better considered Pluck and Bazaarvoice. Bradshaw Tr. 13:21-23. Perform Better ultimately selected Pluck. Bradshaw Tr. 14:9-11. Perform Better was “not concerned” with the acquisition. Bradshaw Tr. 19:20-21, 19:23-25, 20:2-6.
548. **Petco Inc.**, a pet supply retailer, and number 231 on the 2012 IR500, uses Bazaarvoice for R&R functionality on its website. Kelly Tr. 21:2-4; DX1579.

Petco Inc. has a social site hosted by Lithium. Kelly Tr. 22:7-10. PETCO believes that, “the acquisition has not had any impact on PETCO whatsoever.” Kelly Tr. 21:9-17, 21:20-21.

549. **Planet DJ**, an online retailer of DJ equipment, utilized PowerReviews’ R&R functionality for one year, from around November 2011 to November 2012. Holden Tr. 12:17-24. Planet DJ terminated its relationship with PowerReviews at the end of 2012 and no longer has R&R on its website. Holden Tr. 12:2-4, 18:9-11. Planet DJ interacts with its customers using online chat, Facebook, Twitter, LinkedIn, YouTube, and MailChimp, an email marketing service. Holden Tr. 20:18-21:1. Planet DJ believes that the social medial tools it uses “do more than ratings and reviews could ever have done.” Holden Tr. 24:12-25:12. Planet DJ does not believe that the acquisition would have an impact on Planet DJ. Holden Tr. 27:2-4.

550. **Princess Cruises**, a travel company with revenues north of \$2 billion, was in the process of selecting an R&R vendor when it provided testimony in this case, and at the time was considering Bazaarvoice, Pluck and developing R&R in-house. Mansukhani Tr. 17:6-21, 39:2-14; Trial Tr. 1647:8-13. After Princess Cruises indicated to Bazaarvoice that it was looking at another vendor and that Bazaarvoice was not likely going to be the chosen vendor, Bazaarvoice said it would offer the Bazaarvoice Intelligence product [REDACTED] Mansukhani Tr. 61:23-62:4. Princess Cruises believes that the presence of another vendor, Pluck, made Bazaarvoice more inclined to “sweeten the deal” for Princess Cruises. Mansukhani Tr. 65:4-66:8. Princess Cruises selected Pluck as its R&R provider. Trial Tr. 1750:4-11.

551. **Recreational Equipment Inc. (REI)**, an outdoor and sporting goods store, uses PowerReviews for its R&R functionality. Gephart Tr. 27:14-18. REI is number 64 on the IR500 2012. DX1579. REI has been satisfied with the services and products received since Bazaarvoice’s acquisition of PowerReviews. Gephart Tr. 38:9-13. REI perceives that Bazaarvoice has been faster to adopt features and functionality that would keep REI “ahead of the pack.” Gephart Tr. 37:1-6.

552. **Redbox** rents movies to customers via kiosks stationed across the country. Patel Tr. 11:5-14. Redbox’s revenues are roughly \$1.8 billion. Patel Tr. 11:23-25. Redbox uses Pluck for its R&R functionality. Patel Tr. 16:24-17:3. In 2010, Redbox considered Pluck, Jive, Mzinga, Liveworld, and Bazaarvoice for its R&R functionality. Patel Tr. 16:12-17. Redbox is satisfied with the services it is getting with Pluck. Patel Tr. 51:6-15. Redbox believes that there has been no harm to Redbox’s “ability to select a provider of R&R services” following the acquisition. Patel Tr. 50:12-16, 50:20-24, 51:2.

553. **Seagate Technologies** manufactures hard drives and other storage technology. Du Dep. 10:24-11:1. Seagate Technologies is a former Bazaarvoice customer but does not currently utilize R&R functionality on their website. Du Tr. 12:17:22, 13:14-18, 14:17-19. Seagate Technologies had no opinion “with respect to the acquisition.” Du Tr. 30:13-15.

- 1 554. **Sears** is a general merchandise retailer and is number 8 on the IR500 in 2012.
 2 Massuda Tr. 22:25-23:3; DX1579. Sears uses an in-house R&R solution.
 3 Massuda Tr. 33:3-7. Sears had used both Bazaarvoice and Viewpoints for R&R
 4 until 2011 when it decided to implement an internal R&R solution. Massuda Tr.
 5 28:6-14, 33:3-7. Sears believes that the merger between Bazaarvoice and
 6 PowerReviews may actually benefit Sears, as it will give it more companies from
 7 whom to syndicate content. Massuda Tr. 36:12-18.
- 8 555. **Shoebuy.com**, an online footwear retailer, is number 90 on the 2012 IR500 list
 9 and has used its in-house R&R solution for at least seven years. Keller Tr. 15:2-8;
 10 33:19-24; DX1579. Shoebuy testified that it is more cost effective to run an in-
 11 house R&R solution than an external solution. Keller Tr. 76:14-22. At present,
 12 Shoebuy is “satisfied with [its] current solution and [is] not currently seeking any
 13 alternatives.” Keller Tr. 58:24-59:6. Shoebuy is not aware of any impact that the
 14 acquisition of PowerReviews by Bazaarvoice has had on its business. Keller Tr.
 15 58:9-18.
- 16 556. **Shoplet**, an online reseller of office and business products number 130 on the
 17 2012 IR500, and uses an in-house R&R solution. Scharf Tr. 8:12-8:15, 10:5-11:9,
 18 22:16-23:6; DX1579. Shoplet considers its in-house R&R solution viable and
 19 sufficient for its social commerce strategy, and it does not see the value in paying
 20 an outside vendor such as Bazaarvoice for R&R. Scharf Tr. 46:19-47:6. Shoplet
 21 was “not concerned about the merger.” Scharf Tr. 43:2-4, 43:6-7.
- 22 557. **Sierra Trading Post**, a retailer of outdoor products, and number 94 on the 2012
 23 IR500 list, uses an in-house R&R solution. Newlin Tr. 14:13-21; 24:10-25:10;
 24 DX1579. STP implemented PowerReviews’ R&R solution from 2007 to February
 25 2013 when it decided to implement an internal solution that would better suit its
 26 needs. Newlin Tr. 16:15-17:8, 23:25-24:2, 26:23-27:8. Sierra Trading Post views
 27 building an in-house R&R solution as a better alternative than PowerReviews or
 28 Bazaarvoice. Newlin Tr. 45:8-14. Sierra Trading Post believes that Sierra
 29 Trading Post has not been harmed in any way by the acquisition. Newlin Tr.
 30 45:15-18.
- 31 558. **Signal Group** is an online electronics company and is number 445 on the 2012
 32 IR500. Chapman Tr. 6:9-14, 8:20-9:1; DX1579. Signal Group’s revenues are
 33 roughly \$12 million. Chapman Tr. 9:2-5. Signal Group uses an in-house solution
 34 for R&R functionality. Chapman Tr. 12:3-6. Signal Group, believes that “the
 35 acquisition has had no effect” on Signal Group. Chapman Tr. 21:24-22:1.
- 36 559. **Skechers**, a footwear brand, and number 441 on the IR500 in 2012, selected
 37 PowerReviews as its R&R provider about four years ago. Skechers is satisfied
 38 with PowerReviews’ service. DX1792 at ¶¶ 4-6; DX1579. Skechers believes that
 39 R&R is “highly commoditized” and that there are a “number of choices available.”
 40 Skechers is ‘routinely solicited’ by other R&R vendors. DX1792 at ¶ 7.
- 41 560. **The Smithsonian Institute** sells souvenirs in connection with its museums.
 42 Stowell Tr. 9:20-10:4. In August 2012, Smithsonian informed PowerReviews
 43 that it believed it was paying too much for R&R, and was not seeing value for the

amount invested in the product. Stowell Tr. 12:15-13:16. PowerReviews lowered the price of its R&R solution for Smithsonian [REDACTED] Stowell Tr. 14:7-25.

561. **Southwest Airlines** is a commercial airline. Bruns Tr. 7:14-16. In the last fiscal year, Southwest's operating revenue was approximately 17 billion dollars. Trial Tr. 1672:8-14. Southwest Airlines uses Pluck's R&R solution on its Travel Guide site, and uses Trip Advisor's reviews solution on its Southwest.com site. Bruns Tr. 13:6-7, 15:6-12; Trial Tr. 1674:9-21. 1675:23-1676:4. Southwest Airlines has talked with other vendors about potentially providing Southwest Airlines with R&R functionality, including Gogobot, Flavorpill and Pace Communications. Trial Tr. 1678:6-23. Southwest Airlines has the ability to build an in-house R&R solution. Bruns Tr. 29:24-30:7. Southwest Airlines has no opinion about whether Southwest Airlines will be harmed by the acquisition. Trial Tr. 1679:22-25.

562. **Stanley Black & Decker** sells a variety of power tools and hand tools. Glispy Tr. 9:16-22. Stanley Black & Decker's revenues are approximately \$17 billion worldwide. Glispy Tr. 14:23-15:2. Pluck provides R&R for BlackandDecker.com and Dewalt.com. Glispy Tr. 29:22-30:15. [REDACTED]

[REDACTED] Glispy Tr. 97:20-25.

[REDACTED] Glispy Tr. 38:1-7. Stanley Black & Decker uses Reevo outside the United States for R&R, moderation, some custom services, syndication, and Q&A. Glispy Tr. 46:20-47:16.

563. **Step2**, a manufacturer of toys and home and garden products, utilizes legacy PowerReviews for R&R functionality on the Step2 internet store. DX1399 at ¶¶ 2, 4. Step2 believed that there were certain features, including enhanced reporting capabilities and content syndication capabilities that PowerReviews could not provide because of PowerReviews' size and scale. Since Bazaarvoice's acquisition of PowerReviews, Bazaarvoice has made available these additional features that PowerReviews could not previously provide. DX1399 at ¶ 6.

564. **Systemax**, a consumer electronics retailer, is number 25 on the 2012 IR500 list, and has annual revenues of about \$3.5 billion annually. B. Matthews Tr. 10:24-11:5, 15:23-16-3; DX1579. Systemax has used an in-house R&R solution for its various websites since 2005 or 2006. B. Matthews Tr. 23:1-16. Systemax doesn't "think [the acquisition] will affect [Systemax] at all." B. Matthews Tr. 31:8-15.

565. **Tempur-Pedic**, a mattress manufacturer, is number 185 on the 2012 IR500, and its revenues are roughly \$3 billion. Varni Tr. 10:4-7; DX1579. Temper-Pedic uses R&R functionality provided by its e-commerce platform, Shopvisible. Varni Tr. 16:19-23, 20:21-21:21. Tempur-Pedic had no opinion as to whether the acquisition has had an effect on Tempur-Pedic. Varni Tr. 45:6-9.

566. **Tiffany & Co.**, a global jewelry company, is number 116 on the 2012 IR 500, and whose annual revenues are roughly \$3.8 billion. O'Halloran Tr. 8:1-7, 9:2-6, DX1579. Tiffany & Co does not employ R&R on its website because it "doesn't

fit” Tiffany’s Brand. O’Halloran Tr. 13:21-14:3. Tiffany’s uses its Facebook page to “tell [the] brand’s story” and allows customers to post reviews, among other things, on its Facebook wall. O’Halloran Tr. 15:14-16:3.

567. **Toys “R” Us**, a toy and games retailer, and number 29 on the 2012 IR500, has used PowerReviews for R&R since 2006. Caine Tr. 21:24-22:12; DX1579. Toys “R” Us believes and hopes “that the Bazaarvoice technology will, could, or might bring new features and functionality that would become available to Toys “R” Us that [Toys “R” Us] would take advantage of and welcome.” The company believes the merger “could bring a positive benefit to [Toys “R” Us] in that way.” Caine Tr. 49:22-50:22. Toys “R” Us does not think the merger has had a negative impact on its business. Caine Tr. 49:22-25.

568. **Under Armour** is a manufacturer and retailer of apparel, footwear and accessories and is number 143 on the 2012 IR500 list. Parzianello Tr. 7:10-8:2; DX1579. Under Armour uses Bazaarvoice for R&R functionality. Parzianello Tr. 12:25-13:2. Under Armour has the ability to build an in-house R&R solution. Parzianello Tr. 14:18-15:19. Under Armour believes that the acquisition has had no impact on Under Armour. Parzianello Tr. 16:16-21.

569. **Vitamin Shoppe** is a retailer of vitamins and supplements, along with green living and personal care products and is number 201 on the 2012 IR500. Beebe Tr. 8:5-10; DX1579. Vitamin Shoppe uses PowerReviews for R&R and TurnTo for Q&A. Beebe Tr. 14:4-14:8, 15:14-16; Trial Tr. 1367:8-11. In July 2013, Vitamin Shoppe renewed its contract with PowerReviews at a price 57% less than what it was previously paying. DX1796. Vitamin Shoppe believes that it “absolutely” has other options for R&R solutions. Vitamin Shoppe was “certain” that there “are a number of other vendors that [it] could investigate, if need be.” 79:5-8; Trial Tr. 1369:8-21. If Vitamin Shoppe had an unfavorable negotiation with PowerReviews, it would investigate Gigya, along with “any of the players out there” and would “look at small vendors, as well as large vendors, because small vendors can do an equally good job.” Beebe Tr. 33:3-33:12. Vitamin Shoppe has the ability to build an in-house R&R solution. Beebe Tr. 28:9-17; Trial Tr. 1375:18-1376:2. Vitamin Shoppe stated that the effect of the acquisition of PowerReviews by Bazaarvoice would be such that “more services” are available to it as a PowerReviews customer, and that it “hoped to benefit from those new functionalities.” Beebe Tr. 35:3-5, 35:8-9; Trial Tr. 1373:16-1374:3.

570. **Walgreens**, a national drugstore chain, and number 33 on the IR500 2012, uses Bazaarvoice for R&R. Drugstore.com, Beauty.com and VisionDirect, all Walgreens family websites, use PowerReviews for R&R functionality. Jeske Tr. 11:13-13:9, 23:20-24:5; DX1579. Walgreens-owned Drugstore.com had an in-house R&R system before choosing to utilize PowerReviews for R&R. Jeske Tr. 90:20-25. Walgreens deponent Ms. Jeske had no views of the merger and did not believe that at this time the merger had had any negative effects on Walgreens. Jeske Tr. 32:5-17.

571. **Wayfair**, an online home furnishings store uses an in-house R&R solution, and is IR500 2012 number 50. Macri Tr. 8:2-10; Trial Tr. 1601:8-9, 1602:19-24;

DX1579. Wayfair added specific customized features to their R&R tool when it build an internal solution. Macri Tr. 40:2-41:2. Wayfair continues to innovate and improve its in-house technology. Trial Tr. 1607:6-19. Wayfair does not believe that the acquisition of PowerReviews by Bazaarvoice has caused any harm to Wayfair. Trial Tr. 1608:20-22. Wayfair believes there are a lot of vendors in the social commerce space. Trial Tr. 1608:20-1609:4

572. **Wine.com**, an online retailer specializing in wine, number 248 on the IR500 in 2012, has used an in-house R&R solution since 1998. Smalling Tr. 9:2-15, 17:17-21; DX1579. Wine.com has talked to Oracle about the R&R tool built into its ATG Dynamo platform. Smalling Tr. 46:9-23. Wine.com has looked at MarketLive and Magento R&R plug-ins provided by multiple different vendors. Smalling Tr. 46:18-22. Wine.com believes that the acquisition would not “affect [Wine.com] currently.” Smalling Tr. 28:17-19, 28:23-24

573. **World Kitchen** is a manufacturer and distributor of houseware products. World Kitchen runs five different websites: ShopWorldKitchen.com, Corelle.com, Chicagocutlery.com, Snapware.com, Corningware.com and Pyrexware.com. Bausch Tr. 8:21-9:8. World Kitchen estimates that global annual revenues are between \$500 million and \$1 billion dollars. Bausch Tr. 14:6-15. World Kitchen uses Bazaarvoice for R&R. Trial Tr. 1286:23-25. World Kitchen uses Gigya for social infrastructure and single sign on. World Kitchen has access to Gigya’s ratings and review tool as part of that contract. Trial Tr. 1301:3-7; 1291:11-20. World Kitchen would use Gigya in lieu of Bazaarvoice technology and feels it “would be a good alternative.” World Kitchen planned to implement Gigya R&R if Bazaarvoice did not reduce its price. Bausch Tr. 29:25-31:4, 61:24-19; Trial Tr. 1288:25-1289:18. Post merger, World Kitchen re-negotiated its contract with Bazaarvoice and now receives “about six times the capability for a little less than double the price.” Trial Tr. 1299:8-11. World Kitchen did not feel that the acquisition of PowerReviews by Bazaarvoice was “an issue in any of the selection process” and considers the acquisition “irrelevant” to World Kitchen. World Kitchen testified that the acquisition “wouldn’t do any harm.” Trial Tr. 1297:21-1298:9.

574. **XO Group Inc.** is an online retailer specializing in personalized wedding favors, bridal party gifts, decorations, bridal accessories, and a small amount of apparel, and is number 393 on the IR500 2012. Openshaw Tr. 10:21-11:14; DX1579. XO Group uses PowerReviews for R&R on its websites The Knot and American Bridal. Openshaw Tr. 19:24-20:14. XO Group uses Practical Data for R&R on its Groomsmen’s Gifts site. Openshaw Tr. 20:15-18. XO Group finds Practical Data’s ratings and review solution to be “excellent.” Openshaw Tr. 27:3-16. XO Group would consider and has considered Practical Data for its other e-commerce properties for R&R. Openshaw Tr. 54:15-18. XO Group did not think that the acquisition has had any effect on XO Group. Openshaw Tr. 34:7-9, 34:12.

575. **Zappos.com Inc.**, uses an in-house R&R solution. DX1396; DX1579

576. Customers using internal solutions for their R&R needs testified that the acquisition has not harmed and will not negatively impact their business.

1 577. Among many examples, notable customers include eBags, Home Shopping
2 Network, Sears, Sierra Trading Post and Wayfair.

3 578. Customers using competitors with other social commerce tools believe that the
4 acquisition has not and will not negatively impact their business.

5 579. Among many examples, notables include New Era Portfolio and Pacific Sunwear
6 (Gigya customers), Autozone and Perform Better (Pluck customers), Acer and
7 Nutri-Health (Reevoo customers), and Astral Brands and Ink Technologies
8 (Rating-System customers).

9 580. Customers of Bazaarvoice testified that the acquisition has not and will not
10 negatively impact their business. Among many examples, notables include Belk,
11 Build.com, Footlocker, Home Depot, Golfsmith and World Kitchen.

12 581. Customers of PowerReviews testified that the acquisition has not and will not
13 negatively impact their business.

14 582. Among many examples, notables include B&H Photo, BJ's Wholesale Club,
15 Gander Mountain, Hayneedle and Lord & Taylor.

16 583. The government and its economist have not identified any syndication customers
17 who have been or likely will be negatively impacted by the acquisition.

18 584. Bazaarvoice continues to heavily discount in order to secure sales.

19 585. Among many examples, notables include Abe's of Maine, Crate and Barrel,
20 Golfsmith, Guess? Inc., and Smithsonian.

21 ii. Customers are knowledgeable about their current competitive options

22 586. Customers know their business best, and have every incentive to investigate their
23 options and secure the best product and contract terms they can at the time they
24 are contemplating purchasing or renewing their contracts for R&R.

25 587. B&H Photo has begun its search of potential new R&R vendors after becoming
26 dissatisfied with PowerReviews in Spring 2013. B&H has over 100 information
27 technology professionals on staff and could easily build an internal solution as a
28 competitive option. B&H is also currently in the process of evaluating vendors,
including Bazaarvoice, Pluck, Reevoo and Rating-System. As a \$2 billion
revenue company, B&H has the incentive and wherewithal to investigation its
options and pick the solution best suited for B&H. Appendix A.

588. Between October 2011 and February 2012, Clorox investigated R&R options
available to it, including Bazaarvoice, PowerReviews, Reevoo, Gigya and Pluck.
Clorox narrowed the list to the vendors it believed provided the best products,
services and pricing. Clorox will conduct the same evaluation process anew for
its next R&R vendor review. Appendix A.

589. In late 2011, before renewing with Bazaarvoice, Golfsmith conducted a full investigation of Pluck, with numerous meetings, product tests and extensive contract negotiations. Golfsmith ultimately stayed with Bazaarvoice, but leveraged Pluck to extract significant price concessions from Bazaarvoice. Appendix A.

590. Hayneedle has conducted due diligence with regard to the product and service offerings of Bazaarvoice, Pluck, Gigya and Reevo. Hayneedle plans to issue an RFP to multiple vendors to see what market pricing will be like and obtain the best possible deal by leveraging the bidders against each other. Appendix A.

591. In October 2011, Intercontinental Hotels Group issued an RFP and met with five R&R vendors (TripAdvisor, Gigya, PowerReviews, Bazaarvoice and Reevo). IHG eliminated firms that had insufficient experience in travel, such as PowerReviews. IHG conducted more negotiations and narrowed the list down to two (Reevo and Bazaarvoice), and ultimately selected Bazaarvoice because it was less expensive. Appendix A.

592. In late 2012, World Kitchen determined that it was not receiving an appropriate ROI on R&R from Bazaarvoice. World Kitchen used its bargaining position to negotiate a more favorable renewal contract with Bazaarvoice that included significant price and features improvements. World Kitchen had dealt with Gigya and knows it would be a good alternative to Bazaarvoice, if necessary. Pluck is another option that World Kitchen has examined. World Kitchen would readily drop Bazaarvoice and replace it, if necessary, with any of these other vendors. Appendix A.

iii. More competitive options are likely

593. Because of the constant and rapid evolution of technology in this industry, and the absence of entry barriers, the competitive options available to customers likely will change and grow in the near future.

594. For example, Intercontinental Hotel Group testified that the “social space” is “changing pretty rapidly.” As a result, when its contract with Bazaarvoice ends, IHG will likely look at a “whole variety of vendors because the requirements of what consumers want and the capabilities of what different vendors have in their space probably would have changed dramatically.” Trial Tr. 1360:25-1361:7.

595. Hayneedle and B&H Photosimilarly testified that their options are constantly expanding as the technology and industry evolve. Trial Tr. 1630:21-1631:13, 1854:15-1856:6.

c. *The customer testimony was not “cherry picked”*

596. The customers who testified at trial or through depositions were not “cherry-picked” by Bazaarvoice. To the contrary, they represent a broad and representative sample of current, former and potential Bazaarvoice customers – large, medium, small, retailers, brands, and companies covering a broad spectrum of industries. PFF ¶¶1006-1028.

- 1 597. The government identified 76 customers that it believed had relevant information
2 to the case. Plaintiff's March 1 Rule 26 disclosures.
- 3 598. Bazaarvoice sought to depose as many customers identified by the government as
4 possible. The government first argued at the Case Management Conference
5 against providing Bazaarvoice with more deposition time and later argued in May
6 2013 that deposition time should not be extended to allow more time. PFF ¶ 32.
- 7 599. When Bazaarvoice sought more time to depose more customers in May 2013, the
8 government specifically made the claim that more customer depositions were
9 "unnecessarily duplicative" and that nothing would be "addressed in
10 [Bazaarvoice's] 91st deposition that [Bazaarvoice] has not already addressed
11 during its first 90 depositions." PFF ¶ 32.
- 12 600. Bazaarvoice was able to depose 54 of the original 76 customers identified by the
13 government plus an additional 14 customers listed on the IR500 (apart from
14 companies listed on the IR500 within the set of 54). PFF ¶ 33.
- 15 601. The customers who testified at trial or through depositions were not "cherry-
16 picked" by Bazaarvoice. Trial Tr. 2128:11-15.
- 17 602. The customers who testified in this case represent a substantial portion of the
18 customers identified by the government and comprise a representative sample of
19 current, former and potential Bazaarvoice customers – large, medium, small,
20 retailers, brands, and companies covering a broad spectrum of industries. PFF
21 ¶¶1006-1028.
- 22 603. It is logically inconsistent for the government to claim that customer testimony is
23 on the one hand "duplicative" and at the same time subject to such differentiation
24 that they can be "cherry picked."
- 25 604. The abundance of viable competitive alternatives (including in-house solutions
26 and commercial products), and the absence of meaningful barriers to entry and
27 repositioning, ensure that anticompetitive effects have not and likely will not
28 occur as a result of the acquisition.
605. In addition, in an effort to investigate whether there is an area of localized
 competition for R&R customers (U.S. v. Oracle Corp., 331 F. Supp. 2d 1098,
 1118 (N.D. Cal. 2004)), Bazaarvoice served two sets of interrogatories asking the
 government to identify the customers it contends would be harmed by the
 acquisition. The government responded by claiming generally that all customers
 could be harmed, but provided information from which about only [190]
 customers could be identified by name. Plaintiff's Objections and Responses to
 Second Set of Interrogatories.
606. Using the government's interrogatory response, Bazaarvoice attempted to
 determine from company records and customer interviews whether the customers
 identified by the government amounted to a clear area of "localized
 competition" – a unique sub-group of customers who may be harmed by the
 acquisition. Efforts to depose these customers were hampered by the

government's successful court-ordered limitations on deposition discovery. PFF ¶ 32.

607. The government has provided no detailed evidence about the alternatives these customers in fact would have in negotiating renewals or new R&R purchase agreements with Bazaarvoice. On the other hand, the evidence presented by Bazaarvoice, through customer testimony and the analysis of its economic expert, demonstrates that these customers do not in fact constitute an area of localized competition sufficient to support the government's allegation of unilateral effects.

d. The evidence demonstrates that there has been no harm to innovation as it continues to flourish in the dynamic social commerce space

608. Bazaarvoice's acquisition of PowerReviews has not caused (and will not cause) any harm to innovation. Innovation in R&R and social e-commerce technology continues, and Bazaarvoice cannot afford to stand still on innovation.

609. Social commerce is an industry predicated upon innovation, and participants continue to innovate. Customers expect and benefit from the innovation, and suppliers who do not remain competitive will be cast aside.

i. Bazaarvoice must innovate against Amazon

610. Amazon pioneered R&R with its own in-house solution, [REDACTED] Ahmed Tr. 88:14-89:4; Trial Tr. 526:21-527:15 (Amazon "essentially created the concept of reviews").

611. Amazon.com drives innovation in R&R because retailers that Amazon competes with seek out functionality that Amazon develops on its site. Trial Tr. 1511:7-1512:19.

612. For Bazaarvoice and others, Amazon continues to be a driving force of innovation for R&R functionality. Trial Tr. 658:12-659:18, 1785:16-1786:1.

613. When Bazaarvoice thinks about strategy and innovation, Bazaarvoice endeavors to "provide [its] retail clients with the same sort of capabilities that Amazon.com has." Trial Tr. 791:12-793:8. Bazaarvoice "must do the best job ... of being best in class, of being the must [sic] customizable, the most configurable, the most feature-complete solution in the industry." Trial Tr. 225:22-226:9.

614. Amazon constantly improves its R&R functionality. Amazon frequently introduces new features and functionality for R&R – new features and functionality are offered every two weeks. Ahmed Tr. 38:2-39:10, 120:24-121:7.

615. Amazon's R&R allows consumers to share reviews from Amazon.com to websites such as Twitter and Facebook. Ahmed Tr. 46:1-4. Amazon was one of the first companies to allow customers to place R&R written by their friends on Facebook above R&R written by other consumers. Trial Tr. 1469:2, 1471:1-5. This functionality is valuable to consumers because reviews from friends or

acquaintances are “much more persuasive than reviews from strangers.” Trial Tr. 1469:2, 1471:1-5.

616. Amazon was the first website to pioneer the histogram as a reviews tool. A histogram is a graphical representation of the number of reviews a product has received for each level of stars. Consumers can quickly see the distribution of reviews and then can quickly navigate to the most helpful reviews. Ahmed Tr. 38:10-39:10.

617. Amazon introduced functionality that enables consumers to search for specific keywords within reviews. Ahmed Tr. 41:17-42:9.

618. Amazon has offered a forums functionality that has been used by consumers for Q&A on its website for several years. Ahmed Tr. 35:12-16.

619. Amazon has gone beyond the five-star scale for R&R with its “extended attribute” feature. An “extended attribute” is not on a five-star rating scale, but rather is a subset of an overall review. For example, a consumer would be able to indicate how a dress, pant or shoe fits. Ahmed Tr. 71:5-18.

620.



Ahmed Tr. 58:24-59:18.

621. Bazaarvoice and PowerReviews admit they took Amazon’s R&R as the original “inspiration” for their own product offerings, and constantly “monitor” Amazon to stay competitive. Trial Tr. 658:18-659:13, 225:22-226:9. Bazaarvoice and PowerReviews sought to “democratize” R&R against Amazon by offering R&R functionality to all retailers, in order to enable retailers to compete more effectively against Amazon. Trial Tr. 443:16-24, 658:12-660:23.

622. Bazaarvoice considers Amazon to be “far more stimulating” than PowerReviews was with respect to innovation. Bazaarvoice regards Amazon as “really the one to keep up with” in terms of R&R functionality. Trial Tr. 226:10-17.

623. Retail and brand websites will often want certain functionality because they see that Amazon has it. Trial Tr. 1511:21-1512:4. These observations drive Bazaarvoice customers to demand that Bazaarvoice innovate to remain competitive with Amazon. Trial Tr. 443:16-24. For example, when Amazon added a photography blog and discussion board this “raised the bar” on what B&H Photo and its R&R vendor had to provide to consumers. Trial Tr. 1850:13-1851:20.

624. Sears testified that the “industry standard” is to look at Amazon. To try to compete with Amazon, Sears syndicates review content from Bazaarvoice brand and manufacturer customers, to supplement the review content on the Sears websites. Massuda Tr. 51:17-52:1.

ii. Bazaarvoice must innovate against other vendors

625. Commercial vendors including Bazaarvoice, Gigya, [REDACTED] TurnTo, and Lithium have and will continue to innovate by expanding the number and sophistication of various products, including R&R, so that they can offer e-commerce customers more features consolidated under one vendor. Tarkowski Tr. 16:18-17:20; [REDACTED] Schuster Tr. 119:3-24.

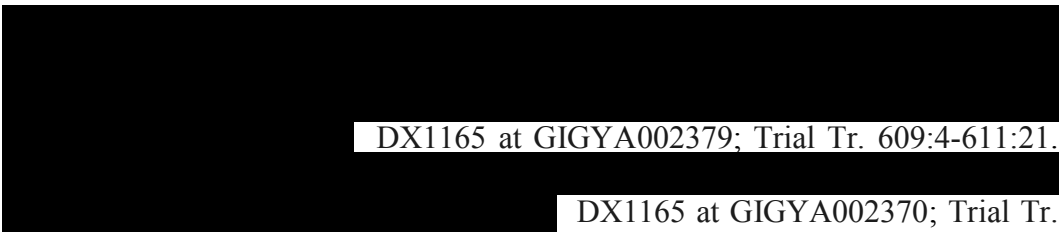


626. [REDACTED] Crickmer Tr. 35:10-22.
[REDACTED] Crickmer Tr. 35:10-22.
[REDACTED] Crickmer Tr. 35:23-36:11.

627. [REDACTED]
Crickmer Tr. 42:22-23, 43:10-15; DX1609 at 1.
[REDACTED] Crickmer Tr. 44:4-24; DX1609 at 1.

628. [REDACTED]
DX1609 at 2.
[REDACTED] Crickmer Tr. 44:25-45:19.

629. [REDACTED] DX1496 at 3.

630. Gigya intends to continue to invest in research and development of its R&R product to “meet the needs of the market” and potentially keep up or provide a better service than its competitors. Tarkowski Tr. 79:13-80:9. Gigya invests in research and development to “continue the innovation of [its] product and services to meet the needs of the market.” Tarkowski Tr. 79:19-22.

631. Gigya recently provided Verizon with “end-to-end social infrastructure” including Social Login and Gamification, and created “a behavior feedback loop so fluid, that more than 50 percent of the site’s users participate in the gamified environment.” DX1547 at 1.
632. Gigya’s innovation allows “Gigya’s reporting and analytics [to be] integrated with more robust website analytics technologies, such as Google’s analytics products or [] Omniture’s.” Tarkowski Tr. 39:20-40:5.
633. Gigya intends to continue to invest in research and development of its R&R product in particular to “continue the innovation of [its] product and services to meet the needs of the market.” Tarkowski Tr. 79:16-22. Gigya also intends to continue to invest in other aspects of the social suite technology in order to “meet the needs of [its] clients, as well as to keep up or provide a better service than [its] competition.” Tarkowski Tr. 79:23-80:21
634. If a customer requests a service that Gigya does not currently offer, Gigya has the technical resources and know-how to develop it. Tarkowski Tr. 32:9-33:19, 108:16-20; DX1166. Gigya could develop a functionality to embed videos into R&R if customers demanded such functionality. Tarkowski Tr. 108:8-20.
635.  DX1165 at GIGYA002379; Trial Tr. 609:4-611:21.
 DX1165 at GIGYA002370; Trial Tr. 615:22-616:22, 621:22-622:4.
636. Lithium launched a new series of products, including a “major upgrade” to Ratings & Reviews, in July 2012. DX1206 at LITH10803; DX0191.  DX1550 at 1.
637. In January 2013, Reevoov introduced “Reevoov Insight” to “harness social data and empower customer-centric decision-making across enterprises.” DX1745. Reevoov has also introduced “The Reputation,” which is a rating of the overall service of a website. Giannoni Tr. 94:18-95:2. Reevoov shares the information collected from “The Reputation” with Google Seller Ratings, whose Pay-Per-Click program shows customers that it provides a substantial increase in paid click-through ads. Giannoni Tr. 94:18-96:8. Reevoov introduced “Reevoov Syndicate” which it described as “a revolutionary approach to sharing your Social Content across your entire business eco system.” DX1161 at 16.
638. Practical Data continually improves its product, including its R&R tool. Jimenez Tr. 11:10-12.
639. Rating-System is constantly driving to improve its services and offerings to clients. Trial Tr. 1305:7-10

640. Rating-System will work with e-commerce sites to customize its R&R solution. Trial Tr. 1309:5-10.

641. ShopVisible places a “premium” on innovation and hosts a platform where it adds new features and functionality to help its clients “stay current with best practices in order to sell their products.” Cook Tr. 11:22-12:7. ShopVisible believes that innovation is crucial to survival and that innovation is “a key part of the value proposition” that it markets. Cook Tr. 13:6-10. ShopVisible introduces new features across its e-commerce platform every 10 weeks. Cook Tr. 14:24-15:9.

642. ShopVisible believes that social commerce features are constantly evolving and that the technologies that they are using are changing. Cook Tr. 36:4-15.

643. [REDACTED] Eberstadt Tr. 148:13-18. [REDACTED] Eberstadt Tr. 149:5-21.

iii. Bazaarvoice will continue to invest in R&D and innovation

644. Bazaarvoice believes it has a need to innovate that “comes from [its] need to create value for [its] clients first and foremost, and the marketplace generally is competitive and very dynamic for all things eCommerce and Internet.” Trial Tr. 759:18-759:25. Bazaarvoice continues to believe that significant R&D investment is essential to its success and to maintain what it has achieved as a company. Trial Tr. 861:18-862:11.

645. Because the basic capability of R&R is a commodity, Bazaarvoice believes it must “constantly innovate to continue to be relevant.” Trial Tr. 835:6-836:9. Bazaarvoice continues to develop new services such as Bazaarvoice Conversations and Bazaarvoice Connections. Trial Tr. 785:22-786:15, 788:20-790:4.

646. Bazaarvoice continues to invest heavily in research and development. DX1433 at ¶ 286, Exhibit 11; Collins Tr. 30(b)(6) 66:23-67:10; Trial Tr. 861:18-862:11. Bazaarvoice has increased its spending on R&D since the acquisition of PowerReviews, [REDACTED] in the last two and a half years Bazaarvoice has gone from approximately [REDACTED] Trial Tr. 861:18-862:11. Bazaarvoice’s investment in R&D has at least doubled over the last two years, and its investment in R&D continues to increase. Trial Tr. 861:18-862:11.

647. [REDACTED]

DX1382 at 1-3.

DX1382 at 4-5.

648. [REDACTED]

DX1382 at 8-9.

e. The data shows no anticompetitive price changes since the merger

649. The price of Bazaarvoice services have remained the same post-merger. Bazaarvoice sales data indicate that the majority of its R&R customers did not experience an increase in prices from June 2012 to March 2013, even if their contracts came up for renewal post merger. DX1433 at ¶ 239. Only 14% of Bazaarvoice's customers experienced any increase in price post-merger. DX 1433 at ¶ 239, Exhibits 4, 5. Virtually all of post-merger price increases were the result of customers that opted for additional or improved features or functionality. DX1433 at ¶ 240 and Exhibit 6; Trial Tr. 1187:11-1188:2.

650. In the most recent quarter, Bazaarvoice's average price went down for the first time. Trial Tr. 849:13-850:8.

651. The DOJ and Dr. Shapiro have presented no evidence of any anticompetitive post-merger price changes.

f. The data shows vigorous customer switching since the merger

652. Bazaarvoice continues to lose customers at the same or higher rate compared to the rate of customer losses before the merger. Trial Tr. 849:13-850:14, 892:13-21, 1119:2-20, 1121:3-1122:18.

653. Following the acquisition, Bazaarvoice lost more than two times as many customers to other R&R solutions, such as in-house builds, e-commerce providers, and other competitors as it did to PowerReviews in the last 10 months preceding the merger (17 versus 7). DX1433 at ¶ 241; Trial Tr. 1121:8-1122:18. Of the customers leaving Bazaarvoice in the 10 months prior to the transaction, only 11 percent opted for PowerReviews. DX1433 at ¶242. Conversely, 29 percent of these lost customers opted for other R&R vendors or solutions. DX1433 at ¶ 242. Following the acquisition, of the 66 customers lost by Bazaarvoice, 40 opted to no longer include R&R on their site. DX1433 at ¶ 241; Trial Tr. 1120:16-1121:7, 1128:4-1129:6.

g. Post-merger, pricing pressure on Bazaarvoice has not waned

654. As forecasted by Bazaarvoice's board, post-acquisition, Bazaarvoice continues to face intense competition and pricing pressure from in-house solutions and commercial vendors.

655. Post-merger, Bazaarvoice has offered customers additional services at discounts in order to hold on to customers or win new customers against competitors. PFF ¶ 649.

656. Competition from Gigya, Pluck, Reevo, Rating-System and many other competitors has forced Bazaarvoice to compete aggressively for customers to the same (if not greater) extent as competition from PowerReviews did before the merger.

657. Competitive pressure on pricing for Bazaarvoice has “definitely become higher” than before the merger. Trial Tr. 1119:2-6. This has been caused by, among other factors, “an insurgence of new niche players that have come to the US” such as Reevo, eKomi, Rating-System. Trial Tr. 1119:2-12. These players have “appeared and become much more aggressive” at pursuing Bazaarvoice’s client base. Several of these companies have former Bazaarvoice employees in their sales team and therefore know Bazaarvoice’s sales strategies. Trial Tr. 1119:2-15.

i. Bazaarvoice faces competitive pressure from in-house solutions

658. Post-acquisition, Sierra Trading Post switched from PowerReviews to an internal solution. PFF ¶ 559.

659. Bazaarvoice has faced competitive pressure from in-house solutions in several large accounts. DX1886 at DDX-0003-2.

- In December 2012, Bazaarvoice gave [REDACTED] after [REDACTED] threatened to replace Bazaarvoice with an in-house solution as it felt the fees it was paying were too high. DX1886 at DDX-0003-2; Trial Tr. 1124:8-18. Although [REDACTED] did reduce some services such as Ask & Answer and Stories, the value of these services is far less than the discount provided to [REDACTED]

DX0223.

DX0223; DX1886 at DDX-0003-2.

DX0223; DX1886 at DDX-0003-2.

- In the spring of 2013, Bazaarvoice offered [REDACTED] for R&R to replace [REDACTED] internal R&R solution. [REDACTED] refused the offer. DX1886 at DDX-0003-2; Trial Tr. 1126:15-1127:6.

- Bazaarvoice reduced [REDACTED] in May 2013 in the face of a threat by [REDACTED] to bring its R&R in-house. DX1886 at DDX-0003-2.

- Bazaarvoice reduced [REDACTED] in August 2013 in the face of a threat by [REDACTED] to bring its R&R in-house. DX1886 at DDX-0003-2.

ii. Bazaarvoice faces competitive pressure from Pluck

660. Crate and Barrel recently seriously considered Pluck as a competitive alternative to Bazaarvoice. PFF ¶ 505. Crate and Barrel used the presence of Pluck as leverage to receive a better price from Bazaarvoice. Seebeck Tr. 32:24-33:5. As a result, Crate and Barrel received [REDACTED] from its previous contract. DX1886 at DDX-0003-2.

661. [REDACTED] DX1150 at DM-DOJ-00014858. [REDACTED] DX1150 at DM-DOJ-00014858. [REDACTED] DX1150 at DM-DOJ-00014858.

662. [REDACTED] DX1886 at DDX-0003-3; Trial Tr. 1127:14-25.

663. Princess Cruises recently considered Pluck and Bazaarvoice for R&R. After Princess Cruises indicated that it was considering another vendor, Bazaarvoice said [REDACTED] Pluck has won the business. PFF ¶ 552.

iii. Bazaarvoice faces competitive pressure from Rating-System

664. In November 2012, Nature Shop informed Bazaarvoice it was considered Rating-System for R&R. Nature Shop believed Rating-System could replicate Bazaarvoice's solution [REDACTED] DX0856 at BZ-01985565. In response, Bazaarvoice approved a discount in pricing [REDACTED] for Nature Shop so that it could "save the client count at almost all cost." DX0856 at BZ-01985562-3.

665. Whirlpool informed Bazaarvoice in August 2012 that it was considering Rating-System for R&R. DX0662 at BZ-01491889. Whirlpool explained to Bazaarvoice that Rating-System was claiming that it could "do everything [Bazaarvoice does] for a 1/10 the price." DX0662 at BZ-01491889.

666. In November 2012, Bazaarvoice was forced to "dramatically drop[]" its price to retain BancVue as a R&R customer. DX1422. BancVue had communicated to Bazaarvoice that its initial pricing was too high, and it had entered serious negotiations with Rating System. DX1422.

667. [REDACTED] Trial Tr. 1130:2-11; DX1886 at DDX-0003-4.

iv. Bazaarvoice faces competitive pressure from Gigya

668. Bazaarvoice noted in September 2012 that it was seeing Gigya in competitive situations and that Gigya is "very aggressive on pricing." DX900.

- 1 669. Bazaarvoice has recently begun seeing Gigya in competitive situations, and has
2 had to “battle” Gigya in specific accounts. DX0196 at BZ-00165041.
- 3 670. Gigya became the “#2 competitor” that PowerReviews was seeing in its sales
4 cycles immediately before the merger. DX0793. PowerReviews noted in 2012
5 that Gigya was in the process of growing, with 100 employees in May 2012 and
6 expecting to have 150 by the end of 2012. DX0608 at BZ-01291869.
PowerReviews observed that Gigya had an opportunity to further grow and
expand its R&R presence by “mimic[ing] BV[‘s] positioning to Brands/Retailers.”
DX0608 at BZ-01291870.
- 7 671. Bazaarvoice noted that “Gigya currently has an advantage” over Bazaarvoice with
8 its seamless user experience. DX0837. This was of particular concern to some at
9 Bazaarvoice who believe that “retailers don’t care as much about the
10 syndication/data as they do about the user experience.” DX0837. Bazaarvoice
noted that “Gigya is a tactical sale for a E-tailer but sometimes that’s enough.”
DX0837.
- 11 v. Bazaarvoice faces competitive pressure from Reevo
- 12 672. In August 2012, Bazaarvoice circulated an announcement that Reevo was
13 expanding into the U.S. and noted that it was important to intensify its focus on
14 the SMB market segment because “Revo-like [sic] prices are coming soon to the
15 US and Australia” through the competitive presence of Reevo. DX0701 at BZ-
01649497.
- 16 673. In October 2012, Bazaarvoice identified the need to react to the fact that Reevo
17 ‘creates more reviews faster’ than the Bazaarvoice R&R solution. DX0718; Trial
18 Tr. 1856:22-1857:19. One of Reevo’s key differentiators is “they are very
19 innovative on how to get customers to respond to reviews.” Trial Tr. 1856:22-
1857:16. Bazaarvoice noted that it does not want customers to compare
Bazaarvoice with Reevo on the basis of the quantity of reviews it is able to
generate. DX0718 at BZ-0168474.
- 20 674. Bazaarvoice considers Reevo to be a “serious threat” in part because of the
21 quantity of reviews it is able to generate. DX0775 at BZ-01848009. Acer was
22 swayed by Reevo’s “we get you content, and lots of it, instantly!” argument, and
Bazaarvoice “imagine[d] others will be as well.” DX0775 at BZ-01848009.
- 23 675. In November 2012, Bazaarvoice circulated its battle card on Reevo while noting
24 that Reevo was going after many Bazaarvoice customers. Bazaarvoice noted
25 that Reevo “has been very vocal around entering [the] market, and [Bazaarvoice
needs] to be prepared to compete and win.” DX0777 at BZ-01850283.
- 26 676. In December 2012, Abe’s of Maine informed Bazaarvoice that it was considering
27 Reevo for R&R. Bazaarvoice agreed to lower Abe’s of Maine’s ASF [REDACTED].
PFF ¶ 478.
- 28 vi. Bazaarvoice faces competitive pressure from Lithium

677. Bazaarvoice responded to Lithium's announcement of a "powerful new ratings and reviews module" in May 2012 by instructing its field teams to take measures to combat Lithium. DX0344.

678. Post-acquisition, Bazaarvoice noted that Lithium is "making a bigger run at brands, [by] expanding their footprint to collect all forms of UGC." DX0196 at BZ-00165042.

679. [REDACTED]
DX0262 at BZ-00319567.

vii. Bazaarvoice faces competitive pressure from new entrants

680. A Bazaarvoice internal email in August 2012 deemed Adobe "the biggest direct competitive threat" faced by Bazaarvoice. Adobe's "retail footprint, uniques, and advertising reach is already 5x [Bazaarvoice] via Omniture." Adobe also offers an "audience measurement platform, personalization and targeting capability," and has "the capability to capture, manage, and distribute content." Adobe is in an "advantageous situation" as a competitor of Bazaarvoice's due to Omniture, and it already has a market platform business that does \$800m. DX0202 at BZ-00166469.

681. Vitamin Shoppe recently came to Bazaarvoice, noting that it was considering leaving Bazaarvoice for the R&R solution built into its new e-commerce platform provided by ATG (which is now owned by Oracle). Bazaarvoice worked with Vitamin Shoppe to restructure its contract so that Vitamin Shoppe would pay 33% less. Trial Tr. 1133:10-1134:8; PFF ¶ 571.

viii. Bazaarvoice faces competitive pressure from rapid entrants

682. Following the acquisition, Bazaarvoice is actively concerned about the possibility of the "launch of an R&R product by one of the big guys" like Oracle or Salesforce, and has had "strategic conversations" on how to remain competitive if such a company launched a R&R product. DX0202 at BZ-00166469.

683. Following the acquisition, Bazaarvoice's CEO noted that there is "another universe of start ups and established companies" that the company had to consider competitors, including Google, Facebook, eBay, Yahoo, Merchantry, Steelhouse, and HookLogic. Bazaarvoice identified each of these companies as "dangerous weapons if combined with other capabilities." DX0202 at BZ-00166469 -70.

h. *Bazaarvoice's financial performance is consistent with increased competition since acquiring PowerReviews*

684. Bazaarvoice's performance since the merger has been exactly the opposite of the predictions in some pre-merger documents that acquiring PowerReviews would eliminate price competition and create barriers that would give Bazaarvoice durable pricing power. Any "belief or assertions that [Bazaarvoice] would enjoy a benefit . . . has not played out in reality." Trial Tr. 853:22-854:2. Bazaarvoice's

“actual sales results, in terms of sales performance, dollars revenue gain, pricing churn, has deteriorated quite significantly.” Trial Tr. 859:7-860:22. Competition has intensified and “constant pressure” on pricing remains the norm. Trial Tr. 892:13-892:21.

685. Since the merger, Bazaarvoice has “had to accept significant [demands for price reductions from customers for reasons] more significant and more powerful than what PowerReviews ever could have done, and that those [market] forces have accelerated and are continuing to impact [Bazaarvoice] in material ways.” Trial Tr. 879:1-879:19.

686. Bazaarvoice’s pattern of financial losses has not changed. DX1802 at 39; Trial Tr. 854:3-855:4. Bazaarvoice is not profitable, and it has never been profitable. Trial Tr. 189:2-11, 220:21-24, 854:16-855:4.

687. [REDACTED] DX1802 at 66. As of April 30, 2013, [REDACTED] DX1802 at 66.

688. Bazaarvoice’s growth rate over the past year has decelerated significantly and is roughly half of what it was in the preceding years. The slowing of Bazaarvoice’s growth rate as this is one of the reasons that its stock has not performed well this year. Trial Tr. 854:3-854:15, 859:14-860:22.

689. [REDACTED] DX1085 at BZ-02285252.

690. Bazaarvoice did not meet its internal sales objectives for fiscal year 2013. Trial Tr. 854:3-854:5.

691. One cause of Bazaarvoice’s poor financial performance since the merger has been increased pricing pressure from customers pursuing competitive options. PFF Section 7 and 8. Customers leave for other non-R&R social commerce tools, other R&R vendors or internal solutions, or for any number of reasons not communicated to Bazaarvoice. Customers also recognize the options available to them and demand price concessions on existing contracts, to which Bazaarvoice has increasingly yielded. Bazaarvoice captures these lost revenues as “churn” data.

692. [REDACTED] DX1870; DX1085 at BZ-02285252; Trial Tr. 855:5-856:1, 879:20-880:4. For example:

•

DX1886 at DDX-0003-3; Trial Tr. 1128:4-1129:6.

693.

DX1092.

DX1843 at BZ-02286809. For example:

- Bazaarvoice post-acquisition reduced ASF for Smithsonian by 27%.
- Guess? succeeded post-acquisition in getting Bazaarvoice to lower ASF by 84%.
- Belk's renewal ASF which was entered into in August 2012 declined by 50%.
- Lord & Taylor renewed its contract with PowerReviews in spring 2013 at a discount of 10% with a provision of additional services.

694.

DX1081 at BZ-02284902.

i. The DOJ's accusation that Bazaarvoice has refrained from anticompetitive conduct is wholly without evidentiary support

695. There is no evidence that Bazaarvoice has artificially refrained from raising prices post-merger.

696. Market forces dictate Bazaarvoice pricing. The number of post-merger losses and discounts provided by Bazaarvoice are numerous and out of Bazaarvoice's control.

697. The government's economist saw no evidence that Bazaarvoice had refrained from raising prices due to the pending investigation.

698. The documents cited by the government as evidence that Bazaarvoice is intentionally refraining from raising prices have nothing to do with pricing decisions. Plaintiff's Response and Objections to Interrogatories 32, 33.

- An email dated October 18, 2012 discusses talking points for Bazaarvoice's acquisition of Longboard Media, a display advertising company. GX0527. The email states that for purposes of explaining that acquisition to the government, the Company will highlight that the advertising revenue retailers receive from placing ads on their websites could help them reduce their prices to consumers. GX0527. This

document has nothing to do with pricing of Bazaarvoice's social commerce products.

- An email dated June 28, 2012 discusses Bazaarvoice's response to a Huffington Post blog post claiming the acquisition would harm retailers and that "Turnto is a more affordable option." GX0495 at BZ-INT-00000302-303. The email said that the article "feels like a total plant." The email discusses possible responses to the post, warning that the response would need to be "vetted by legal to avoid any anti-trust gotchas." GX0495 at BZINT-000301. This document has nothing to do with Bazaarvoice pricing and was written in response to what appeared to be a competitor attack on the acquisition.

699. Dr. Shehadeh correctly concludes that there is no evidence of manipulation of post-merger evidence in this case. Trial Tr. 2023:4-2024:14.

j. Dr. Shapiro did not analyze the post-merger effects of the acquisition

700. Dr. Shapiro did not address the numerous customers who testified in favor of the merger. Trial Tr. 1032:24-1033:6.

701. Dr. Shapiro has not studied post-merger pricing. Trial Tr. 1033:13-18, 1066:23-1067:2.

9. Product Market

702. The relevant market is broader than "PRR platforms" and includes other social commerce tools such as Q&A, social sharing, social sign-in, gamification, comments, forums, and discussions.

703. R&R competes with other social commerce tools to provide sites with user generated content, conversions, and increased traffic.

704. Though social commerce is in its infancy, customers have testified that they are willing to trade off R&R against other social commerce tools.

705. R&R competes with other social commerce tools for space on the product detail page and the e-commerce "wallet."

706. Customers have testified that social commerce tools all compete for their limited budgets.

707. The increasing prevalence of social suites confirm that social commerce tools, including R&R, belong to a cluster market.

a. R&R compete with other social commerce tools to provide sites with user generated content, conversions, and increased traffic

708. Social commerce tools such as question and answer, social sign-in, Facebook comments and "likes," R&R, and forums have become increasingly important to

retailers and manufacturers as they seek to generate UGC and expand their reach in social media. DX1432 at 22-25; Seebeck Tr. 11:19-12:4; May Tr. 9:4-11; Moen Tr. 26:5-23; Bausch Tr. 15:4-24.

709. UGC can be created using a number of similar social commerce tools, including customer comments, question and answer, R&R, blogs, images/photos, Facebook shares and “likes,” and other forum-like content. May Tr. 9:12-18; Yudin Tr. 11:22-12:10; Glispy Tr. 20:13-25:12; Gallagher Tr. 10:23-11:7; Kikkawa Tr. 10:9-11:17; Massuda Tr. 27:13-19; Scharf Tr. 16:21-17:20; Beebe Tr. 11:18-12:3; Jeske Tr. 9:15-10:6; Bausch Tr. 15:11-24; Masciola Tr. 33:6-34:18; Evons Tr. 13:2-13:12; Maki Tr. 7:18-8:5; Koven Tr. 13:15-14:9; Moen Tr. 26:5-23; Reilly Tr. 13:10-14:6; Patel Tr. 10:5-11:3; Trial Tr. 1503:3-1504:7.

710. UGC is a kind of “social proof,” which increases product purchases or “conversions” and also increases the average order value. DX1432 at 22-23; Johnson Tr. 14:21-15:3; Trial Tr. 1500:3-1503:2.

711. Social commerce tools, including R&R, influence consumer purchases or conversions in many locations. Glispy Tr. 87:4-12; Traywick Tr. 15:20-16:6.

- Social commerce tools influence consumer purchases made through websites online. DX1432 at 8, 11; Pierson Tr. 14:18-15:10; Johnson Tr. 31:2-23; Keller Tr. 22:11-24.
- Social commerce tools also influence consumer purchases that are made at brick and mortar stores (i.e., offline purchases). DX1432 at 8, 11; Yaniv Tr. 52:25-53:12; Glispy Tr. 87:4-12; Traywick Tr. 15:20-16:5; Fernandez Tr. 17:8-20; Pierson Tr. 14:18-15:10.
- Social commerce tools also influence consumer purchases that are made through retailer websites at in-store kiosks. DX1432 at 12.

712. Social commerce tools, including R&R, facilitate creation of UGC, which provides sellers of products and services insights on the products they sell such as which products are highly rated or have flaws, or new features customers want. DX1432 at 25.

713. The government’s industry expert acknowledges that the ultimate goal of all social commerce tools is to engage with customers and make sales. GX0986 at 3.

714. The government’s industry expert acknowledges that R&R, Q&A, Twitter, Facebook, forums and blogs all influence customer purchasing decisions, allow users to gain awareness of new products and services, and allow users to share positive and negative experiences they have had with products and services. Dellarocca Tr. 133:12-134:7, 136:16:137:19, 191:18-192:25.

715. Social commerce tools facilitate creation of UGC, which improves website search engine optimization (“SEO”) and increases search engine rankings and website traffic. DX1432 at 23-25; Trial Tr. 1163:21-1164:6, 1503:19-22.. Search engines

like Google and Bing consider websites with newer or “fresher” and unique content to be a positive factor in ranking their search results. DX1432 at 23-25.

716. Social networks such as Pinterest now account for 4-5% of all traffic referrals to product detail pages on retailer sites and that percentage is growing rapidly. Trial Tr. 1520:5-12.

717. The fact that social commerce tools can be complementary does not mean they cannot be in the same product market. The government’s industry expert acknowledges that ratings are different from reviews and though they “serve the same purpose at a high level” they are “complementary at the lower level.” Dellarocca Tr. 148:13-149:11, 152:7-12.

718. The DOJ does not dispute that R&R and other social commerce tools are all used to accomplish the same ends. Plaintiff’s Objections and Responses to Interrogatories 14 (“The United States does not contend that other social commerce products besides PRR platforms are unable to “provide highly relevant, product specific information on a retailer’s or manufacturer’s website near the time of purchase,” “increase sales, decrease product returns, and attract more consumers to a retailer’s or manufacturer’s website,” “provide valuable data about consumer preferences and behavior, which retailers and manufacturers can use to make inventory purchasing and product design decisions,” “benefit a retailer and manufacturer by boosting a product’s ranking on a search engine results page” or “provide information that is not easily ascertainable when shopping on line.”).

b. Though social commerce is in its infancy, customers have testified that they are willing to trade off R&R against other social commerce tools

i. Social commerce is in its infancy and still dynamic and evolving

719. The social commerce space is dynamic and growing. PFF ¶¶85-95.

720. Social commerce is a “constantly evolving space” which will continue to change the nature of competition among vendors of social commerce tools, including the tools themselves. Cook Tr. 10:23-11:12; DX1432 at 6.

721. While retailers and manufacturers have been adopting social strategies since the birth of social media, “early movers are just beginning to crack the code.” DX1433 at ¶ 28. Every month of so, new companies with new capabilities are pitching to CMOs. Trial Tr. 524:3-22.

722. E-commerce sites are “constantly evaluating the effectiveness of current partnerships . . . and as consumer preferences change [they] look to adapt to those in an ongoing way.” Johnson Tr. 36:4-37:7.

723. Many of the functionalities being offered by various social suites, e-commerce platforms, and standalone providers are currently being employed by early adopters attempting to differentiate their websites from other e-commerce providers. DX1433 at ¶¶ 28, 29; DX1432 at 38.

724. [REDACTED] DX1432 at 8; DX1433 at ¶¶ 28, 29; DX1435 at 1; Hildebolt Tr. 10:17-12:10; Eberstadt Tr. 127:6-129:8; DX1685 at 1. Once the benefits of new social commerce tools are demonstrated, more widespread adoption takes place. DX1433 at ¶¶ 28, 29. The process of experimentation and acceptance is currently taking place in the social commerce space.
- ii. Customers testified that they are willing to trade off R&R against other social commerce tools
725. Some customers have stopped using R&R and replaced R&R with other social commerce solutions. Abell Tr. 17:1-21; Holden Tr. 12:2-4, 18:9-19:5; Knisely Tr. 13:3-25.
726. Orchard Supply is a former legacy Bazaarvoice customer that cancelled its R&R functionality in May 2013 after deeming R&R not to be a priority. Abell Tr. 17:1-21. Orchard Supply uses Facebook, Twitter, and Pinterest to interact with its customers. Abell Tr. 22:6-23:6.
727. Planet DJ terminated its relationship with PowerReviews at the end of 2012 and no longer has R&R on its website. Holden Tr. 12:2-4, 18:9-11. Planet DJ interacts with its customers using online chat, Facebook, Twitter, LinkedIn, YouTube, and MailChimp, an email marketing service. Holden Tr. 20:18-21:5. Planet DJ believes that the social medial tools it uses “do more than R&R could ever have done” based on its experience. Holden Tr. 24:12-25:12.
728. Karmaloop terminated its relationship with PowerReviews in February 2012 and no longer utilizes R&R on its site. Knisely Tr. 13:3-7. Karmaloop worked with Monetate, an online testing company, which determined that there was no conclusive evidence that R&R increased conversion. Knisely Tr. 14:12-15:8. Karmaloop replaced its R&R functionality with Facebook comments on the products page, which gives customers the opportunity to write a comment about a product in a Facebook comment box. Knisely Tr. 15:16-16:6. Karmaloop believes that Facebook’s built in comments functionality has sparked more interest from consumers than R&R had. Knisely Tr. 15:16-16:13. Karmaloop uses social media heavily as a way of communicating with consumers and responding to questions and comments about products. Knisely Tr. 17:17-24, 19:3-20:9.
729. [REDACTED] and [REDACTED] are both examples of former customers of Bazaarvoice that have terminated their R&R service and replaced R&R with functionalities they believed to be more valuable. Trial Tr. 1128:4-1129:6
730. Abercrombie & Fitch has chosen not to use R&R on its website despite receiving sales calls in the past year from Bazaarvoice, Pluck, Gigya, Reevo, and TurnTo. May Tr. 15:18-16:5. [REDACTED] May Tr. 19:4-20:1.


1 731. Tiffany & Co does not employ R&R on its website because it “doesn’t fit”
 2 Tiffany’s brand. O’Halloran Tr. 13:21-14:3. Tiffany’s uses its Facebook page to
 3 “tell our brand’s story” and allows customers to post reviews, among other things,
 4 on its Facebook wall, with some level of moderation provided. O’Halloran Tr.
 5 15:14-16:3.

6 732. Fossil, Inc., number 195 on the 2012 IR500, previously had a R&R solution
 7 powered by PowerReviews. DX1433 at ¶ 97; DX1579. Fossil’s website does not
 8 currently offer R&R, but rather, provides links to social media such as Facebook
 9 and Pinterest. DX1433 at ¶ 76.

10 733. Some Clorox brands do not implement R&R on their brand websites but have
 11 invested in a Facebook page. Trial Tr. 313:4-13.

12 *c. R&R compete with other social commerce tools for space on the product detail page and*
 13 *the e-commerce “wallet”*

14 734. Factors that determine the purchasing decisions of customers among social
 15 commerce tools, including R&R, include the amount of physical space available
 16 on the website page and the customer’s budget for social commerce.

17 735.  Trial Tr. 640:10-641:5, 821:8-822:12;
 18 822:19-823:7; 831:22-832:19, 1120:16-1121:7, 1509:25-1511:6; Targett Tr.
 19 20:10-21:3, 24:22-25:2, 25:14-18; Bausch Tr. 19:3-7; Doss Tr. 23:13-24:5; Maki
 20 Tr. 17:1-6; Moen Tr. 29:2-25; DX1432 at 18, 20, 36; Eberstadt Tr. 153:2-15;
 21 DX0243 at BZ-00255119; DX0363 at BZ-00579173; DX0874 at BZ-02062921;
 22 DX0391 at BZ-00661981.

23 736. Each social commerce tool adds to the total cost of the website. DX1432 at 18.

24 737. E-commerce sites recognize that “there is overlap” among the functionalities of
 25 various social commerce tools, which in turn affects the purchase decisions for all
 26 social commerce tools. Trial Tr. 1500:3-1501:16; Cotlar Tr. 23:11-24:1.

27 738. Social commerce tools and the UGC they help generate compete for the limited
 28 space on product detail pages. Trial Tr. 1509:25-1511:6; DX1432 at 19-20.

739. Consumers spend a decreasing amount of time looking at each additional piece of
 UGC added to a web page. DX1432 at 36-37; Trial Tr. 1509:25-1511:6.

740. The addition of too much UGC to a page increases page load time, which can
 decrease sales. DX1432 at 19, 20; Holden Tr. 25:13-26:9.

741. Customers value social commerce tools based on return on investment (“ROI”).
 DX1432 at 26; Trial Tr. 871:19-872:11. The ROI for any particular website
 feature refers to the value received from the feature as compared to the cost of the
 feature. DX1432 at 11; Johnson Tr. 30:12-31:1; Moen Tr. 24:18-25:10; Beebe Tr.
 25:1-9.

742. [REDACTED] Hodapp Tr. 64:23-65:13; Maki Tr. 16:16-17:6; Moen Tr. 24:18-25:10, 29:2-19, 30:2-5; Beebe Tr. 25:4-9; Seebeck Tr. 19:25-20:18; Johnson Tr. 28:21-29:6, 54:2-9; Tarkowski Tr. 22:15-23:5; DX0159 at BZ-00140108-00140154; DX0251 at BZ-00283757; DX0256 at BZ-00298183; DX1165 at GIGYA002370.

743. Because various social commerce tools accomplish the same objectives, use of one social commerce tool can reduce the ROI attributable to other social commerce tools and, therefore, the price the customer is willing to pay for those other tools. For example, the value of R&R to a customer is reduced if it also has Q&A on its website. DX1432 at 21-22, 37; Trial Tr. 1509:25-1511:6, 1649:23-1651:2.

744. Brands that do not sell products on their sites consider a wide range of ways to engage customers because they are seeking to increase brand interaction; R&R is only one form of customer engagement. DX1432 at 49.

745. The government's industry expert acknowledges that "the amount of money that one is prepared to spend on a project or tool ought to be commensurate with [the] incremental value that you're likely to get from using the tool." Dellarocca Tr. 229:2-5.

746. [REDACTED] Eberstadt Tr. 153:2-154:5.

747. The price for an R&R solution is affected by non-R&R alternatives because those alternatives dilute the consumer's attention and as more social proof is offered about a product, consumers pay less attention to each individual element. DX1432 at 21-22, 36-37; Trial Tr. 1509:25-1511:6.

d. Customers and competitors have testified that social commerce tools all compete for their limited budgets.

748. With a limited budget, Princess Cruises would pay less for R&R in order to invest more in other social commerce tools. Trial Tr. 1649:23-1651:2. The value of certain social commerce tools is affected by whether a particular customer has already implemented certain other social commerce tools. For example, the value of R&R to a customer is reduced if it also has Q&A on its website. Trial Tr. 1649:23-1651:2.

749. La-Z-Boy pays for its R&R solution from "the same funds that sit in the same budget as the other social commerce tools," and La-Z-Boy's internal direct to consumer budget constrains the tools that it can purchase from Bazaarvoice. Targett Tr. 20:10-21:3, 24:22-25:18.

- 1 750. Hunter Fan is weighing developing a Q&A solution against other on-line
2 priorities for budget dollars, such as adding a blog to the website. Doss Tr. 23:13-
24:5.
- 3 751. Golfsmith stated that if the ROI of R&R decreased, Golfsmith would consider
4 shifting resources to some other social commerce tool such as Facebook. Maki Tr.
5 17:1-6.
- 6 752. Hayneedle stated that it would shift funds dedicated to R&R to other tools such as
7 Facebook, Pinterest, or Gigya if the product had a greater ROI than its current
8 R&R solution. Moen Tr. 29:2-25. Hayneedle would dedicate funds to the option
9 with the highest ROI. Moen Tr. 30:2-5.
- 10 753. Bazaarvoice competes for dollars from the same “social wallet” as Radian6, a
11 listening platform that provides information on brand sentiment, volume/share of
12 consumer voice, topics of conversation, etc. DX0243 at BZ-00244119.
- 13 754. Bazaarvoice stated that Sociable Labs, a social commerce solution provider, is
14 “selling into social wallets for retailers, so . . . they are a wallet share competitor.”
15 DX0874 at BZ-02062921.
- 16 755. Bazaarvoice competes with Facebook for fixed budgets that customers have to
17 spend on social marketing spend. Barton Tr. 640:10-641:5.
- 18 756. Bazaarvoice competes with Google for fixed budgets that customers have to
19 spend on social marketing spend. Barton Tr. 640:10-641:11.
- 20 757. Bazaarvoice believes that Buddy Media, a provider of “Power Tools for Facebook”
21 is a potential competitor for “wallet share.” DX0363 at BZ-00579173.
- 22 758. TurnTo created marketing materials highlighting the value that its Q&A product
23 provided to e-commerce sites relative to R&R. DX1685 at 1. The TurnTo case
24 study of BabyAge’s experience with the TurnTo Q&A stated that “with a content
25 product rate 7 times higher than customer reviews, TurnTo’s cost-per-post was far
26 lower than the cost-per-post of [BabyAge’s] customer reviews system.” DX1685
27 at 2.

28 *e. The increasing prevalence of social suites confirms that social commerce tools, including
R&R, belong to a cluster market*

- i. Social commerce tools providers are moving to social suites in response to
industry trends to consolidate vendors

759. Social commerce suppliers can shift resources to supply different products in the
relevant market. Tarkowski Tr. 25:8-23, 80:10-21.
760. [REDACTED] DX1432 at 18; Tarkowski Tr. 15:1-16:9; Crickmer
Tr. 24:19-25:10, 31:24-14; Jiminez Tr. 18:25-19:24; Trial Tr. 1202:23-1203:11.

1 761. The industry is moving towards competition in “bundles” or “suites.” This factor
 2 has induced entry. In the recent past, firms that offer suites have added R&R
 3 functionality to their offering. This trend towards fewer vendors offering more
 4 functionality will continue. DX1432 at 20-22; DX1735 at 45. See Trial Tr.
 5 1202:23-1203:11.

6 762. [REDACTED]
 7 [REDACTED] Tarkowski Tr. 15:7-16:25, 20:7-10; 24:18-25:23,
 8 80:11-21; Schuster Tr. 19:18-20:7; Crickmer Tr. 20:12-23, 24:19-25:10, 27:6-23,
 9 31:1-32:8, 116:19-117:21; DX1620.

10 763. [REDACTED]
 11 [REDACTED] Hurt Tr. 101:15-23, 103:8-22; Barton Tr. 142:18-143:6,
 12 262:24-263:6; Wilson Tr. 18:18-19:2; DX0807 at BZ-0189116; Trial Tr. 1305:7-
 13 10.

14 764. Bazaarvoice sells its products as a bundle and does not systematically segregate
 15 revenue by type of social commerce functionality. It is therefore not possible to
 16 determine its revenues from the sale of R&R alone. Bolian Tr. 49:22-50:7;
 17 DX1802 at 65.

18 ii. Customers purchase and use social commerce tools together

19 765. Ink Technologies uses Rating System’s R&R platform, along with gamification
 20 functionality provided by 500 Friends. Davis Tr. 15:7-22, 16:20-22.

21 766. Build.com uses Bazaarvoice for R&R, and uses an in-house Q&A solution. Trial
 22 Tr. 1167:18-25; 1172:23-1173:15.

23 767. Overstock uses an in-house R&R solution on its website and an in-house Q&A
 24 functionality. Jolitz Tr. 18:12-17, 26:2-4.

25 768. Amazon.com has R&R and Q&A and forums functionality on its website. Trial
 26 Tr. 1609:24-1610:12; 1611:12-18.

27 769. Vitamin Shoppe uses PowerReviews for R&R and TurnTo for Q&A. Beebe Tr.
 28 14:4-14:8; Trial Tr. 1367:8-11.

770. Cabela’s has R&R and Q&A on its website, as well as integration with Facebook.
 Uhler Tr. 16:21-17:9.

771. B&H Photo has R&R and Q&A on its website, and also uses social log-in from
 Gigma. Meisels Tr. 20:21-21:1, 26:17-22.

772. eBags uses an internal R&R solution, it also has a chat function through
 liveperson.com, a blog, and has social media tools such as Facebook, Instagram,
 and Twitter. Cobbs Tr. 19:18-20:15.

1 773. Shoplet uses various mediums, including social media, such as Facebook, Twitter,
2 and blogs, as well as R&R on its website. Scharf Tr. 16:21-17:20.

3 774. Many customers use the R&R functionality provided in social suites that have
4 additional features such as gamification, social sign-in, blogs, forums, and profile
5 management. Bradshaw Tr. 14:12-15:6; Rowland Tr. 24:16-22; Bruns Tr. 20:13-
25; Masciola Tr. 33:11-21; Trial Tr. 1201:12-1203:11.

6 *f. The government has offered no basis to limit the relevant market to product R&R only for
7 manufacturer and retailer customers*

8 775. The government contends that the relevant market is limited to certain types of
9 customers; namely, manufacturers and retailers.

10 776. The record contains numerous customers that use product R&R that fall outside
11 this market, such as airlines (Southwest Airlines), travel companies (International
Hotels Group, Starwood, Expedia, Princess Cruises), and financial services firms
(First Tennessee Bank).

12 777. Competitors such as Pluck testified that they sell their R&R to any firm that wants
13 to purchase it, including media companies, publishers, travel, hotels, airlines,
online booking engines, entertainment, and automobile manufacturers. PFF ¶ 342.

14 778. There is no evidence in the record that the R&R functionality sold to a retailer or
15 manufacturer is different from the R&R functionality sold to other types of
customers.

16 779. The government has offered no principled reason or evidence to limit the relevant
17 market to these customers when other types of customers clearly demand and use
the same R&R product.

18 *g. Dr. Shapiro's product market analysis is flawed*

19 780. Dr. Shapiro defines the relevant product market by reference to demand
20 considerations alone and does not include supply elasticity in his market
21 definition analysis. Trial Tr. 1722:4-16; GX0984 at 2-3; DX1736 at ¶ 128.

22 781. Dr. Shapiro's quantitative analysis of the relevant market is unreliable:

- 23 • No data exist to perform a Hypothetical Monopolist Test for R&R. Trial Tr.
1733:12-1735:24.
- 24 • Dr. Shapiro's recapture analysis does not establish that a hypothetical
25 monopolist could impose a small but significant non-transitory increase in
26 price (SSNIP) on R&R solutions because it makes no attempt to model how
27 customers would behave in response to a price increase and only examines
actual switching behavior in the absence of a price incentive to switch due to
28 an increase in R&R prices relative to all other products. DX1736 at ¶ 183.

- Dr. Shapiro does not calculate a recapture rate for the market, but instead offers a “proxy” based on what IR500 customers did at prevailing prices. Trial Tr. 935:13-936:15.
- Bazaarvoice and PowerReviews do not track revenue for R&R separately from revenue for their other products. Trial Tr. 1083:25-1084:14.
- Dr. Shapiro’s analysis of a hypothetical price increase on PowerReviews’ Enterprise product is meaningless because it incorrectly assumes that ASF differences between customers can be attributed to R&R solutions specifically and therefore relies on price comparisons that lack any foundation. DX1736 at ¶ 184.
- The margin used in Dr. Shapiro’s recapture analysis reflects all social commerce products sold by Bazaarvoice and PowerReviews. Trial Tr. 1083:25-1084:14.
- Dr. Shapiro’s own recapture analysis shows it would be unprofitable for Bazaarvoice to raise prices post-merger because the number of IR500 customers leaving Bazaarvoice for solutions other than PowerReviews would discipline any price increase. Trial Tr. 1881:3-19, 1888:15-23.

782. The government defines the relevant market on the basis of customer characteristics (R&R used by manufacturers and retailers), but provides no reason or evidence as to why other customer-types that purchase product R&R are not part of the relevant market. Dr. Shapiro claims to exclude “travel, hotels, ticketing” customers and “a bunch of other online activities” from the market without giving a reason why they do not impact supply and demand conditions for R&R, even though they are purchasing the same R&R product. Trial Tr. 1082:19-22, 1732:25-1733:11.

783. Dr. Shapiro includes InterContinental Hotel Group (IHG) in his data analysis but excludes hotels from the relevant market. Trial Tr. 1732:6-22.

784. Dr. Shapiro includes Netflix in the market simply because they are on the IR500 without giving a reason for treating DVD rental and video streaming as retailing rather than service. Trial Tr. 1082:16-17.

h. Dr. Shehadeh’s product market analysis is correct

785. Dr. Shehadeh properly considers both supply and demand conditions in defining the relevant market. Trial Tr. 1721:2-1722:16; DX1736 ¶¶ 181-189.

786. Dr. Shehadeh correctly concludes that identically-situated customers can and do use different tools such as product-specific “likes” and comments for the same purposes other customers use R&R. Trial Tr. 1722:19-1727:22; DX1433 at ¶¶ 27-29, 264-267.

787. Dr. Shehadeh correctly concludes that websites can partially substitute for R&R by investing more in other tools and less in R&R. Trial Tr. 1730:19-1732:5; DX1433 at ¶¶ 264-67.

788. Dr. Shehadeh correctly concludes that providers of other social commerce tools could provide supply substitution into R&R. Trial Tr. 1722:19-1727:22; DX1433 at ¶¶ 264-67.

789. Dr. Shehadeh correctly excludes websites with no social commerce tools from the relevant market. Trial Tr. 1727:23-1728:19.

790. Dr. Shehadeh correctly concludes that the relevant product market encompasses vendors of social commerce tools and e-commerce platforms due to a combination of demand substitution and supply substitution factors. Trial Tr. 1735:25-1736:12; DX1433 at ¶¶ 264-267.

10. The Geographic Market is Worldwide

a. Non-U.S. firms can service customers in the U.S.

791. Non-U.S. R&R suppliers are actively selling in the United States; U.S. customers can turn to these vendors for R&R products. Trial Tr. 682:12-22.

792. [REDACTED] Tarkowski Tr. 71:17-72:1; Giannoni Tr. 33:6-22, 91:4-92:24.

i. Reevo

793. Reevo is a viable competitor in the U.S. PFF ¶¶380-412.

794. Reevo has taken steps to market its offering to U.S. customers. DX1432 at 51-53.

795. Reevo services global accounts that include U.S.-based websites. DX1432 at 51-53; Giannoni Tr. 91:4-92:24.

796. [REDACTED] DX1250 at Reevo CID-05097.

797. Several U.S. companies have selected Reevo as their R&R vendor.

- [REDACTED]
Giannoni Tr. 41:7-16; DX1314.

- [REDACTED] Giannoni Tr. 85:16-86:5.
- [REDACTED] Giannoni Tr. 84:10-24; DX0263 at BZ-00320977-00320978; DX0675 at BZ-01580268-69. [REDACTED] Masciola Tr. 57:14-59:2.

798. Many U.S. e-commerce sites have considered implementing Reevo for R&R.

- Reevo is “definitely a company [B&H Photo will] be looking at as [it] evaluat[es] next steps.” Meisels Tr. 22:2-9.
- Build.com would consider Reevo if Bazaarvoice were to raise prices. Friedland Tr. 21:8-21; Trial Tr. 1171:24-1172:10
- Hayneedle would consider Reevo as a possible R&R option in the future, and would include it in an RFP for R&R in the future. Trial Tr. 1631:14-23
- Crate & Barrel, a retailer of consumer goods, considered Pluck and Reevo for R&R, before deciding to remain with Bazaarvoice. DX0861 at BZ-01988525.
- Abe’s of Maine considered Reevo before obtaining a discount from Bazaarvoice by using Reevo as leverage. Trial Tr. 1264:1-1265:1; Yudin Tr. 17:13-18:23.
- [REDACTED] Glispy Tr. 38:1-7. Stanley Black & Decker uses Reevo outside the United States for moderated R&R. Glispy Tr. 40:7-21.

ii. Yotpo

799. Yotpo is a viable competitor in the U.S. PFF ¶¶433-38.

800. Yotpo, an Israeli R&R vendor, sells R&R products to U.S. customers, and attributes approximately 55% of its customers to the United States. DX1400 at ¶ 11.

801. “Yotpo is available as a plug-and-play add-in on most major eCommerce platforms available to US customers, including Magento, Volusion, Shopify and BigCommerce.” DX1400 at ¶ 7.

802. Many U.S. e-commerce sites have implemented Yotpo’s R&R solution:

- Birdsafe, a specialty pet supply retailer headquartered in Winchester, Virginia, purchased R&R services from Yotpo. Arbogast Tr. 11:7-21.
- Drums on Demand, a manufacturer and seller of music software, purchased R&R from Yotpo. Randle Tr. 14:3-8.
- Juice Nashville, a seller of cold-pressed juices, utilizes R&R from Yotpo. Waring Tr. 11:17-21.

iii. Feefo

803. Feefo is a viable competitor in the U.S. PFF ¶¶290-91.

804. [REDACTED] Giannoni Tr. 55:11-25.

805. Feefo is a Google Licensed Content Provider and can syndicate to Google Seller Ratings. DX0842 at BZ-01970276.

806. [REDACTED] an Internet-based travel website, purchases social commerce tools from Feefo. DX0842 at BZ-01970277.

iv. Other non-U.S. R&R suppliers

807. Other non-U.S. R&R suppliers actively selling in the United States include: Trustpilot, a Danish company, that sells R&R products in the United States (DX1735 at 44); alaTest, a Swedish R&R vendor that sells its product in the United States and recently expanded to offer its product on e-commerce websites (DX0552; DX1432 at 60).

b. *Dr. Shapiro's geographic market analysis is incorrect*

808. Software is generally sold worldwide "quite easily." Trial Tr. 1906:20-22.

809. Geographic markets are normally defined around the location of the suppliers of the product, and Dr. Shapiro admits that foreign suppliers providing R&R to U.S. customers must be included in the market. Trial Tr. 1906:17-19, 1907:2-4.

810. Dr. Shapiro's approach to defining a geographic market has no limiting principle to justify a U.S. market but not a market for a single city or single customer. Trial Tr. 1908:1-1909:7.

811. There is no clear line between U.S. and international customers because customers may have multiple bases of operation, as with IHG being based in London, England but procuring R&R in Atlanta, Georgia. Trial Tr. 1908:25-1909:2. Similarly, customers like IHG use a single website domain (ihg.com in that case) to serve consumers around the world and therefore cannot be targeted on the basis of the location of consumers using the website as Shapiro hypothesizes. Trial Tr. 1357:13-16; GX0983 at 41.

1 812. Dr. Shapiro fails to account for supply substitution in defining the geographic
2 market. Trial Tr. 1906:14-1907:25.

3 813. Bazaarvoice and PowerReviews do not track U.S. revenue separately from
4 revenue from other countries. Trial Tr. 1084:15-18.

5 814. Dr. Shehadeh correctly concludes that the ability of international suppliers to
6 serve U.S. customers justifies a world-wide geographic market. Trial Tr. 1909:8-
16; DX1433 at ¶¶ 260-263.

7 **11. The Government's Alleged Market Shares Are Wrong; A Proper Calculation Must**
8 **Take Account of Rapid Entrants, Bidding Markets, and Potential Customers**

9 *a. The government's market share analysis is flawed and unreliable*

10 815. The government concedes, and it is undisputed, that there are no generally
11 accepted market share statistics covering the sales of R&R solutions or social
12 commerce solutions. GX0983 at 5, 51; Trial Tr. 2114:10-13.

13 816. Because there are no generally accepted market share statistics covering the sales
14 of R&R solutions, the government relies on customer counts and customer
15 revenues from the Internet Retailer 500 (IR500) as a proxy for actual market
16 shares. Trial Tr. 944:6-21, 952:11-15, 1090:16-19.

17 817. Market shares are ordinarily counted using units of the relevant product sold by
18 suppliers to the relevant customers or revenues received by the supplier from such
19 sales. Trial Tr. 1093:16-19.

20 818. Neither Dr. Shapiro nor Dr. Shehadeh has ever seen customer revenue used as a
21 proxy for supplier market share before. Trial Tr. 1090:16-19, 1747:9-17. Lists
22 published by the IR500 "do not offer a credible way to establish market share" for
23 R&R because the IR500 does not reflect any meaningful or accurate measure of
24 any commercial supplier's share of e-commerce ratings and review deployments.
25 DX1432 at 70.

26 819. Dr. Shapiro has previously written that market shares, the Herfindahl-Hirschman
27 Index (HHI), and other market concentration measures have little relevance to
28 differentiated products unilateral effects cases like this one. DX1384 at fn 53;
DX1736 at ¶¶ 178-179; Trial Tr. 1034:4-7.

820. Dr. Shapiro incorrectly relies on market share as a proxy for PowerReviews'
competitive significance even though market shares are unreliable indicators of
competitive significance in technology markets. DX1736 at ¶¶ 23, 33.

i. The IR500 does not capture huge swaths of the government's alleged relevant
market

821. The Internet Retailer Magazine is published by Vertical Web Media. DX1778 at ¶
2; DX1736 at ¶ 41. The Internet Retailer Magazine publishes a list of the 500
largest online retailers in North America based on Internet Retailer's

determination of “web sales.” This list is known as the Internet Retailer 500 (IR500) or Top 500. DX1398 at ¶ 3; DX1778 at ¶¶ 3, 7.

822. The IR500 excludes significant sectors of the economy, industries and companies that use R&R. DX1398 at ¶ 5; DX1736 at ¶¶ 36-41, 71; DX1579; Trial Tr. 1537:9-1539:16; Trial Tr. 227:21-228:10.
823. The IR500 does not include: (1) consumer brands that do not offer consumers the ability to purchase products on their websites; (2) businesses that offer travel and hospitality purchases and reservations online; (3) wholesalers and business-to-business companies that do not offer individual consumers the ability to purchase products on their websites; (4) sites that offer consumers the ability to purchase subscription products such as magazines, cable, phone service, Internet, or satellite television; (5) telecommunications carriers such as Verizon, AT&T, T-Mobile, and Sprint that primarily sell products on their websites as part of mobile service contracts; (6) restaurant reservation and food delivery sites; (7) event ticketing; (8) adult content sites (excluded by Internet Retailer editorial standards); (9) automotive informational and reviews sites; (10) informational reviews sites such as Yelp!, Angie’s List, TripAdvisor, and OpenTable; (11) comparison shopping sites; (12) financial services such as American Express, Visa, and banking; (13) healthcare and insurance; and (14) auction and marketplace sites such as eBay. DX1398 at ¶ 5; DX1736 at ¶¶ 38, 41; Trial Tr. 1537:22-1539:11.
824. The government’s industry expert testified that R&R are an important feature for travel sites like Travelocity and Expedia. Dellarocca Tr. 257:14-21.
825. The government’s industry expert testified that R&R are an important feature for websites that sell event tickets. Dellarocca Tr. 258:1-18.
826. The government’s industry expert testified that R&R are needed by entertainment sites such as Yahoo! Movies or Disney.com. Dellarocca Tr. 258:19-259:10.
827. The government’s industry expert testified that R&R are important for marketplace sites such as eBay. Dellarocca Tr. 256:20-25.
828. In addition, companies for which “web sales” cannot be measured or ascertained by Internet Retailer may not be eligible for inclusion in the Guides. DX1398 at ¶ 5.
829. The IR500’s focus on retailers biases the market share calculation in favor of PowerReviews because its business strategy was to focus on retailers; however a business strategy does not define a relevant market. Trial Tr. 1746:10-21.
830. At the same time, the IR500 is obviously an incomplete picture of the overall market because it does not capture R&R sales representing nearly 75% of Bazaarvoice’s revenues and 34 of its top 50 customers are from firms that are excluded from the IR500. DX1736 at ¶¶ 36, 37; Trial Tr. 1088:2-1089:11.
831. Dr. Shapiro’s market share analysis does not measure share attributable to serving “many of the brands” because it does not measure brands unless they appear in

the IR500. Trial Tr. 966:23-968:14, 1086:12-1087:4, 1097:20-1098:9, 1747:18-1748:9.

832. The IR500 provides no information about the many thousands of e-commerce retailer sites that use R&R products supplied by other vendors such as Yotpo, Ratings System, Practical Data, Magento, and PowerReviews Express. DX1579. The government has alleged that all of these solutions and the customers that use them are in the relevant PRR platform market and assigned no share to them, even on a customer count basis, simply because they are not reflected in the IR500.

833. [REDACTED] Bazaarvoice's largest account by ASF in 2012, is excluded from the 2012 IR500. DX1736 at ¶ 39; DX1579. [REDACTED] Bazaarvoice's 5th largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 39; DX1579. [REDACTED] Bazaarvoice's 19th largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 39; DX1579. [REDACTED] Bazaarvoice's 22nd largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 39; DX1579. [REDACTED] Bazaarvoice's 38th largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 40; DX1579. [REDACTED] Bazaarvoice's 43rd largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 40; DX1579. [REDACTED] Bazaarvoice's 48th largest customer by ASF in 2012, is excluded from the IR500. DX1736 at ¶ 40; DX1579. [REDACTED] Bazaarvoice's 50th largest Bazaarvoice customer in 2012 by ASF, is excluded from the IR500. DX1736 at ¶ 40; DX1579.

834. Significant third-party marketplaces that have built their own R&R solutions, such as eBay and Amazon, are excluded from the IR500. DX1432 at 71.

ii. The IR500 data is not accurate

835. Data for publication in the IR500 are collected by Internet Retailer by mailing a simple, unverified survey to retailers appearing in the prior years' IR500 list and retailers that may have "come to the attention" of Internet Retailer. DX1398 at ¶ 6.

836. The IR500 is inconsistent, not an accurate listing of the top 500 sites, and the site traffic and revenue data reported is unreliable. Trial Tr. 1536:24-1537:8.

837. The survey does not provide any instructions to its recipients on how to calculate requested information such as "online sales" or how to fill out free form text fields asking for vendor information. DX1398 at Exhibit A.

838. Approximately 40% of the firms listed in the IR500 reported their "online sales" to Internet Retailer. The "online sales" or "web sales" reported for the remaining 60% are based on estimates done by Internet Retailer and are not verified by the companies listed. DX1398 at ¶ 7.

839. Because survey recipients are given no guidelines on how to calculate their online sales, "U.S. based retailers may include sales outside the United States." DX1398 at ¶ 7a; DX1736 at ¶ 43; Trial Tr. 1538:5-16 (IR500 does not intend to include foreign revenues).

840. Because survey recipients are given no guidelines on how to calculate their online sales, survey respondents, “may include sales attributable to any of the activities excluded from [Internet Retailer’s] definition of ‘retail.’” DX1398 at ¶ 7b; DX1736 at ¶ 43.

841. The IR500 reported Amazon’s 2012 revenues as \$48 billion, but Amazon’s 2012 10-K states that \$21.37 billion of its \$48 billion is from “international” operations. DX1736 at ¶¶ 43.

842. Reducing the total revenues in the IR500 by Amazon’s international operations alone reduces the IR500’s share of North American online retail commerce by almost ten percent. DX1736 at ¶ 44.

843. E-commerce sites report inaccurate or inflated sales numbers and business metrics to the IR500. DX1432 at 71.

844. Customers have testified that the data provided in the IR500 is inaccurate:

- L.L. Bean is listed in the 2012 IR500 and is reported to have e-commerce revenue of approximately \$1.7 billion in 2011, but that is “higher than actual web sales” which “is closer to half that figure.” Wilson Tr. 10:24-11:10; DX1579.
- OneCall, an entity ranked 252nd in the 2013 IR500 (No. 228 in 2012 (DX1579)), testified that the numbers used by IR500 are “completely wrong” and “not accurate.” Weisman Tr. 14:17-15:11, 16:4-22. OneCall testified to having 2012 sales of \$10 million. Weisman Tr. 12:22-13:8, 14:17-22, 16:4-10. The 2013 IR500 report lists OneCall’s 2012 web sales as approximately \$68.7 million. Weisman Tr. 16:4-16.
- Signal Group testified that “all the data” used by Internet Retailer in devising the IR500 chart was “estimated” and “incorrect.” Signal Group was ranked “in the 400s,” but correct information would put them “somewhere in the 1200 category.” Chapman Tr. 8:12-19.
- eBags testified that its revenues for 2011 were \$105 million. The 2012 IR500 reported eBag’s annual online revenues as \$199,584,000. Cobb Tr. 11:1-12:4; DX1579.
- HSN testified that its annual web sales for 2012 were approximately \$700 million to \$750 million. Reilly Tr. 10:20-24. The IR500 reported its online sales at \$1,454,000,000. DX1681 at 1.
- The IR500 is misleading because the website vendor for “Customer Reviews & Forum” does not separately report the vendor for “Customer Reviews” alone. DX1398 at ¶ 10; DX1432 at 71.
- The 2012 IR500 Guide lists Bazaarvoice as Barnes & Noble’s “Customer Review and Forums” provider. DX1579. However, Barnes & Noble

actually has an internal solution and uses Pluck for R&R. Rowland Tr. 23:8-15, 24:16-25:7; DX1579.

- The IR500 Guide lists both Bazaarvoice and in-house as Blue Nile’s “Customer Reviews and Forums” provider. In fact, Blue Nile terminated their relationship with Bazaarvoice in Spring 2011 and now relies solely on an in-house R&R solution. Sainsbury Tr. 19:3-22, 20:19-23.
- Bazaarvoice and in-house are both listed as HSN’s vendors for “Customer Reviews and Forums” in the 2012 IR500. DX1579. In fact, HSN uses only an in-house R&R solution. Reilly Tr. 27:15-23.
- The 2012 IR500 reports Systemax’s “Customer Reviews and Forums” vendor as “ProfitCenter Software.” DX1579. Systemax in fact uses an in-house system for R&R. B. Matthews Tr. 23:1-8.

iii. The IR500 has no particular competitive significance

845. Commercial R&R suppliers do not target firms on the IR500 differently than other companies. [REDACTED]

Crickmer Tr. 220:13-221:23.

846. [REDACTED] DX1379; DX1787; DX1433 at ¶ 254. [REDACTED]

[REDACTED] DX1379 at 2; DX1787; DX1433 at ¶ 254.

847. The Internet Retailer 500 measures the online sales of the firms on the list, not revenues from sales of R&R. DX1778 at ¶ 3; DX1736 at ¶ 45.

848. Market power over customers assumed from market shares tabulated on the basis of customer size improperly attributes the customer’s bargaining power to the vendor. DX1736 at ¶ 24.

849. There is no correlation between the IR500 and demand for R&R. DX1736 at ¶ 167.

850. Lists published by the IR500 “do not offer a credible way to establish market share” because the IR500 does not reflect any meaningful or accurate measure of any commercial supplier’s share of e-commerce ratings and review deployments. DX1432 at 70.

iv. Online revenue is not correlated with the value a customer receives from R&R

851. Social commerce tools, including R&R, influence consumer behavior both online and offline at brick and mortar stores. Dellarocca Tr. 140:1-141:4; GX0986 at 4;

DX1432 at 8; Glispy Tr. 87:4-12; Traywick Tr. 15:20-16:5; Yaniv Tr. 52:25-53:12; Fernandez Tr. 17:8-20; Pierson Tr. 14:18-15:10.

852. The government's industry expert agreed that in order to measure the importance of R&R to a website the impact of the R&R on both online and offline revenues should be measured. Dellarocca Tr. 199:9-200:7.
853. The government's industry expert testified that a retailer or brand with no online sales could benefit from social commerce tools, including R&R. Dellarocca Tr. 142:10-143:1.
854. The government's industry expert agreed that online revenues are not the only measure of a retailer or brand's need for R&R on its website. Dellarocca Tr. 143:21-24.
855. A 2012 Forester Research study estimated that in 2012, 44% of all U.S. retail sales were influenced by "pre-shopping" online. DX1432 at 11.
856. Dr. Shapiro ignores the effect of R&R on offline sales by only taking account of online sales to calculate market shares.
857. R&R are less valuable, and customers are willing to pay less for R&R, when consumers increasingly read reviews on sites such as Amazon and Google Shopping and obtain social proof from social network sites such as Pinterest, which offers Rich Pins. Trial Tr. 1515:15-1520:21.
858. Thirty percent of U.S. consumers begin researching online purchases on Amazon.com. DX1432 at 11.
859. Total online revenues for a retailer cannot be attributed to the R&R supplier on a retail site when there is evidence that many consumers read the reviews on other sites before they purchase a product on the retail site. There is a wide variety of paths to purchase that consumers take when they are shopping online. These paths include reading R&R on Amazon or Google Shopping or consuming social media such as Rich Pins before purchasing on a retail site. Trial Tr. 1515:15-1520:21; DX1432 at 11-12. The availability of R&R on sites other than the retailer's site (e.g., on a marketplace site) demonstrates that there is no basis to attribute all of a retailer's e-commerce revenues to the commercial provider of R&R to that site, without regard to all sources of R&R that influence sales on the site.
860. The government's industry expert also believes that consumption of reviews not on a brand or manufacturer's website can benefit the brand, which is further evidence that online sales are a poor predictor of the value of R&R provided by a commercial vendor such as Bazaarvoice. GX0986 at 6.
861. Customer online revenue is not correlated with the amount of money a customer spends on R&R. Trial Tr. 1540:5-22.

- 1 862. Customer online revenue is not correlated with whether a customer decides to
2 deploy R&R on their websites. Trial Tr. 1539:17-1540:4.
- 3 863. Using customer revenue to measure vendor market share is unprecedented. Trial
4 Tr. 1746:10-1748:9, 1090:16-19.
- 5 v. Dr. Shapiro's inconsistent methodology leads to unreliable market share
6 calculations
- 7 864. Dr. Shapiro has admitted his initial report made multiple allocation errors.
8 GX0985 at Exhibit D1; Trial Tr. 1096:14-1097:19.
- 9 865. Dr. Shehadeh showed that Dr. Shapiro attributed customers to Bazaarvoice and
10 PowerReviews that were not, in fact, their customers. DX1736 at ¶¶ 25-32, 137-
11 138. Trial Tr. 964:16-965:16, 965:24-966:10, 1096:4-1097:19.
- 12 866. Dr. Shapiro's surreply materials continue to make significant customer allocation
13 errors, including allocating Apple Inc.'s revenue to Bazaarvoice even though
14 Apple uses an in-house solution for PRR and assigning Liberty Interactive's
15 revenue to PowerReviews even though PowerReviews only served a website
16 accounting for 0.13% of Liberty Interactive's websales reported to the IR500.
17 DX1736 at ¶¶ 26, 138. Trial Tr. 1073:24-1074:12, 1091:2-1092:17.
- 18 867. Dr. Shapiro has not adjusted his revenue measure shares to account for Reevo
19 serving Skype, a Microsoft subsidiary. Trial Tr. 1092:20-1093:15. Applying Dr.
20 Shapiro's methodology, Reevo should be allocated all of Microsoft's IR500
21 revenue because it serves Skype. Trial Tr. 1092:20-23.
- 22 868. Dr. Shapiro's method attributes billions of dollars to Bazaarvoice and
23 PowerReviews' market shares even for customers whose R&R purchases are
24 small. Trial Tr. 1090:20-1091:17.
- 25 869. Dr. Shapiro's market share analysis does not measure share attributable to serving
26 small retailers. Trial Tr. 968:23-25.
- 27 870. Dr. Shapiro allocates no market share to Yotpo and Amazon Webstore. Trial Tr.
28 1065:19-1066:12.
871. Dr. Shapiro does not account for IR500 retailers selling through Amazon
Marketplace. Trial Tr. 1049:10-1053:10.
872. Dr. Shapiro allocates no market share to rapid entrants despite the presence of
many potential rapid entrants. Trial Tr. 1094:4-1095:16, 1748:10-25.
873. Dr. Shapiro does not ascribe any market share to firms not currently selling R&R
in the United States. Trial Tr. 969:22-25.
874. Dr. Shapiro's market shares do not reflect the 10-1 ratio of Bazaarvoice's revenue
to that of PowerReviews. Trial Tr. 1041:4-17, 1739:10-1740:3.

875. Dr. Shapiro's market share measures do not adequately reflect the individual and collective competitive significance of current players like Gigya, Pluck, Amazon Webstore, Rating System, Reevo, and others going forward. Trial Tr. 1742:11-1743:4, 1749:1-1755:19.

876. Dr. Shapiro's revenue-based shares overstate PowerReviews' competitive significance because Staples alone accounts for 40% of the market share given to PowerReviews in his revenue method, and the top five PowerReviews customers account of 60% of its market share in that method. Trial Tr. 1049:1-5, 1742:1-10.

877. PowerReviews' attributed market share would be lower if brands were included in the analysis. Trial Tr. 1087:5-11, 1087:23-1088:1.

878. Dr. Shapiro had to make numerous corrections to his original market share calculations due to data errors, and his calculations still suffer from multiple errors that inflate PowerReviews' competitive significance. Trial Tr. 1095:20-1097:19, 1743:5-1747:5.

879. Dr. Shapiro's market share checks do not help:

- The Fortune 500 does not focus on customers that would be likely to use R&R. Trial Tr. 975:6-8, 976:5-7.
- The IR1000 uses the same methodology as the IR500. DX1778 at ¶ 8, Trial Tr. 969:5-9.
- When Dr. Shapiro calculated share using Dr. Shehadeh's sample, he found in-house supply was larger than either Bazaarvoice or PowerReviews. Trial Tr. 980:19-981:9.

880. Both of Dr. Shapiro's market share measures are biased, and averaging two biased measures of market share does not yield a valid measure. Trial Tr. 1746:22-1747:8.

b. Dr. Shehadeh's estimate of market share covers the total addressable market and is consistent with historic Bazaarvoice estimates of market share

881. [REDACTED] DX1433 at ¶ 254; DX1787 at 3, 5, 7; DX1789 at 2; DX1379 at 2, 13, 16.

882. [REDACTED] DX1787 at 3, 5.

1 883.

2 [REDACTED] DX1789 at 2.

3 884.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] DX1379 at 2; DX1433 at ¶¶ 249, 252.

9 885.

10 [REDACTED] DX1379 at 2.

11
12 886. Bazaarvoice's economic expert estimates, based on a sample of the 29,000
13 workable accounts, that the combined market share of PowerReviews and
Bazaarvoice is no more than approximately 21%. DX1433 at ¶¶ 252-253.

14 887. In calculating market share, Dr. Shehadeh drew a random sample of 1,000
15 "workable accounts" from Bazaarvoice's salesforce data, and determined whether
16 PowerReviews or Bazaarvoice provides any solutions to that website. 87
17 accounts with no corresponding webpage were excluded from the analysis. He
concluded that the combined firm provides service to 11% of this sample.
DX1433 at ¶¶ 252-253.

18 888. To refine his analysis, Dr. Shehadeh took into account that 51 percent of
19 Bazaarvoice's prospective customers implement some social marketing solution
20 already. In framing his analysis, Dr. Shehadeh conservatively assumed that only
21 those customers who have implemented some social marketing solution would be
candidates to purchase R&R. Using this metric, Dr. Shehadeh concluded that
Bazaarvoice and PowerReviews combined provide solutions to 21% of the sample.
DX1433 at Exhibits 8, 9.

22 889. Dr. Shehadeh correctly concludes past market shares and market concentration
23 analyses are unlikely to be instructive in unilateral effects cases involving
24 differentiated products because they are backward-looking and may not reflect
25 competitive significance going forward. Trial Tr. 1714:12-1715:3, 1718:20-
1721:1, 1736:22-1739:9, 1740:4-1741:1, 2024:15-2026:8.

26 890. Dr. Shehadeh's sample drawn from the Total Addressable Market identified in
27 Bazaarvoice documents is more representative of the market than the IR500.
Trial Tr. 979:19-980:16, 1912:16-23.

28 891. Dr. Shehadeh's approach correctly accounts for supply substitution by estimating
the market shares of Bazaarvoice and PowerReviews across all websites in the

sample with user-generated content gathering functionality because providers of different solutions and providers in different geographies could readily expand into selling R&R solutions in the U.S. Trial Tr. 1909:18-1915:7; DX1736 at ¶¶ 16-33.

892. Dr. Shehadeh also offers a calculation for all websites in his sample that shows Bazaarvoice has an 11% post-merger market share if websites that do not have user-generated content gathering functionality but could implement such functionality are included. Trial Tr. 1911:4-11, 1936:19-1938:12; DX1736 at ¶¶ 16-33; DX1433, Exhibits 8 and 9.

893. Dr. Shehadeh's approach may even overstate PowerReviews' competitive significance because the customer count methodology does not capture the 10-1 revenue disparity between Bazaarvoice and PowerReviews. Trial Tr. 1914:2-17.

894. Bazaarvoice's post-merger market share is no higher than 22%. Trial Tr. 1911:12-16.

895. Dr. Shapiro's own colleagues used a similar approach to Dr. Shehadeh's in analyzing the merger of Sirius and XM. Trial Tr. 1915:13-1919:3.

c. *Dr. Shapiro ignores the Horizontal Merger Guidelines requirements that market share take into account the nature of bidding markets and rapid entry*

i. Rapid Entrants

896. Antitrust economics, embodied in the DOJ's and Federal Trade Commission's 1992 Horizontal Merger Guidelines (the "1992 Merger Guidelines"), further teaches that rapid entrants should be considered market participants for purposes of calculating market shares and market concentration. 1992 Merger Guidelines § 1.32 (referring to rapid entrants as "uncommitted entrants"); 2010 Horizontal Merger Guidelines § 5.1 ("Firms that clearly possess the necessary assets to supply into the relevant market rapidly may also be rapid entrants.").

897. Amazon, Google, Salesforce, Facebook, and Oracle, among others, have the requisite technology, reputation and relationships with brands and retailers to be viewed as reasonable rapid entrants into R&R such that entry could occur within one year. PFF ¶¶104-132.

898. The government did not present any evidence that Amazon, Google, Salesforce, Facebook, and Oracle are not rapid entrants as defined under the 1992 Merger Guidelines.

899. Contrary to the 1992 Merger Guidelines, the government assigns a market share of 0.0% to rapid entrants like Amazon, Google and Oracle. PFF ¶¶872, 896.

ii. Bidding markets

900. Dr. Shapiro agrees that a bidding market framework is appropriate to this case, meaning market shares are less relevant. Trial Tr. 1034:8-15.

- 1 901. The alleged PRR platform product market includes all retailers and manufacturers
2 that use R&R.
- 3 902. The evidence shows that customers have different preferences and requirements
4 for their R&R systems. PFF ¶¶106-1028.
- 5 903. Thousands of customers use platforms such as Yotpo and PowerReviews Express
6 while others use PowerReviews, Reevo, Gigya, Pluck, in-house systems and
7 Bazaarvoice. DX1400 at ¶¶7-11; DX0021 at BV-VOL-000000949.
- 8 904. Customers have also testified that they have switched from relatively more
9 sophisticated platforms like Bazaarvoice and PowerReviews to platforms such as
10 Rating-System (Astral Brands) and Magento (Big Dot of Happiness). PFF ¶¶482,
11 488.
- 12 905. The government's theory of individualized customer negotiations leading to
13 different prices for the same product also demonstrates that different customers
14 place different value on the same product.
- 15 906. The government makes no allegations as to how customer preferences are
16 distributed across the relevant market.
- 17 907. Given the wide range of customer preferences across the alleged PRR platform
18 market, no particular supplier, including in-house, is better positioned to capture
19 business across the entire set of PRR platform purchasers than another.
- 20 908. Antitrust economics, embodied in the 1992 Merger Guidelines, teaches that in a
21 bidding market, "[w]here all firms have, on a forward-looking basis, an equal
22 likelihood of securing sales," those firms should be assigned "equal shares." 1992
23 Merger Guidelines § 1.41 n.15.
- 24 909. It is routine to consider only one viable alternative when an e-commerce website
25 is negotiating a renewal. DX1432 at 69; G. Green Tr. 12:20-23; Maki Tr. 18:23-
26 19:25; Masciola Tr. 46:25-48:4; Morgan Tr. 16:7-22; D. Green Tr. 32:12-33:16.
- 27 iii. Market shares must take account of rapid entry and bidding markets
- 28 910. The 1992 Horizontal Merger Guidelines state that rapid entrants are market
 participants and that in a bidding market where market participants are equally
 likely to secure sales, shares should be allocated equally among them. PFF ¶896.
911. Today, conservatively, there are at least five existing equally competitive R&R
 options that customers have chosen in bidding situations – Bazaarvoice, internal
 solutions, Gigya, Pluck and Reevo. PFF ¶¶658-676. The government makes no
 allegations as to customer preferences in the overall set of customers for PRR
 platforms that would make any one of these solutions preferable.
912. There are also at least two rapid entrants, and likely more, that could and would
 be equally competitive R&R options for customers – Amazon and Google. PFF
 ¶¶104-111, 117-120.

- 1 913. Because at least seven competitors today have an equal likelihood of securing
2 sales in R&R for any given customer – Bazaarvoice, Pluck, Gigya, Reevo, internal solutions, Amazon and Google – each competitor has an equal market
3 share of 14.8%.
- 4 914. A post-merger market share of 14.8% for Bazaarvoice is far below the level
5 economists would view as indicative of market power. PFF ¶894.
- 6 915. Seven rivals with an equal likelihood of securing sales in R&R for any given
7 customer (eight if Oracle is included) is far greater than the two available to
8 customers that the DOJ alleges existed before Bazaarvoice acquired
9 PowerReviews.
- 10 916. With seven equally competitive options in R&R available to a customer in any
11 given bidding situation, each firm with a 14.8% market share, the market
12 concentration level is 1429, a figure representing only a “moderately concentrated”
13 market. 1992 Merger Guidelines § 1.51. Market concentration levels are
14 computed by totaling the squared market share of each market participant (14.8%
15 squared + 14.8% squared + 14.8% squared + 14.8% squared + 14.8% squared +
16 14.8% squared + 14.8% squared). Id. § 1.5 n.17.

13 **12. Government Cannot Show Anticompetitive Effects**

- 14 917. The government bases its theories of harm exclusively on “unilateral effects.”
- 15 918. The government overstates how close Bazaarvoice and PowerReviews would
16 have been as competitive substitutes absent the acquisition, and fails to prove that
17 other firms have not and could not replace PowerReviews.
- 18 919. The testimony from customers and competitors refutes the government’s
19 contention that the head-to-head competition between Bazaarvoice and
20 PowerReviews that would have persisted absent the merger would not be replaced
21 by other competitive options. PowerReviews’ retail customer base did not
22 include brands to use PowerReviews syndication. PFF ¶949-950.
- 23 920. Customers uniformly testified that they have not been and likely will not be
24 harmed by Bazaarvoice’s acquisition of PowerReviews. PFF ¶¶477-577.
- 25 921. DOJ presented zero customer witnesses who believed the acquisition has or will
26 harm them.
- 27 922. Approximately 100 current, former and potential customers testified that the
28 acquisition has not and will not harm them. PFF ¶¶477-577.
- Customers with internal solutions have not and will not be harmed by the acquisition.
 - Customers using competitor R&R solutions have not and will not be harmed by the acquisition.

- Customers who currently use Bazaarvoice's R&R solutions have not and will not be harmed by the acquisition.
- Customers who currently use PowerReviews' R&R solutions have not and will not be harmed by the acquisition.
- Syndication customers have not and will not be harmed by the acquisition.

a. *At the time of the acquisition, PowerReviews was shifting away from direct competition with Bazaarvoice and towards a social suite targeted at customers not served by Bazaarvoice*

923. **From Buzzillions to BV Flips.** PowerReviews initially offered a free R&R solution as part of its Buzzillions shopping comparison portal. Hurt Tr. 84:24-85:23; Trial Tr. 379:15-380:22, 232:5-17, 379:15-380:9, 1169:7-9. Buzzillions was fashioned as a competitor to Amazon. Trial Tr. 379:15-380:22. PowerReviews was focused on driving traffic to Buzzillions, and making money by selling advertising on the site. Hurt Tr. 83:24-85:14; Trial Tr. 379:15-380:22. PowerReviews used its R&R software as a means to increase traffic to Buzzillions. PowerReviews gave its R&R software away for free to brands and retailers in exchange for the right to post the reviews for their products on Buzzillions. Hurt Tr. 83:24-87:16; DX0021 at BV-VOL-000000950; Trial Tr. 379:15-380:22.

924. The PowerReviews R&R solution was not robust. Rather, it was simple and turnkey. [REDACTED] DX0021 at BV-VOL-000000987; DX0771 at BZ-01818593; Trial Tr. 1107:16-1109:5. Due to the limitations of its solution, many customers did not consider PowerReviews a viable option. PFF ¶951.

925. Over the next three years, Buzzillions failed to obtain the traffic PowerReviews had forecasted. Trial Tr. 380:23-381:8. In November 2008, PowerReviews' founders expressed concern about the future of the company, stating that they did not know "where [the company would] be in 6 months." DX0298 at BZ-00371754-55. Brett Hurt, Bazaarvoice's then-CEO, noted that Bazaarvoice's board "expect[ed] them to go out of business in 2009 given the very tough economy we are in and the fact that they are burning cash like a dot-com of yesteryear." DX0025 at BZ-00004546. In 2008, PowerReviews laid off approximately 30% of its staff. DX0025 at BZ-00004546. PowerReviews conducted additional layoffs in 2009. DX0305 at BZ-00389748. PowerReviews considered exiting the market through acquisition. PowerReviews pursued, but ultimately abandoned, a sale of the company to NexTag's corporate parent. DX0307 at BZ-00390198.

926. In October of 2009, PowerReviews' board appointed Pehr Luedtke as CEO. Trial Tr. 327:20-23. PowerReviews changed its business strategy, deciding it would begin charging for its R&R solution. DX0305 at BZ-00389748. PowerReviews announced the release of PowerReviews Express, "a lower-cost delivery model

with less functionality than our base review service, aimed at the 200,000+ small and medium-sized online retailers and brands.” DX0027 at BZ-00009733.

927. Despite this change in strategy, PowerReviews’ financial performance continued to suffer. In December 2010, Mr. Luedtke informed the board that PowerReviews’ Q4 performance that year was “going to be below expectations.” Mr. Luedtke blamed the deficit of \$75,000 monthly recurring revenue on Power Review’s inability to “forecast the significant seasonality in the SaaS business” and “revenue reversals.” DX0071 at BZ-00058312. As a result of this deficit, Mr. Luedtke suggested the company may need to borrow money or take another round of financing before it reached profitability. DX0071 at BZ-00058312.

928. In 2011, traffic to Buzzillions dried up after Google made a change to its algorithm (“Panda” update) that devalued aggregated content like that which appeared on Buzzillions. Trial Tr. 381:19-382:5; DX1865 at BZ-01993248. The revenue potential from Buzzillions disappeared overnight. Trial Tr. 381:19-382:5. PowerReviews pursued a new round of financing but had trouble finding a willing investor. Multiple venture capital firms passed on the opportunity to invest in PowerReviews. DX0075 at BZ-00061035.

929. Given the loss of Buzzillions’ revenue, PowerReviews began looking for other sources of revenue. In early 2011, PowerReviews initiated a sales strategy dedicated to attracting high profile brands and large retailers. DX0325 at BZ-00458432. As part of this strategy, PowerReviews sought out to “flip” Bazaarvoice brand and retail customers, and be in every deal Bazaarvoice was in. GX0325 at BZ-00458434; GX0241 at BZ-00066878. It identified “four key focus areas”: “1. Flip Retailers to PowerReviews; 2. Win Net New Brands; 3. Syndicate BV Brands onto PowerReviews Retailers; 4. Syndicate [Bazaarvoice] Brands onto PowerReviews’ Retailers.” Trial Tr. 382:10-384:7; GX0241 at BZ-00066898.

930. PowerReviews anticipated that this “BV flip” strategy would allow it to move up market and break into anchor accounts (i.e., high profile brands and retailers). Company executives anticipated that this would also generate some market credibility. DX0325 at BZ-00458432.

931. PowerReviews’ management sought to “ramp” up its lead generation as part of this process to increase sales. DX0389 at BZ-00651364-65. PowerReviews hired Cathy Halligan, the former CMO of Wal-Mart.com, as Vice President of Sales to spearhead this anchor account effort. Hurt Tr. 359:14-21. Andy Chen underlined the need for this effort, stating, “My sense of our challenge with these big brands is that . . . we still aren’t seen as ‘committed’ to brands.” DX0082 at BZ-0065926-27; Trial Tr. 384:8-385:1.

932. Ms. Halligan used her connections developed at Wal-Mart.com to convince larger brands and retailers to consider PowerReviews. Trial Tr. 1805:11-13. Despite this effort, PowerReviews “struggle[ed] to sell into the enterprise level accounts.” DX0530 at BZ-01015853; Trial Tr. 234:16-235:9, 235:17-19. PowerReviews missed its sales estimates again in July 2011. DX0203 at BZ-00171115. This

was the second consecutive quarter that PowerReviews missed its sales goals. DX0088 at BZ-00071887.

933. In a presentation relied on by DOJ, PowerReviews identified six retailers and two brands that they were looking to win over. PowerReviews succeeded in converting none of those customers. GX0241 at BZ-00066898; Trial Tr. 382:10-384:7. Its syndication efforts were also largely a failure. GX0241 at BZ-00066898; Trial Tr. 382:10-384:7. PowerReviews had “limited success” in convincing Bazaarvoice brands to syndicate into the PowerReviews network. And PowerReviews had “no success whatsoever” in syndicating PowerReviews brands into Bazaarvoice retailers. Trial Tr. 383:22-384:7.
934. PowerReviews’ failure to win the business of large brands and retailers was due, in part, to the nature of PowerReviews’ solution. Large brands and retailers requested that PowerReviews provide a more customized solution that required extensive service support. Others wanted an R&R provider that had a syndication network. PowerReviews did not have these features. DX0863 at BZ-01994862; DX0082 at BZ-00065930. Many large brands and retailers did not see PowerReviews as a competitive alternative to Bazaarvoice. DX0082 at BZ-00065930; PFF ¶951.
935. In September 2011, PowerReviews missed its sales estimates for the third straight quarter. DX0088 at BZ-00071886-87. PowerReviews achieved only 57% of its estimated bookings. DX0088 at BZ-00071887. This number was “beyond problematic” for Ben Boyer, a member of the PowerReviews board, because management had previously lowered the Company’s sales target. DX0088 at BZ-00071887. As a result, Cathy Halligan was removed from her position as Vice President of Sales. DX0088; DX0509 at BZ-00909277. Following this sales miss, Mr. Boyer told Mr. Luedtke that he was “starting to get worried this thing is broken beyond repair in a reasonable period of time.” DX0088 at BZ-00071887. In Mr. Boyer’s opinion, “PR clearly has some real problems that need to be fixed.” DX0088 at BZ-00071886.
936. While Mr. Boyer was concerned regarding the past sales misses, he was also concerned about future results: “it feels like we’re a bit of a falling knife – spending lots on marketing, sales while introducing new products and seeing worse results.” DX0088 at BZ-00071886. Following the September 2011 sales miss, Ben Boyer called for a meeting with senior PowerReviews management. Among the questions Mr. Boyer asked were: “is sales fixable”; “where do our products truly stand up relative to competition (ie do we really have anything compelling to sell, once we fix sales)?”; and “what’s the mood of the organization (ie are we in a death spiral and about to start losing core engineers?).” DX0088 at BZ-00071885.
937. All in all, PowerReviews spent \$6 million in 2011 trying to flip Bazaarvoice accounts which was over half over its revenues for that year. Trial Tr. 384:17-21. If bookings and revenue from PowerReviews did not materialize in 2012, PowerReviews would continue to sustain losses and exhaust its cash reserves of \$5.4 million in the second half of 2012. Trial Tr. 393:1-9.

- 1 938. **Moving from red to blue ocean.** In summer 2011, PowerReviews decided to
2 abandon its “BV Flip” strategy. PowerReviews would move away from the “red
3 ocean” where competition with Bazaarvoice was fierce to the “blue ocean” where
4 there would be less competition. Trial Tr. 1044:5-12, 1840:25-1841:16, 377:18-
5 378:21. PowerReviews’ board supported this change in direction, pushing
6 PowerReviews’ management to stop focusing exclusively on pursuing BV brands
7 and retailers. Rather, the board “really [wanted] to see [PowerReviews] spend
8 more time going after new markets.” DX0322 at BZ-00455059.
- 9 939. PowerReviews’ change in direction was precipitated both by its failure to capture
10 BV brands and retailers and by a rapidly changing market. More and more e-
11 commerce sites were becoming comfortable with social commerce. Trial Tr.
12 1805:16-25; DX0322 at BZ-00455059. R&R was becoming more commoditized
13 which threatened the long-term viability of PowerReviews. PowerReviews
14 needed to develop and market high-margin additional value solutions to sell.
15 Trial Tr. 1809:17-1810:19.
- 16 940. In November 2011, PowerReviews announced internally that it was “expanding
17 the scope of [its] offering to become ‘The Essential Social Suite’ (‘ESS’)” and
18 began developing functionality for ESS. DX0092 at BZ-00073913. ESS
19 included loyalty, Q&A, analytics and R&R. Trial Tr. 1805:20-1806:13.
- 20 941. PowerReviews hoped ESS would attract a larger share of a potential customers’
21 social commerce spend. DX0092 at BZ-0073913. In addition, PowerReviews
22 believed an integrated social commerce platform like ESS would be very popular
23 with mid-market CMOs. PowerReviews had found that these CMOs were
24 demanding a holistic platform because integrating different technologies and
25 services from different companies was difficult. Trial Tr. 377:18-378:21. E-
26 commerce sites were turning away from “best in class” solutions towards
27 integrated platforms. Trial Tr. 386:19-387:6. In the launch of this new strategy,
28 PowerReviews identified its competitors as Gigya, Lithium and Bazaarvoice.
29 Trial Tr. 1843:5-1844:15; DX0513 at BZ-00917867.
- 30 942. ESS was aimed at mid-market e-commerce sites (i.e., medium-sized businesses)
31 where PowerReviews had had historical success. DX0092 at BZ-00073913; Trial
32 Tr. 1806:17-24. PowerReviews, in focusing more and more on the mid-market,
33 would compete against Bazaarvoice less and less. DX0092 at BZ-00073913.
- 34 943. PowerReviews made its first announcement concerning ESS in February 2012
35 and began selling ESS to customers in early 2012. Trial Tr. 426:21-427:17. In
36 the time between fall 2011 and February 2012, PowerReviews continued to
37 pursue its previous strategy. Trial Tr. 426:21-427:17; GX797 at BZ-00534356.
38 On March 20, 2012, shortly after PowerReviews began selling ESS the board
39 demoted Pehr Luedtke, the then-CEO, and replaced him with Ken Comee, a
40 member of the board. DX0208 at BZ-00183945. Ken Comee, PowerReviews’
41 new CEO, supported PowerReviews’ strategic “pivot” away from competing
42 solely against Bazaarvoice to pitching a social loyalty platform. Mr. Comee
43 wanted to take PowerReviews away from being a point solution R&R provider
44 and focusing on flipping Bazaarvoice accounts. Trial Tr. 1805:16-24.

944. PowerReviews' last quarter was its worst on record. It sustained its highest net losses in its history. DX1387.001.

b. *Bazaarvoice and PowerReviews' products were not close substitutes in terms of product characteristics*

i. The solutions offered by Bazaarvoice and PowerReviews were differentiated in terms of feature depth and breadth

945. Bazaarvoice's and PowerReviews' solutions were highly differentiated.

- **Technical Architecture.** Bazaarvoice and PowerReviews had very different architectural approaches. Bazaarvoice hosted review content on its own servers. PowerReviews delivered the reviews to its customers every day at which point the customer would then upload the content to their site. This led to PowerReviews being unable to customize its implementation on client sites. Trial Tr. 1107:16-1109:5.
- **Customization.** Bazaarvoice offered a "very highly customized" solution that was "suitable to large retailers" and brands. PowerReviews offered a "very turnkey, easy-to-service . . . product offering" that did not provide customers the ability to customize." Trial Tr. 209:19-210:2, 214:19-25, 529:4-530:2, 535:7-536:9, 830:24-831:21, 1108:1-1109:5; GX0540 at BZ-00085252; DX1432 at 45. PowerReviews' "model [would] not scale if [it] need[ed] to hand hold and take care of an account." DX0085 at BZ-00069821. [REDACTED] DX0021 at BV-VOL-000000987; DX0771 at BZ-01818593. With respect to one prospective client, PowerReviews debated whether to pursue the opportunity given the amount of work that would be involved. "We are a multi tenant SaaS business, not a custom IT house . . . if there is lots of custom work, we really need to seriously consider." DX0390 at BZ-00656040; DX0863 at BZ-01994862.
- **User Interface.** All PowerReviews implementations look very similar, which is one reason that some customers might not use PowerReviews. Trial Tr. 1491:22-1492:20. Bazaarvoice allowed customers to customize the appearance of the user interface which allowed for differentiation. DX1432 at 45-46; DX1735 at 38.
- **Analytics.** Bazaarvoice had an advanced analytics product called "Customer Intelligence" that was subsequently reconfigured and renamed "Bazaarvoice Intelligence." Trial Tr. 116:21-117:3. This product is "a much deeper analytics product." Trial Tr. 116:15-20. It analyzed "the data for ratings and reviews and other user data that [Bazaarvoice] captured as well as content that [Bazaarvoice] could import from [its] customers on their sales activity [and]customer relationship data." Trial Tr. 675:15-22. Bazaarvoice Intelligence allows Bazaarvoice clients "to look at how consumer reviews relate to their customer and their

customer's preference, and it helps them make better marketing and merchandising decisions." Trial Tr. 790:23-791:8 PowerReviews offered basic analytics services on the number of reviews generated, average star rating, and trending products. Bazaarvoice regarded PowerReviews' analytics as "sub-par" and did not believe they would satisfy the needs of Bazaarvoice's enterprise customers. Svatek Tr. 117:6-18. PowerReviews' analytics product was not as advanced as Bazaarvoice Intelligence. Trial Tr. 117:10-13; DX1432 at 45.

- **Additional Social Commerce Products.** Bazaarvoice offered additional social commerce products such as Q&A, stories and mobile apps. Hurt Tr. 296:12-20. The breadth of its solution was a competitive advantage. Hurt Tr. 296:12-20. For Bazaarvoice, "it was important . . . to add additional features, capabilities beyond reviews, because we knew that our clients needed more." Svatek Tr. 75:23-76:11. Bazaarvoice also offered better integration with social networks. DX1432 at 45. PowerReviews did not have a "broad suite of services" to compete with Bazaarvoice. Trial Tr. 260:14-25.
- **Syndication.** Bazaarvoice had a robust syndication network and product offering. PowerReviews syndication technology and customer base did not appeal to brands. PFF ¶949-950.
- **Customer Support.** Bazaarvoice had a large client support team of 80-90 people to drive the "health and success" of clients. Trial Tr. 535:7-536:9, 1110:3-16. The team is responsible for managing clients as they implement and utilize Bazaarvoice services. Trial Tr. 1110:1-12. Bazaarvoice offered top of the line customer service that large retailers and brands needed. DX1432 at 45. "Although Bazaarvoice had far fewer clients than PowerReviews, Bazaarvoice had many more employees, which reinforced [the] perception that Bazaarvoice's product was more suitable for more complex implementations that would require substantial interaction between Bazaarvoice and the customer." DX1432 at 45. PowerReviews had essentially the opposite approach. Because of its turnkey solution, PowerReviews did not offer the same level of customer support. PowerReviews had a six person team for customer support. Trial Tr. 1110:3-19.
- **Moderation.** PowerReviews and Bazaarvoice had very different philosophical approaches to moderation and authentication. Bazaarvoice had a massive team of human moderators who read every single review and worked with the most advanced moderation technology. GX0034 at BZ-00159949; Trial Tr. 1111:3-22. Bazaarvoice's moderators also tagged content for the client to look at. Bazaarvoice required all clients to adhere to its authentication standards which meant its clients could not filter out any negative reviews. Trial Tr. 1111:3-22. PowerReviews, on the other hand, performed some technical moderation which filtered out profanity and inappropriate content. Trial Tr. 1111:23-1112:5. In 2011, PowerReviews still used spreadsheets to moderate reviews. GX0034 at

1 BZ-00159949. PowerReviews allowed customers to filter their own
2 reviews. Trial Tr. 1111:23;1112:5.

- 3 • **Sales organization.** PowerReviews did not have the sort of enterprise
4 selling and service capabilities that Bazaarvoice did. DX1432 at 45; Trial
5 Tr. 830:24-831:21, 1108:6-1109:5.
- 6 • **Cost Structures.** PowerReviews and Bazaarvoice had very different cost
7 structures and therefore different pricing strategies and clients. This was
8 due to the implementation effort, the size of the customer success team,
9 and the size, breadth and depth of the moderation capabilities, as well as
10 the increased customization and syndication opportunities offered by
11 Bazaarvoice. Trial Tr. 1112:21-1113:10. [REDACTED]

12 [REDACTED] DX0021 at 14.

13 946. Because of these differences in their solutions, Bazaarvoice's and PowerReviews'
14 customer base was very different.

- 15 • **PowerReviews** succeeded with small and medium sized business. Dodd
16 Tr. 40:4-13; Trial Tr. 1114:1-9, 529:17-24. They had only a handful of
17 large retail customers. Bazaarvoice identified PowerReviews' "sweetspot"
18 as "the SMB market," while positioning themselves as the R&R provider
19 "built for enterprises." DX0624 at BZ-01328389; Trial Tr. 442:6-12,
20 830:24-831:5. Bazaarvoice understood that PowerReviews "may service
21 more websites," but emphasized the fact that "the vast majority of their
22 5,000 clients are SMBs using PowerReviews Express." DX0624 at BZ-
23 01328391. PowerReviews was not attractive to brand clients. Trial Tr.
24 229:9-17.
- 25 • **Bazaarvoice** traditionally served larger retailers and brands, like Wal-
26 Mart and Best Buy, who were very concerned about their sites and
27 required a lot of customization. Trial Tr. 1109:15-20. Traditionally,
28 Bazaarvoice had not pursued the mid-market. Trial Tr. 1114:6-9.

947. Dr. Shapiro overstates PowerReviews' competitive significance:

- PowerReviews had few brand customers. Trial Tr. 1014:11-14.
- PowerReviews secured few Bazaarvoice accounts overall, and only three Bazaarvoice IR500 accounts between 2009 and 2012. Trial Tr. 1042:17-1044:8; DX1883.
- PowerReviews had to alter its strategy in light of its failure to secure Bazaarvoice accounts. Trial Tr. 1044:5-12.

- PowerReviews’ “open syndication” strategy was merely a press release. Trial Tr. 1044:25-1045:13.
- PowerReviews was running out of cash by the time of the merger. Trial Tr. 1048:6-13.

948. Dr. Shapiro’s own analysis and the record evidence show that PowerReviews was a distant competitor to Bazaarvoice and could thus be easily replaced and that many other competitors could restrain Bazaarvoice’s pricing. DX1736 at ¶¶ 48-127; Trial Tr. 1041:18-1042:7.

ii. PowerReviews did not have robust syndication capabilities

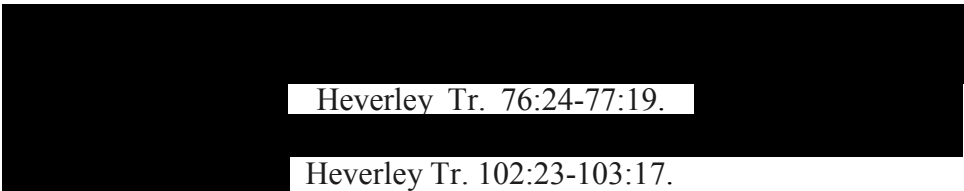
949. PowerReviews did not offer robust syndication. Trial Tr. 393:15-18. PowerReviews regarded syndication as “interesting but not essential” to its customer base. DX0084 at BZ-00069472. PowerReviews had a “[v]ery minimal level of process technology methodology around the syndication component of the network.” Svatek Tr. 129:8-23. Not many PowerReviews customers wanted to use its syndication product. BJ’s believed that PowerReviews’ syndication was a “relatively new functionality” and “wanted to ensure that it was a trustworthy method of receiving and submitting reviews before [they] added it to [their] website.” Cunningham Tr. 32:16-33:9. REI considered PowerReviews syndication “smaller scale,” and the limited number of participating brands was a relevant factor in its decision to not participate. Gephart Tr. 32:5-17. Part of PowerReviews’ problem with its syndication product was that it did not have very many brand customers from whom it could syndicate reviews. Trial Tr. 1110:20-1111:2. PowerReviews had “limited success” in convincing Bazaarvoice brands to syndicate into the PowerReviews network. And PowerReviews had “no success” in syndicating PowerReviews brands into Bazaarvoice retailers. Trial Tr. 383:22-384:7.

950. A very small percentage of PowerReviews’ customer base was interested in syndication. At the time of the merger, only 3.4% of all PowerReviews customers participated in syndication. DX1736 at 62 and Exhibit 6a. Only 9.1% of all PowerReviews enterprise customers participated in syndication. DX1736 at 63 and Exhibit 6a. Only 0.5% of all PowerReviews Express customers participated in syndication. DX1736 at 63 and Exhibit 6a. Only a handful of Bazaarvoice brands had signed up for BrandShare. Trial Tr. 423:22-424:20, 772:1-6, 813:22-814:9.

iii. Customers did not view Bazaarvoice and PowerReviews’ products as close functional substitutes

951. Customers who had evaluated the solutions offered by Bazaarvoice and PowerReviews believed their solutions to be differentiated:

- Abercrombie & Fitch believed that PowerReviews focused on small to mid-sized customers while Bazaarvoice focused on larger organizations that value a service-based offering. May Tr. 20:14-25.

- 1 • AutoZone, which eventually chose to work with Pluck, only considered
2 PowerReviews briefly. AutoZone did not believe PowerReviews to be a
3 leader in their field, especially as compared to Bazaarvoice. Traywick Tr.
26:11-27:5; Trial Tr. 1334:12-18.
- 4 • Belk never considered using PowerReviews as an R&R provider before
5 the merger, and would not have done so absent the merger. Chin Tr. 17:2-
11, 17:18-18:10.
- 6 • The Clorox Company evaluated PowerReviews' R&R solution between
7 October 2011 and February 2012. The Clorox Company chose not to
8 work with PowerReviews for the vast majority of its brand websites
9 because PowerReviews was not able to provide or ensure acceptance of
The Clorox Company's syndicated review content by retailers. Levin Tr.
77:11-78:5; Trial Tr. 287:2-13, 316:1-22.
- 10 • 
11 Heverley Tr. 76:24-77:19.
12 Heverley Tr. 102:23-103:17.
- 13 • Dick's Sporting Goods was initially a PowerReviews customer that
14 switched to Bazaarvoice because "[t]here were inherent limitations in the
15 PowerReviews' platform, and Bazaarvoice had kind of filled the gap in the
16 functionalities that [it was] looking for." Marraccini Tr. 34:25-35:9.
17 Bazaarvoice allowed for additional functionalities not available on
18 PowerReviews including: social sharing; better SEO; more styling
flexibility; more customization; and more flexibility in the review module.
Marraccini Tr. 35:10-36:3.
- 19 • Golfsmith viewed the features and functionality of PowerReviews' R&R
20 as inferior to both Pluck and Bazaarvoice. Maki Tr. 20:24-21:4.
21 Golfsmith did not consider PowerReviews' technology "robust." Maki Tr.
21:14-17. Golfsmith viewed PowerReviews as a "less superior product"
compared to Bazaarvoice. Maki Tr. 28:16-23; Trial Tr. 1216:20-1217:2.
- 22 • Guess? initially considered both PowerReviews and Bazaarvoice for R&R
23 functionality but did not seek a price quote from PowerReviews because
24 Bazaarvoice was "clearly the better choice" based on their technology.
Koven Tr. 19:16-20:14.
- 25 • The Home Depot did not see PowerReviews as a competitive alternative
26 to Bazaarvoice. The Home Depot felt that PowerReviews did not fit The
27 Home Depot's needs, because PowerReviews did not have the capability
28 to syndicate reviews from some of The Home Depot's major brands.
PowerReviews' inability to syndicate reviews from some of The Home
Depot's major brands was the reason The Home Depot chose not to
further explore PowerReviews as a provider. Yaniv Tr. 24:4-14; 26:8-13.

- InterContinental Hotel Group (IHG) initially considered five vendors when selecting an R&R platform: Bazaarvoice, PowerReviews, Reevo, Gigya and TripAdvisor. Morgan Tr. 12:15-18. IHG eliminated PowerReviews during its initial evaluation because it did not believe that PowerReviews had sufficient experience in the travel space. Morgan Tr. 19:10-16; Trial Tr. 1359:2-1360:11.
- La-Z-Boy did not consider PowerReviews “an alternative” to Bazaarvoice when it initially evaluated the marketplace for R&R, and it did not evaluate PowerReviews during its most recent renewal. Targett Tr. 14:22-15:4.
- Petco did not consider PowerReviews when it chose Bazaarvoice for R&R because Bazaarvoice had the best product. Kelly Tr. 20:12-21. Since that time, Petco has never considered replacing R&R from Bazaarvoice with R&R from PowerReviews. Kelly Tr. 21:1-5.
- In 2011, Sears evaluated Bazaarvoice, PowerReviews and Viewpoints as R&R vendors. Massuda Tr. 19:16-21. Sears did not consider PowerReviews to be a viable option because they did not have “the scalability and capacity to handle Sears being so big.” Massuda Tr. 20:17-24.
- World Kitchen testified that “there are many other components to Bazaarvoice which don’t exist for PowerReviews.” Such components include syndication and Facebook integration. Bausch Tr. 26:9-25; Trial Tr. 1297:5-20.

iv. Customers for whom the DOJ claims Bazaarvoice and PowerReviews were “close competitors” had and continue to have many options

952. The government provided, in response to Defendant Interrogatory Numbers 6, 7 and 8, a list of customers for whom Bazaarvoice and PowerReviews were the closest competitors. To support their response, the DOJ pointed to internal Bazaarvoice and PowerReviews documents.
953. These documents, particularly the “How the Deal Was Done” (“HTDWD”) documents, often contain incorrect information. Bazaarvoice executives have testified that HTDWD emails were promotional materials written by salespeople to congratulate themselves and the contributors to a deal. Trial Tr. 203:22-204:2, 728:19-729:5. They were more “art” than “science.” Trial Tr. 203:22-25. The salesperson was given free reign to include whatever information he wanted in the email. Trial Tr. 203:22-204:3. The HTDWD emails were not screened prior to being sent out. Trial Tr. 203:22-204:2.
954. The “How The Deal Was Done” e-mails and Salesforce.com database Dr. Shapiro relies on frequently incorrectly identified the competitive set and were otherwise incomplete and inaccurate. Trial Tr. 1901:6-1903:2, 2074:17-2076:10.

1 955. In addition, Bazaarvoice employees have noted that their data and methods of
 2 tracking the competitive alternatives considered by the clients were “particularly
 3 bad” resulting in Bazaarvoice executives lacking faith in the reports which were
 generated to reflect competition in the pipeline. Trial Tr. 508:17-509:24.

4 956. A review of the competitive engagements below reveals that there were many
 5 alternatives for customers. Pl.’s Obj. and Resp. to 4th Set of Interrogatories.
 6 And some customers have selected alternatives, both before and after the
 consummation of the acquisition. DX1433 at ¶¶ 30-97.

- 7 • **IHG.** IHG also considered TripAdvisor, Reevo, Gigya and several
 8 creative agencies. DX1433 at ¶ 45. PowerReviews was eliminated from
 that opportunity first, and Bazaarvoice subsequently discounted their price
 9 quote by 57 percent in response to Reevo competition. DX1433 at ¶ 45.
- 10 • **DR Power Equipment.** DR Power Equipment is a division of Country
 11 Home Product. The Chief Executive Officer of Country Home Products
 told Dr. Ramsey Shehadeh that DR Power has decided to abandon
 12 Bazaarvoice as its R&R provider for www.drpower.com in favor of the
 R&R functionality offered by its e-commerce platform provider, Red
 13 Prairie. DX1433 at ¶ 47. DR Power Equipment plans to use its call
 service center to moderate its website R&R content and to use either its
 14 call center or its live-chat functionality to provide Q&A content. DX1433
 at ¶ 47.
- 15 • [REDACTED] has never been a customer of PowerReviews or
 16 Bazaarvoice for any products. DX0181; DX1433 at ¶ 52. [REDACTED]
 fact uses an in-house solution for R&R. DX1433 at ¶ 52.
- 17 • **Auto Anything.** AutoAnything is a former Bazaarvoice client that
 18 switched to an R&R product than Bazaarvoice or PowerReviews.
 DX1433 at ¶ 53. AutoAnything has selected Pluck to manage its online
 19 social marketing, including R&R. DX1433 at ¶ 53; Traywick Tr. 34:4-12.
- 20 • [REDACTED] a former Bazaarvoice
 21 customer, is using Rating-System.com to power its reviews. DX0213;
 DX01433 at ¶ 54.
- 22 • **CompSource.** Neither PowerReviews nor Bazaarvoice ever provided
 23 R&R to CompSource. DX1433 at ¶ 55. Today, CompSource employs
 eKomi as its R&R solution. DX1433 at ¶ 55.
- 24 • **Timex.** Timex, a former Bazaarvoice customer, uses an R&R solution
 25 supplied by its e-commerce provider, Drupal. DX1433 at ¶ 56.
- 26 • [REDACTED] has terminated
 27 its relationship with Bazaarvoice and did not switch to PowerReviews.
 DX1433 at ¶ 59. [REDACTED] considered PowerReviews Express,
 28 but never completed its integration, as they claimed that the “solution will

not work with our current ecommerce platform (iCongo).” DX0666 at BZ-01517300. [REDACTED] now uses an alternate solution, provided by what appears to be an in-house solution or e-commerce provider. DX1433 at ¶ 57.

- **Promega.** Promega is former Bazaarvoice customer is now using Rating System. DX1433 at ¶ 58.
- **Wrapables.** Wrapables terminated its relationship with Bazaarvoice in August 2010. DX1433 at ¶ 59. Currently, Wrapables is using reviews provided by its e-commerce vendor, Bigcommerce. DX1433 at ¶ 59. Wrapables never used PowerReviews as its R&R provider. DX1433 at ¶ 59.
- [REDACTED] In August 2012, [REDACTED] terminated its Bazaarvoice contract in favor of an R&R solution from its e-commerce provider, Magento. DX0818; DX0223 at BZ-0145050; DX0656 at BZ-00217452; DX1433 at ¶ 60.
- **Fruit of the Loom.** Fruit of the Loom notified PowerReviews in August 2012 that it would no longer be using its R&R services. Krebs Tr. 31:18-24. [REDACTED] Krebs Tr. 20:17-22; Trial Tr. 1224:10-1225:7; DX1418. Fruit of the Loom has testified that the company is not concerned about the Bazaarvoice-PowerReviews merger. Krebs Tr. 34:17-35:10.
- [REDACTED] DX0575; DX0577; DX1433 at ¶ 62. [REDACTED] DX1460 at 14; DX1477.
- [REDACTED] Portions of [REDACTED] business are powered by various social marketing solutions including Pluck, TurnTo, and Bazaarvoice. DX1433 at ¶ 63. IBM manages the e-commerce activities for [REDACTED] DX1009. IBM recommended that [REDACTED] consider Pluck as an alternative to Bazaarvoice. Trial Tr. 2088:1-10; DX1009.
- **JoAnn Fabric.** JoAnn Fabric appears to use an in-house solution. DX1433 at ¶ 64.
- **Borders.** Borders is now owned by Barnes & Noble. DX1433 at ¶ 65. Barnes & Noble currently uses a proprietary system for R&R, and Lithium for its blogs and forums. Rowland Tr. 19:5-13. Barnes & Noble is under contract to switch to Pluck as its R&R provider. Rowland Tr. 19:8-13, 21:25-22:21.
- **Clearasil.** Clearasil’s parent company, Reckitt Benckiser, has a pre-existing relationship with Reevo, according to a Bazaarvoice document and therefore has the option of turning to Reevo as an alternative R&R supplier. DX0494.

- 1 • **Land's End.** Land's End has developed a proprietary e-commerce
2 platform in-house. DX1433 at ¶ 67. Land's End is a Bazaarvoice
3 customer that believes it has options for R&R and is evaluating an in-
house build. DX1433 at ¶ 67.
- 4 • [REDACTED] issued an RFP and Bazaarvoice believed that there
5 were "other vendors being considered." DX0360 at BZ-00573349.
6 Bazaarvoice believed Pluck was another vendor competing for the
business. DX0843.
- 7 • **Liquidation Channel.** An executive at Liquidation Channel, a
8 PowerReviews customer, described R&R reviews platforms from
Bazaarvoice, PowerReviews, Rate Point and UK Review Center as
9 "apples to apples." DX0570 at BZ-01164128; DX1433 at ¶ 69.
- 10 • **Guitar Center.** Guitar Center had "active conversations" with Lithium
11 and a "relationship" with Jive, and Pluck also competed compete for
Guitar Center's R&R business. DX0094 at BZ-00075487; DX0083 at
12 BZ-00068383.
- 13 • **MLT Vacations, Pioneer Electronics and United Stationers.** MLT
14 Vacations, Pioneer Electronics, and United Stationers do not currently
display R&R on their websites and have never been PowerReviews or
15 Bazaarvoice customers; Bazaarvoice and PowerReviews therefore cannot
be closest competitors for these customers. DX1433 at ¶¶ 71-72.
- 16 • **Autodesk.** Autodesk's website does not have R&R. DX1433 at ¶ 73.
17 The website provides links to its Facebook, Twitter, and YouTube channel.
DX1433 at ¶ 73.
- 18 • **Cricket.** Cricket does not currently offer R&R on its website but does
19 have Facebook "likes" on individual product pages. DX1433 at ¶ 74.
- 20 • **Li-Ning USA.** The government cited no documents that identify any
21 competition between Bazaarvoice and PowerReviews for Li-Ning's
business. The company's website does not currently offer R&R. DX1433
22 at ¶ 75.
- 23 • **Fossil.** The company's website does not currently offer R&R and instead
24 links to social media such as Facebook and Pinterest to share impressions
on particular products. DX1433 at ¶ 76.
- 25 • **Wonderful Pistachios.** Wonderful Pistachios no longer uses R&R on its
26 website. DX1433 at ¶ 77.
- 27 • **Aramark.** Aramark no longer offers R&R on its website. DX1433 at ¶
28 78.

- 1 • **Serena & Lily.** Serena & Lily no longer has R&R on its website.
2 DX1433 at ¶ 79.
- 3 • **Oakley.** Oakley does not maintain R&R on its website, but instead
4 includes the option to engage about particular products through social
5 media such as Facebook, Twitter, and Google+. DX1433 at ¶ 80.
- 6 • **Reitmans.** Reitmans chose to abandon R&R on its website instead of
7 renewing its contract with PowerReviews. DX1433 at ¶ 81.
- 8 • [REDACTED] signed a contract with Bazaarvoice, but in
9 November 2012, [REDACTED] terminated all Bazaarvoice services. DX0896.
10 [REDACTED] now provides expert reviews and testimonials for its phones.
11 DX1433 at ¶ 82.
- 12 • [REDACTED] chose to terminate its contract with
13 Bazaarvoice in November 2011. DX1433 at ¶ 83. [REDACTED] never went
14 live with the Bazaarvoice R&R solution before terminating. DX0256 at
15 BZ-00298183.
- 16 • **Frederick's of Hollywood.** Frederick's no longer uses R&R on its
17 website and Bazaarvoice's bookings data similarly show that Frederick's
18 has not purchased products or services from Bazaarvoice since October
19 2012. DX1433 at ¶ 84.
- 20 • **The Scooter Store.** The Scooter Store no longer employs R&R, and
21 Bazaarvoice's bookings data confirm that The Scooter Store has not made
22 any payments to Bazaarvoice since January 2011, 18 months prior to the
23 merger. DX1433 at ¶ 85.
- 24 • **Blue Cross Blue Shield of Illinois.** BCBSIL does not currently appear to
25 utilize R&R on its website or to be a customer of Bazaarvoice. DX1433 at
26 ¶ 86.
- 27 • [REDACTED] was a PowerReviews Express customer. DX1433 at ¶ 87.
28 The government cited a HTDWD email discussing a deal between
29 Bazaarvoice and [REDACTED] for BrandAnswers to Wal-Mart.
30 DX0121. There is no evidence indicating that Bazaarvoice was
31 considered to replace PowerReviews Express R&R. DX1433 at ¶ 87.

957. Even where a customer considered PowerReviews and Bazaarvoice, the choices made by such a customer's peers demonstrate that there are competitive alternatives.

- The government cites [REDACTED] as a customer for whom Bazaarvoice and PowerReviews were closest competitors. DX1493 at ¶ 89. There are numerous examples of games companies using alternative solutions such as Shockwave.com, who utilizes a review solution that is not Bazaarvoice, and not identifiable as a different R&R vendor's source

code (implicating that an in-house build or e-commerce platform functionality is used) and WildTangent, who does not use R&R, but instead relies on Facebook to share customer opinions. DX1433 at ¶ 89.

- H&R Block, TurboTax (Intuit), and TaxACT are competitors in digital do-it yourself tax preparation software. DX1433 at ¶ 90. H&R Block and TurboTax are Bazaarvoice customers that employ R&R on their websites. DX1433 at ¶ 90. However, TaxACT instead displays customer testimonials on its product pages through an in-house solution. DX1433 at ¶ 90. This example demonstrates that customers with similar characteristics do not necessarily choose the same solutions to engage their customers. DX1433 at ¶ 90.
- Apparel retailers American Eagle Outfitters, Abercrombie & Fitch and American Apparel also use different social commerce solutions. DX1433 at ¶ 91.

v. Those customers identified by the DOJ for whom PowerReviews and Bazaarvoice were closest competitors have not faced higher prices post merger

958. The customers the DOJ claims believed PowerReviews and Bazaarvoice were closest competitors have not faced higher prices for R&R post merger. PFF ¶ 649.

959. As one example, the government identified Belk as a customer for whom Bazaarvoice and PowerReviews were closest competitors. DX1433 at ¶ 93. Pre-merger, Belk received R&R and Facebook applications [REDACTED]. DX1433 at ¶ 93. Belk renewed their contract in August 2012 [REDACTED] with no incremental ASF. DX1433 at ¶ 93. Belk's price for the bundle of Bazaarvoice solutions declined by more than 50 percent post merger. And, even considering R&R on a standalone basis (i.e., assuming that Belk receives no value for the features beyond R&R), Belk's ASF did not change post merger. DX1433 at ¶ 93. Indeed, Belk testified that it did not consider PowerReviews as an alternative to Bazaarvoice, that it would not have considered PowerReviews as an alternative to Bazaarvoice in the absence of the merger, and that it was not affected by the merger. Chin Tr. 17:7-11, 18:3-10, 21:17-22:3.

c. *DOJ improperly relies on pre-merger documents to establish anticipated unilateral effects*

960. The DOJ relies on several Bazaarvoice documents which attribute statistics on price erosion from competition with PowerReviews to Michael Osborne. GX0513 at BZ-01164594. These documents do not prove that PowerReviews caused any specific level of price discounting in any specific number of deals.

- Mr. Barton, who attributed the information to Mr. Osborne, testified that Mr. Osborne never provided him with any analysis to support the claims in his email (GX0513). Trial Tr. 662:20-664:5. Mr. Barton stated that the estimated percentages in his email (GX0513) were a "best guess" based on "gut feel" he acquired because he sat on the same floor as the sales team.

1 Trial Tr. 662:20-664:5. Mr. Barton believed the figures were based on
2 “anecdotal information.” Trial Tr. 662:20-664:5.

- 3 • Mr. Osborne never performed an analysis on the impact of PowerReviews
4 on Bazaarvoice pricing of R&R. Trial Tr. 725:18-24; GX221 at BZ-
5 0169528. Mr. Osborne never saw any such analysis by anyone at
6 Bazaarvoice. Trial Tr. 725:18-24, 725:18-726:21. Mr. Osborne based his
7 10-20% price erosion on his experience and general sense. He did not
8 have any data to back it up. Trial Tr. 728:12-18; GX0326 at BZ-
9 01720200.
- 10 • No Bazaarvoice employee engaged in any quantitative analysis of the
11 impact of PowerReviews on Bazaarvoice’s pricing. Trial Tr. 1392:17-23,
12 160:19-161:6.
- 13 • Bazaarvoice’s overall discounting rate decreased from Q1 2012 (quarter
14 ending July 1, 2011) to Q2 2012 (quarter ending October 31, 2012).
15 GX202 at 5; Trial Tr. 724:16-25. This was during the period the DOJ
16 alleges was an intense period of competition with PowerReviews. Trial Tr.
17 724:16-25. Bazaarvoice missed its financial estimates in Q2 2012 due to
18 missing its targets in Europe. Trial Tr. 734:23-725:12; GX0202 at 5.
19 PowerReviews did not compete with Bazaarvoice in Europe in “any
20 significant way.” Trial Tr. 734:23-735:12; GX0202 at 5.
- 21 • Mr. Osborne believed that one of the ways the acquisition would “change
22 [] everything” for Bazaarvoice would be in giving Bazaarvoice a product
23 that it could sell to small and medium sized businesses. Trial Tr. 727:6-13.

17 961. The DOJ relies on documents prepared for Bazaarvoice investors to establish that
18 Bazaarvoice’s syndication network is a barrier to entry.

- 19 • In the documents prepared for investors and for Bazaarvoice’s road show,
20 Bazaarvoice lists several “barriers to entry.” GX0966 at 64-66; Trial Tr.
21 257:12-259:3. Brett Hurt, who was involved in the drafting of these
22 documents, used “barriers to entry” as a way of illustrating Bazaarvoice’s
23 value proposition. Trial Tr. 224:4-21, 257:12-259:3, 236:18-237:19. This
24 is why “culture” is identified as a “barrier to entry” along with
25 “syndication.” Trial Tr. 224:4-21, 135:1-19; GX0966 at 64-66.
26 Bazaarvoice executives admit that there are no real “barriers to entry” in
27 the social commerce space. Trial Tr. 135:1-19, 337:8-338:20.

25 962. The DOJ relies on two presentations (GX0610 and GX0612) created by
26 PowerReviews employees in preparation of Ken Comee’s meeting with
27 Bazaarvoice in April 2012 to support its contention that PowerReviews believed
28 the combination would erect barriers to entry.

- 27 • Neither was ever presented to Bazaarvoice. Comee Tr. 144:24-145:2. Mr.
28 Comee only reviewed the financial information in the slides. He did not
review the slides pertaining to the combination benefits. Comee Tr.

162:22-24; Trial Tr. 1842:10-14. Mr. Comee was focused on the financials because, in his experience, an acquisition always comes down to the financials. Trial Tr. 1842:15-1843:4.

- In the presentation prepared by Pehr Luedtke (GX0254), he described some “Combination Benefits” including “Unique trust, credibility, and scope in emerging social software category.” GX0254 at BZ-00917340. Under that bullet, he listed “[b]arrier to entry for sub-scale firms” as a benefit. He used that term colloquially to describe the fact that after the acquisition, Bazaarvoice and PowerReviews would have a brand name and credibility in the marketplace (as described in the “[u]nique trust, credibility and scope in emerging social software category”) and would be able to upsell a wide range of social commerce tools to its customer base. Trial Tr. 334:23-338:2; 338:8-20.

963. The DOJ relies on Mr. Luedtke’s statements that Bazaarvoice and PowerReviews were a duopoly for the proposition that Bazaarvoice and PowerReviews were the only options for R&R.

- Mr. Luedtke used “duopoly” to describe that there were two leading providers of outsourced R&R and to get better brand recognition. Trial Tr. 376:14-377:1. By saying there was a “duopoly,” PowerReviews suggested that it offered comparable services to Bazaarvoice. Trial Tr. 376:14-377:1. It helped PowerReviews obtain more recognition and credibility. Trial Tr. 376:14-377:1.

964. The DOJ points to documents concerning Project Menlogeddon for the proposition that Bazaarvoice and PowerReviews were engaged in intense competition and Bazaarvoice was forced to lower its price floors.

- Beginning in the summer of 2011, PowerReviews launched a campaign to “flip Bazaarvoice accounts” and “be in every deal BV is in.” GX0241 at BZ-00006698; DX0325 at BZ-00458449. As part of that campaign, Cathy Halligan called into several large Bazaarvoice accounts, requesting that they perform an evaluation of their R&R vendor. GX0540 at BZ-00085253; Trial Tr. 539:7-23; GX0034 at BZ-00159942. One of PowerReviews’ salespeople started a blog aimed directly at talking negatively about Bazaarvoice. Trial Tr. 234:16-235:9. During Bazaarvoice’s customer “summit,” PowerReviews hacked into Bazaarvoice’s Twitter account that was being used for the summit to post messages promoting PowerReviews. Trial Tr. 530:16-531:15. These tactics stirred “passionate feelings about PowerReviews” as reflected in internal documents as a result of a “combination of all of these things happening at the same time.” Trial Tr. 539:7-23.
- During this time period, PowerReviews succeeded in “getting under [Bazaarvoice’s] skin.” Trial Tr. 539:24-540:4; GX0040 at BZ-01754033. They became a “thorn in [Bazaarvoice’s] side.” GX0424 at BZ-00280543.

- 1 • In addition, during the summer of 2011, Bazaarvoice was preparing for its
2 IPO. Trial Tr. 1417:17-1418:4, 495:9-22. This was a particularly
3 sensitive time for Bazaarvoice as it prepared for its market debut. Trial Tr.
4 1417:17-1418:4, 495:9-22; GX0034 at BZ-00159944. In preparation for
5 the IPO, Bazaarvoice knew it was important not to lose any major
6 customers. In addition, Bazaarvoice was also seeing whether it would be
7 possible to move down-market into the SMB space where PowerReviews
8 had historically had success. Trial Tr. 495:9-22.
- 9 • Project Menlogeddon was the culmination of Bazaarvoice efforts to
10 strategize about PowerReviews' tactics and look at expanding down-
11 market. Trial Tr. 538:5-539:6. Bazarvoice had previously been
12 "unfocused" and "uncoordinated" in developing a message for salespeople.
13 GX0034 at BZ-00159943. Project Menlogeddon culminated in a
14 presentation put together by Erin Defosse. GX0034 at BZ-00159939. Mr.
15 Defossee believed the presentation was aimed at: (1) defending
16 Bazaarvoice's client base from Cathy Halligan's calls; (2) ensuring that
17 the sales team had the right set of tools to sell to smaller customers; and (3)
18 dispel any concerns that customers or salespeople had about
19 PowerReviews' "open" syndication network. Trial Tr. 538:5-539:6.
- 20 • In Mr. Defosse's Menlogeddon presentation, he reference to "lowering
21 price floors" reflects Bazaarvoice's move down market to compete in the
22 SMB space. Trial Tr. 493:15-494:1; GX0034 at BZ-00159942. In
23 moving down-market, Bazaarvoice had to develop a different pricing
24 structure, as most smaller e-commerce sites could not afford
25 Bazaarvoice's solution. Trial Tr. 49:11-494:1. The reference of
26 "lowering price floors" was not made to any "price erosion" or
27 competitive response to PowerReviews. Trial Tr. 493:15-494:1.
- 28 • In the presentation, Mr. Defosse discusses "revenue erosion" and
" [s]lowing down sales." GX0034 at BZ-00159942. These statements
refer to the fact that PowerReviews was causing Bazaarvoice to have to
make more effort at securing and maintaining accounts which increased
the costs of sales. Bazaarvoice now needed to respond to client inquiries
after PowerReviews had made calls into those customers. Trial Tr.
493:15-494:1; GX0034 at BZ-00159942. But PowerReviews failed to
take away any BV customers. Trial Tr. 540:2-4.
- Page 7 of the Menlogeddon presentation lists five Bazaarvoice customers
that Cathy Halligan encouraged to re-evaluate Bazaarvoice as their R&R
provider: The Home Depot, Expedia, Best Buy, and QVC. GX0034 at
BZ-00159946. PowerReviews failed to convert any of customers and
failed to have any effect on Bazaarvoice's ASF. Trial Tr. 1428:13-1429:2.
- Home Depot testified that it met with PowerReviews and found, after their
presentation, that PowerReviews' solution did not meet their needs. Yaniv
Tr. 22:12-24:20.

- Best Buy issued an informal request for information in order to evaluate the capabilities of their vendors. Trial Tr. 1116:12-23. Bazaarvoice undertook a substantial effort to respond to the RFI, and to reeducate Best Buy as to the value Bazaarvoice had added over the course of the relationship. Trial Tr. 1116:12-23, 530:3-555:6; GX0540 at BZ-00085282. Best Buy decided to keep Bazaarvoice as its vendor without any change to the pricing structure or agreements we had in place at that time. Trial Tr. 1116:12-23; 530:3-535:6.
- Expedia at the time was in negotiations with Bazaarvoice over signing a new contract with a different structure. Trial Tr. 1116:24-1117:6. Bazaarvoice ended up increasing pricing for Expedia significantly because Bazaarvoice added a whole new set of services. Trial Tr. 1116:25-1117:6.
- Finally, QVC had a legacy contract that did not fit the business model at the time. Trial Tr. 1117:9-18. For example, Bazaarvoice was providing services to geographies that QVC did not find critical. Trial Tr. 1117:9-18. QVC's contract also had volume tiers that did not make sense based on the actual amount of reviews QVC was received. Bazaarvoice ended up restructuring their contract so that, while the price decreased, the scope and depth of services also went down. Trial Tr. 1117:9-18.
- Menlogeddon spurred no across the board price discounts or innovative product releases. Trial Tr. 1428:13-1429:2.

965. The DOJ also points to a "PR Pricing Analysis / Recommendation" performed by Paul Dodd. GX0208; GX0553.

- But as Mr. Dodd testified, the analysis was performed to see how Bazaarvoice would be affected as it moved down-market into SMB where PowerReviews had historically been successful. Dodd Tr. 59:24-60:04. He had not analyzed effects on Bazaarvoice pricing on larger accounts. Dodd Tr. 59:24-60:24. In addition, Mr. Dodd testified that there was no definitive action taken with respect to his recommendations on pricing. Dodd Tr. 85:7-15.

966. The DOJ points to an email from Stephen Collins in October 2011 concerning the PowerReviews acquisition. GX0320.

- In that email, Mr. Collins explains that "the reason to merge is not as much about taking out the competitive threat as building scale to take on the greater market opportunity and fend off the bigger long term threats." GX0320 at BZ-00161026. He also notes that the acquisition would benefit customers because it would create "maximum market efficiency particularly in advertising where audience reach at scale is what the advertiser wants from the network owner. ditto on data network." GX0320 at BZ-00161026.

1 967. The DOJ points to an email in which Brett Hurt states that “[t]here is no doubt
2 that PowerReviews brings our pricing down.” GX0424 at BZ-00280543.

- 3 • But in the same document, Mr. Hurt notes that there were “[n]o major
4 defections to them (or minor ones that I can think of) at any time
5 recently . . . Our services, breadth of solutions, global reach, large blue
6 chip client base, and network effect (i.e., the BV Network of content
7 syndication) all help build defensive barriers to entry.” GX0424 at BZ-
8 00280543.

9 968. The assertion in the Complaint (¶ 34) that “Bazaarvoice now faces virtually the
10 same competitive landscape” as in April 2011 is incorrect because the industry
11 has changed significantly. Companies such as Gigya, Lithium, Pluck and Reevo
12 have emerged and evolved since April 2011 when Bazaarvoice summarized much
13 of the R&R market as “low-quality alternatives.” Trial Tr. 647:19-649:2, 665:19-
14 666:11. Reevo, for example, is a “much stronger competitor” than it was at the
15 time, while Gigya is now “a much more relevant direct competitor.” GX0513;
16 Trial Tr. 647:19-649:2, 665:19-666:11.

- 17 • Reevo has repositioned its product to better compete against Bazaarvoice
18 by deploying a sales force in the United States. PFF ¶ 394.
- 19 • Lithium added R&R to its platform in July 2012. PFF ¶ 325.
- 20 • Gigya added R&R to its platform in July 2011 and received \$15 million in
21 funding in September 2012. DX0900; PFF ¶¶ 299 – 300.
- 22 • Social commerce tools such as question and answer, social sign-in,
23 Facebook comments and “likes,” and forums have become increasingly
24 important to retailers and manufacturers as they seek to generate UGC
25 and expand their reach in social media. DX1432 at 22-25.
- 26 • [REDACTED] PFF ¶ 339. Bazaarvoice has also learned that “Pluck is
27 making a much bigger push back into Retail, even reemphasizing the
28 Pluck name and talking about going after BV clients unhappy with the
29 PowerReviews acquisition.” DX0729.
- 30 • E-commerce vendors and other suppliers of social commerce tools
31 such as hybris, Adobe, Oracle, Volusion, Magento, Shopify, Red Prairie
32 and Ektron, continue to add R&R to their platforms in order to compete
33 for website spend on social commerce tools. PFF ¶¶ 439-467.

34 d. *The documents stating that the acquisition would cause anticompetitive effects were
35 wrong*

36 969. Bazaarvoice employees have testified that their predictions relating to the effect
37 of the merger on pricing and the market have been proven false by post-merger
38 events. The acquisition has not provided Bazaarvoice pricing power or relief

from price erosion. Some Bazaarvoice employees “overestimated the actual effect on [Bazaarvoice’s] business that [the acquisition] would have.” Trial Tr. 677:16-679:6. Bazaarvoice competes in a “very competitive environment” and “in the span of two years, many more people are now competing in that market.” Trial Tr. 677:16-679:22.

970. The acquisition will not prevent entry, slow innovation, or enable Bazaarvoice to increase prices.

971. The market for social commerce tools is highly competitive with new innovations in R&R, and other social commerce tools, occurring post merger.

972. Bazaarvoice continues to invest in research and development at a level higher than the combined R&D budgets of Bazaarvoice and PowerReviews before the acquisition. DX1433 at ¶¶ 286-290, Exhibit 11; Trial Tr. 861:18-862:11.

973. The government’s industry expert testified that social commerce tools and R&R in particular would continue to be innovative. PFF ¶90.

974. Customers continue to have viable alternatives for R&R. Section 8.

975. Internal R&R solutions are a viable alternative to commercially supplied R&R and can be built at low cost in a short amount of time. Trial Tr. 823:8-824:9, 832:21-833:5, 850:15-21.

976. Existing competitors have repositioned their products to take the place of PowerReviews in competitive bidding. Section 8.

977. Bazaarvoice continues to lose customers and offer discounts to the same extent that it did before the merger. PFF ¶¶476-577.

978. Syndication is not a barrier to entry because so few of Bazaarvoice’s customers demand or even use syndication and other players can provide it. PFF ¶¶179-193.

979. Reputation is not a barrier to entry because large reputable companies continue to select Bazaarvoice rivals. PFF ¶¶175-178.

980. Moderation can easily be done internally or outsourced to other vendors. PFF ¶¶194-201.

981. Bazaarvoice continues to face competition in social commerce tools generally and in R&R specifically from Amazon, Gigya, Pluck, Reevo, and internal solutions. Section 8.

e. Consistent with the merger rationale, Bazaarvoice’s post-merger pricing strategy has been to maintain and lower prices to win and maintain customers

982. Bazaarvoice acquired PowerReviews in order to “increase the amount of content data and audience that we have, which is essential to the value creation equation”

for Bazaarvoice's long-term strategy to compete more effectively in the social commerce space. DX1855; Collins Tr. 843:23-845:20.

983. A strategy of raising prices would be counter to Bazaarvoice's long-term business strategy. Bazaarvoice seeks to build a successful social commerce network. A critical asset is to have the largest audience possible because that is how "advertisers and marketers and brands think about the value they get." Trial Tr. 842:21-843:16. In Mr. Collins' view, "any tactical action that would reduce the size of our audience runs counter to the current and long-term strategy for the company, which is to provide brands the maximum access or the largest audience they can access with regard to shoppers globally." Trial Tr. 842:21-843:16. As a result, "any financial gains that we might obtain in the short-term from raising price would be transitory and could result in losing significantly more money on the brand side because that retailer decides to explore an alternative, whatever that alternative might be." Trial Tr. 842:21-843:16.

984. In communications internally at Bazaarvoice and externally with the investment community, Bazaarvoice reiterated that "pricing impacts" through a possible "lift up" of pricing levels was not the reason to acquire PowerReviews. DX1855 at BZ-01722463; GX0840 at BZ-00869938. The greater opportunity was the creation of greater value to brands through the combination of Bazaarvoice with PowerReviews' retailer audience. Trial Tr. 848:10-849:12.

985. Leading up to the closing of the merger and afterwards, Bazaarvoice maintained a consistent strategy with respect to pricing so that it would achieve the long-term objectives of the acquisition. If necessary, Bazaarvoice would "give away or even pay retailers to use [its] platform so [Bazaarvoice could] maximize reach." DX0735 at BZ-01710985; Trial Tr. 837:21-839:18. In December 2012, six months after acquiring PowerReviews, Mr. Collins advised his executive team that the company's board supports a "no excuses win deals mandate to materially drive up new client adds" – including offering prices that are "client friendly" and without worrying about "bookings dollars as the pass/fail measure." DX0753 at BZ-01746799.

986. The combination of the PowerReviews acquisition and the media advertising strategy embodied in the acquisition of Longboard in Fall 2012 would permit Bazaarvoice someday to give retailers "a check . . . by engaging in benefit or site monetization activities enabled by [its] network." Trial Tr. 839:19-840:6. Retailers would actually be able to make a profit from Bazaarvoice's strategy of using the larger retail audience and its data bank to sell brands more social commerce functionality, including syndication, data analytics, and advertising features. DX0735 at BZ-01710985.

987. Bazaarvoice's long-term pricing strategy is consistent with the competitive forces it faces. As recently as April 2013, Bazaarvoice recognized that it would continue to see "price compression" as customers "contemplate internal and external [competitive] alternatives." DX1857 at BZ-02229334. Bazaarvoice accurately noted that R&R "WILL commoditize" as customers continue to migrate toward

internal builds and third-party alternatives, resulting in pricing pressure for Bazaarvoice. DX1857 at BZ-02229334.

f. DOJ's customers did not experience any anticompetitive price increases

988. Bazaarvoice sent a notice to all of its customers informing them of the DOJ investigation. Bazaarvoice received "very few" complaints in response. Trial Tr. 769:20-771:18; GX1222 at BZ-01736589.

989. The DOJ did not present live at trial or depose any customers who had serious complaints about the merger.

990. The DOJ's "examples" of "complaining" customers did not, in fact, experience any post-merger price increase for R&R. And a sample of five customers cannot overcome the overwhelming number of customers who testified that the acquisition does not cause them any harm.

i. Bed Bath & Beyond

991. Mr. Waltzinger was the Bed Bath & Beyond deponent. He has not canvassed to see whether there are additional R&R providers beyond PowerReviews or Bazaarvoice. Waltzinger Tr. 98:2-5. Mr. Waltzinger admitted that he does not keep abreast of developments in the R&R sphere. Waltzinger Tr. 100:15-21.

992. In 2012, Bed Bath & Beyond did not investigate any other R&R vendors besides Bazaarvoice. Waltzinger Tr. 36:9-13. Mr. Waltzinger did not know whether his team had met with Pluck, Gigya, or any other R&R provider in 2012. Waltzinger Tr. 99:23-100:14.

993. Mr. Waltzinger did not know whether Bed Bath & Beyond had mentioned a competitive alternative to Bazaarvoice in 2012 when negotiating the price of its contract with Bazaarvoice. Waltzinger Tr. 112:20-113:5.

994. Mr. Waltzinger admitted that Bed Bath & Beyond had never performed a specific estimation of the costs of switching R&R platforms. Waltzinger Tr. 81:20-82:24. Mr. Waltzinger admitted that Bed Bath & Beyond had never estimated the initial or ongoing costs for building a R&R solution in-house. Mr. Waltzinger does not know whether Bed Bath & Beyond has ever estimated the ongoing costs of building R&R internally. Waltzinger Tr. 85:19-86:13, 91:16-22.

995. In addition, Bed Bath & Beyond received additional services, not an anticompetitive price increase. Bed, Bath and Beyond's historic contract was structured so that there were volume "tiers" of costs for moderating a certain number of reviews. As part of the negotiations in 2013, Bazaarvoice based pricing on a projection of the number of reviews Bed Bath & Beyond would accumulate. Bazaarvoice proposed a price increase of 33% which reflected the historic and future performance while eliminating tiers and allowing Bed Bath & Beyond unlimited review volume. Bed Bath & Beyond was able to negotiate that increase down to 11% without seeking competitive bids from other vendors. Trial

Tr. 1131:17-1133:9. In addition, Bed Bath & Beyond received additional services launched R&R in Canada at no additional costs. Waltzinger Tr. 71:7-19.

vii. Clorox

996. The DOJ called Anastasiya Levin from Clorox as a witness at trial. Ms. Levin was not the primary negotiator of pricing with Bazaarvoice for Clorox. Levin Tr. 309:18-310:3. Steve Gregory was the primary negotiator of the contract with Bazaarvoice, and handled communications with Bazaarvoice in relation to the contract, much of which Ms. Levin was not involved in. Levin Tr. 310:4-10. Ms. Levin testified that Mr. Gregory is more familiar with the agreement between Bazaarvoice and Clorox and its amendments, and would be better suited to discuss any developments that occurred during negotiations between the companies. Levin Tr. 310:18-312:15.

997. The 2012 MSA between Clorox and Bazaarvoice was the first agreement signed between the companies that encompassed each of the Clorox brands. DX0947; Levin Tr. 310:18-312:15. The 2012 agreement between Clorox and Bazaarvoice suggests that Bazaarvoice reduced the price it charged per brand in exchange for gaining more brands as customers, such that the total amount of the contract could potentially grow in the future. DX0947.

viii. [REDACTED]

998. As Dr. Shehadeh explained, the increase in price that was offered to [REDACTED] was standard pre-merger PowerReviews' policy that would increase prices at renewal as PowerReviews shifted away from its free Buzzillions model and towards a paying model. Trial Tr. 1894:2-1895:11.

999. When Mr. Collins became aware of the situation, he pushed back against the price increase because Bazaarvoice's "long-term value proposition" was different than PowerReviews' and rested on the ability to make money on the data generated from each customers. Trial Tr. 1894:2-1895:11; DX1892; DX1894.

1000. As Mr. Collins explained, [REDACTED] was mainly concerned about Bazaarvoice's higher moderation standards and the fact that [REDACTED] might be able to remove authentic negative reviews as they had done when working with PowerReviews. Trial Tr. 797:6-10; DX1892 at BZ-02444520.

vii. [REDACTED]

1001. [REDACTED] received several additional features including an upgrade of all its sites to the ESS platform (which includes Loyalty, Q&A, Crowdsourcing, Q&A Ask Product Owner and Premium Support). It also considerably expanded services for its foreign sites. DX1851; Trial Tr. 437:16-439:16.

1002. The DOJ points to a July 2012 email from [REDACTED] in which a representative voices possible concerns related to the acquisition. Following receipt of this email, Pehr Luedtke alleviated those concerns by describing the additional services and value that [REDACTED] was receiving under the new contract. Mr. Luedtke

explained that [REDACTED] was, in fact, receiving these additional services at a “significant discount.” GX0257; DX1851; Trial Tr. 437:16-439:16.

g. *Any “Price Discrimination” Theory of Harm Fails*

i. Bazaarvoice cannot engage in targeted, customer specific price increases

1003. The DOJ’s theory of harm depends on identifying customers who may be harmed from the customers in the market that DOJ concedes will not be harmed. But the DOJ has not identified any specific individualized characteristics of customers that would make it possible for Bazaarvoice to engage in targeted price increases.

1004. There are no discernible characteristics of customers that would make it possible for Bazaarvoice to engage in targeted price increases.

1005. The sales process for R&R is opaque and prevents Bazaarvoice from garnering information on which it could target customers. PFF ¶¶47-53. Due to customer control over information and opacity in the negotiation process, Bazaarvoice has no way of knowing whether a particular alternative is viable for a particular customer, and thus no way of targeting a specific price increase on a group of customers. PFF ¶¶47-53.

ii. Similarly situated customers use different R&R solutions

1006. Apparel brands targeting young adults use varying R&R solutions.

- Abercrombie & Fitch does not have R&R on its e-commerce site Abercrombie.com. May Tr. 16:2-5.
- Alternative Apparel currently uses Amazon Webstore to power its R&R functionality. Kwok Tr. 23:5-24:22.
- American Eagle uses Bazaarvoice for its R&R functionality. Holland Tr. 17:11-16.
- Karmaloop uses Facebook to gather user-generated reviews of its products. Knisely Tr. 15:14-16:13.
- Pacific Sunwear uses Gigya for R&R functionality on its website. Trial Tr. 1201:1-8.

1007. Women’s apparel brands use varying R&R solutions.

- Chico’s FAS Inc. currently uses Bazaarvoice for R&R functionality. Kelley Tr. 14:5-14.
- Coldwater Creek uses an in-house solution for R&R functionality. Williams Tr. 34:3-15.
- Guess? uses Bazaarvoice for R&R functionality. Koven Tr. 18:4-8.

1008. Clothing manufacturers use varying R&R solutions.

- Fruit of the Loom uses Amazon Webstores for R&R functionality. Trial Tr. 1223:3-12.
- Jockey uses PowerReviews for R&R functionality. Smith Tr. 22:16-18.

1009. Shoe retailers use varying R&R solutions.

- Onlineshoes.com uses PowerReviews to collect the R&R content from customers, and an in-house software to display the content on its website. Grams Tr. 13:20-14:2.
- Shoebuy uses an in-house solution for R&R functionality. Keller Tr. 29:11-16.
- Zappos uses an in-house solution for R&R functionality. DX1396 at ¶3.

1010. Specialty electronics retailers use varying R&R solutions.

- Cableorganizer.com uses PowerReviews for R&R functionality. Ribero Tr. 25:16-22.
- Ink Technologies uses Rating-System for R&R functionality. Davis Tr. 13:8-15.
- B&H Photo currently uses PowerReviews for R&R functionality. Meisels Tr. 12:24-13:6.
- Broadcast Supply WorldWide currently uses “Bazaarvoice Express” to power its R&R and moderation functionality. Roalkvam Tr. 16:10-25.
- Planet DJ does not currently utilize R&R on its website. Holden Tr. 12:2-4.

1011. Electronics retailers use varying R&R solutions.

- Signal Group uses an in-house solution for R&R functionality. Chapman Tr. 12:3-6.
- Abe’s of Maine utilizes Bazaarvoice for R&R functionality. Yudin Tr. 12:11-19.
- Systemax uses an in-house solution for R&R functionality. B. Matthews Tr. 23:3-8.
- OneCall uses PowerReviews for R&R functionality. Weisman Tr. 23:24-24:9.

1012. Electronics brands use varying R&R solution.

- Acer uses Reevoov for R&R functionality. Masciola Tr. 57:14-17.
- Seagate Technologies does not currently utilize R&R functionality on their website. Du Tr. 13:14-18, 14:17-19.

1013. Food brands use varying R&R solutions.

- Green Mountain Coffee Roasters uses PowerReviews for R&R functionality. Cadmus Tr. 26:3-7.
- Johnsonville Sausage uses an in-house solution for R&R functionality designed by Tech By Design. Mueller Tr. 11:6-18.
- Nature's Path, certified organic manufacturer of breakfast cereals, granolas, hot oatmeal, waffles, toaster pastries and snack bars, uses R&R functionality built by an agency using FCV. Emmer-Aanes Tr. 19:2-8.

1014. Supplement retailers use varying R&R solutions.

- iHerb uses in-house R&R functionality. Rose Tr. 12:9-16.
- Nutri-Health Supplements uses Reevoov for R&R and question and answer functionality. Callahan Tr. 13:19-14:3.
- Vitamin Shoppe uses PowerReviews for R&R functionality. Trial Tr. 1367:8-11.

1015. Pharmacies use varying R&R solutions.

- Walgreens uses Bazaarvoice for R&R. Skinstore.com, Beauty.com and VisionDirect, all Walgreens family websites, use PowerReviews for R&R functionality. Jeske Tr. 12:14-13:9.
- Walgreens' competitor, Rite-Aid, uses Amazon Webstore for R&R. Trial Tr. 1751:7-16; DX1897 at 22.

1016. Gaming retailers and manufacturers use varying R&R solutions.

- [REDACTED] Heverley Tr. 49:8-12.
- Shockwave implements either an in-house build or existing e-commerce platform functionality. DX1736 at ¶ 96.

1017. Digital goods and online video and game rental sites use different R&R solutions.

- Gamefly uses an in-house R&R system. Hodess Tr. 22:11-13.
- Redbox uses Pluck for R&R functionality. Patel Tr. 16:24-17:3.

- PayPal is in the process of implementing Zuberance R&R functionality for the PayPal “Here” product. Castro Tr. 10:15-18.

1018. Health and Beauty brands use varying R&R solutions.

- Astral Brands uses Rating-System for R&R functionality. Trial Tr. 1342:23-1343:4.
- Crabtree & Evelyn uses Pluck for R&R functionality. G. Green Tr. 23:13-18.
- L’Oreal has a contract for R&R with both Bazaarvoice and Pluck across L’Oreal’s various brands. DX1433 at ¶ 63.

1019. Home improvement retailers use varying R&R solutions.

- Bed Bath & Beyond uses Bazaarvoice for R&R functionality. Waltzinger Tr. 27:20-25.
- Wayfair uses an in-house solution for R&R functionality. Trial Tr. 1602:22-24.
- Hayneedle uses PowerReviews for R&R functionality. Moen Tr. 13:5-20.; Trial Tr. 1629:1-3.
- Overstock.com uses in-house R&R functionality on its website. Jolitz Tr. 18:12-17.

1020. Home furnishings brands use varying R&R solutions.

- Hunter Fan uses an R&R tool provided by the Ektron e-commerce platform. Doss Tr. 16:6-19.
- La-Z-Boy uses Bazaarvoice for R&R functionality. Targett Tr. 11:20-24.
- Tempur-Pedic uses R&R functionality provided by its e-commerce platform provider, ShopVisible. Varni Tr. 16:19-23.
- Lovesac uses Bazaarvoice for ratings and review functionality. Johnson Tr. 18:16-20.
- Pottery Barn recently dropped R&R from its website deciding rather to use its social commerce budget with Monetate. Trial Tr. 1128:4-1129:6.

1021. Jewelry companies use varying R&R solutions.

- Blue Nile uses an in-house solution for R&R functionality. Sainsbury Tr. 20:19-23.
- Tiffany & Co. does not have R&R. O’Halloran Tr. 13:21-14:3.

1022. Department stores use varying R&R solutions.

- Sears uses an in-house solution combined with syndication from Bazaarvoice for R&R functionality. Massuda Tr. 13:15-14:1.
- The Bon-Ton Stores, Inc. currently uses Bazaarvoice for R&R functionality. Fernandez Tr. 24:14-18.
- Dillard's uses PowerReviews for R&R functionality. Hodapp Tr. 37:17-19.
- BJ's Wholesale Club currently uses PowerReviews for R&R functionality. Trial Tr. 467:1-4.
- Neiman Marcus recently dropped R&R from its website deciding rather to use its social commerce budget with Monetate. Trial Tr. 1128:4-1129:6.

1023. Sporting goods brands use varying R&R solutions.

- Columbia Sportswear uses Bazaarvoice for R&R functionality. Evons Tr. 18:3-6.
- K-Swiss uses its Magento e-commerce platform for R&R functionality. Ogle Tr. 12:2-3.
- Perform Better uses Pluck R&R functionality on its website. Bradshaw Tr. 14:9-11.

1024. Sporting goods retailers use varying R&R solutions.

- Golfsmith uses Bazaarvoice for R&R functionality. Trial Tr. 1212:13-14.
- Sierra Trading Post uses an in-house solution for R&R functionality. Newlin Tr. 23:20-24:2.
- REI uses PowerReviews for R&R functionality. Gephart Tr. 27:14-18, 27.

1025. Travel companies use varying R&R solutions.

- International Hotel Group uses Bazaarvoice for R&R functionality. Morgan Tr. 10:15-25.
- Princess Cruises selected Pluck as its R&R provider. Trial Tr. 1647:8-13, 1742:25-1743:1, 1750:6-16.
- Southwest Airlines uses Pluck's R&R solution on its Travel Guide site, and uses Trip Advisor's reviews solution on its Southwest.com site. Bruns Tr. 13:6-7, 15:6-12.

iii. Customers with similar revenues choose different solutions

1026. Customers with over \$1 billion in revenue select varying ratings and review solutions, including no R&R at all.

- Rite Aid's revenues are roughly \$25 billion. Rite Aid uses Amazon Webstore for R&R. Trial Tr. 1751:7-16; DX1897 at 22.
- Stanley Black & Decker's revenues are \$17 billion worldwide. Glispy Tr. 14:23-15:2. Stanley Black & Decker uses Pluck for R&R functionality. Glispy Tr. 30:12-15.
- Chico's revenues are \$2.6 billion. Kelley Tr. 11:9-11. Chico uses Bazaarvoice for R&R functionality. Kelley Tr. 14:5-14.
- Systemax's revenues are roughly \$3.5 billion. B. Matthews Tr. 10:24-11:5. Systemax uses an internally developed R&R solution. B. Matthews Tr. 23:3-8.
- Tempur-Pedic's revenues are roughly \$3 billion. Varni Tr. 10:4-7. Temper-Pedic uses Shopvisible for R&R functionality. Varni Tr. 16:19-23.
- Guess?'s revenues are approximately \$2.6 billion. Koven Tr. 11:8-12. Guess? is implementing Bazaarvoice for R&R functionality. Koven Tr. 18:4-8.
- Redbox's revenues are roughly \$1.8 billion. Patel Tr. 11:23-25. Redbox uses Pluck for R&R functionality. Patel Tr. 16:24-17:3.
- Tiffany's revenues are roughly \$3.8 billion. O'Hallaran Tr. 9:2-6. Tiffany's does not employ R&R on its e-commerce site. O'Hallaran Tr. 8:15-18, 13:21-14:3.
- HSN's revenues are roughly \$3 billion. Reilly Tr. 10:11-19. HSN uses an internally developed R&R solution. Reilly Tr. 27:15-23.
- AutoZone's revenues are roughly \$8 billion. Traywick Tr. 13:19-24. AutoZone uses Pluck for R&R functionality. Traywick Tr. 34:4-12.
- Princess Cruises' revenues are north of \$2 billion. Mansukhani Tr. 17:6-21. Princess Cruises is using Pluck for R&R functionality. Trial Tr. 1647:8-13, 1742:25-1743:1; 1750:7-11.

1027. Customers with between \$100 million and \$1 billion in revenue select varying R&R solutions.

- Orchard Supply Hardware's revenues are roughly \$600 million. Abell Tr. 8:16-18. Orchard Supply Hardware is dropping R&R. Abell Tr. 17:1-5.

- Karmaloop's revenues are roughly \$200 million. Knisely Tr. 9:18-24. Karmaloop uses Facebook for reviews functionality. Knisely Tr. 15:14-16:13.
- eBags' revenues are roughly \$122 million. Cobb Tr. 12:2-4. eBags uses an internal R&R solution. Cobb Tr. 15:1-4.
- Nature's Path's revenues are more than \$250 million. Emmer-Aanes Tr. 10:13-18. Nature's Path uses a R&R solution built by a third-party agency using Drupal. Emmer-Aanes Tr. 19:2-8.

1028. Customers with less than \$100 million in revenue select varying R&R solutions.

- Alternative Apparel's revenues are roughly \$60 million. Kwok Tr. 11:17-22. Alternative Apparel uses Amazon Webstore for R&R functionality. Kwok Tr. 23:5-20.
- Ink Technologies's revenues are roughly \$18 million. Davis Tr. 9:1-8. Ink Technologies uses Rating-System for R&R functionality. Davis Tr. 13:8-15.
- Cableorganizer's revenues are roughly \$17 million. Ribero Tr. 12:10-15. Cableorganizer uses PowerReviews for R&R functionality. Ribero Tr. 25:16-22.
- Signal Group's revenues are roughly \$12 million. Chapman Tr. 9:2-5. Signal Group uses an in-house solution for R&R functionality. Chapman Tr. 12:3-6.

iv. Bazaarvoice's Salesforce data cannot be used to identify localized competition between Bazaarvoice and PowerReviews

1029. The competitor information in the Bazaarvoice Salesforce database is often wrong or incomplete. The competitor data in the Salesforce database was not very reliable. Salesforce hygiene is generally a difficult thing to get a sales team to maintain. Bazaarvoice's sales team was particularly bad at updating fields in Salesforce. Trial Tr. 729:12-23.

1030. Ninety-two percent of all pre-merger sales opportunities in Salesforce include no data on competitors. DX1736 at ¶ 176.

1031. Ninety-four percent of all post-merger sales opportunities in Salesforce include no data on competitors. DX1736 at ¶ 176.

1032. Dr. Shapiro's bidding frequency data are incorrect because they do not reflect the fact that in-house development is much larger than PowerReviews and in-house development was the most frequent reason customers chose not to use Bazaarvoice. Trial Tr. 528:4-13, 981:6-9.

- 1 1033. Bazaarvoice sales personnel are not provided any guidelines on inputting
2 information into the Salesforce database. Bolian Tr. 64:21-25.
- 3 1034. Opportunities are created in Salesforce on an ad-hoc basis. Bolian Tr. 69:19-21.
- 4 1035. Many different people, including sales directors, sales managers, client services
5 managers and market development personnel are responsible for inputting data
6 and information into the Bazaarvoice and PowerReviews Salesforce database.
7 Bolian Tr. 63:4-64:25, 105:5-14.
- 8 1036. Each person may enter data in various ways, using various different fields.
9 Bolian Tr. 73:12-75:4, 101:20-102:4.
- 10 1037. Bazaarvoice sales personnel are not required to fill out “competition” fields in the
11 Salesforce database. Bolian Tr. 75:5-19, 123:4-17.
- 12 1038. Bazaarvoice sales personnel do not fill out the “competition” field in the
13 Salesforce database “commonly” or “in the ordinary course of business.” Bolian
14 Tr. 93:9-12, 73:24-74:4.
- 15 1039. Bazaarvoice sales personnel do not always know the identity of their competitors
16 on a particular opportunity. Bolian Tr. 86:14-88:6, 123:4-17.
- 17 1040. Bazaarvoice sales personnel are not required to keep Salesforce data up to date.
18 Bolian Tr. 123:4-124:2.
- 19 1041. When R&R is sold together with other social commerce tools such as Q&A,
20 Bazaarvoice sales personnel are provided no guidance on allocating revenue to
21 R&R versus the other social commerce tools included in the sale. Bolian Tr.
22 51:1-18.
- 23 1042. Bazaarvoice “largely do[es] not” use the “product data field” in the Salesforce
24 database. Bazaarvoice executives are aware that “due to the way dollars are
25 attributed to products,” the Salesforce database is an “imperfect measure.” Bolian
26 Tr. 61:15-62:2.
- 27 1043. PowerReviews used their Salesforce database in a “largely similar” way to
28 Bazaarvoice. Bolian Tr. 107:3-16.
1044. Although Professor Shapiro concludes, based on Salesforce data, that Brookstone,
Walgreens and Drugstore.com were customers for which Bazaarvoice and
PowerReviews were the only vendors considered, these accounts were in fact also
competitive with Viewpoints. DX1343.
1045. Bazaarvoice’s Salesforce data does not reflect Gigya competition for the Pacific
Sunwear of California account. Pacific Sunwear ultimately selected Gigya to
provide its R&R solution. Katz Tr. 13:1-21.

1046. The Salesforce opportunity for Guitar Center lists only PowerReviews as competition, whereas documents indicate competition with Lithium, Jive and Pluck in this account. DX0083; DX0094 at BZ-00075487.
1047. Professor Shapiro assumes, relying on Salesforce data, that Liquidation Channel was a customer where Bazaarvoice and PowerReviews were the only vendors considered. However, Liquidation Channel considered Bazaarvoice, PowerReviews Rate Point and UK Review Center to be “apples to apples.” DX0570 at BZ-00164128.
1048. [REDACTED] DX0843.
1049. The Salesforce opportunities for AutoZone list no competitors but Pluck ultimately won the account. Trial Tr. 1331:17-23. AutoZone testified that the company considered Bazaarvoice, Pluck, Lithium, Jive, and briefly, PowerReviews. Traywick Tr. 26:11-23; Trial Tr. 1331:9-16, 1334:12-18
1050. The Salesforce opportunities for Target only list Pluck as a competitor, whereas documents indicate Jive and Lithium were also considered. DX0398 at BZ-00692077.
1051. The Salesforce opportunities for Tempur-Pedic list no competitors. Tempur-Pedic selected ShopVisible, which Bazaarvoice tracks as an R&R competitor, and its e-commerce platform in 2010 and now appears to provide R&R on the Tempur-Pedic site. DX0366 at BZ-00587478; Varni Tr. 35:8-16.
1052. The Salesforce opportunities for Bose do not list any competitors whereas documents indicate that Bose actually switched to Pluck. DX0425.
1053. Although Sierra Trading Post left PowerReviews in favor of an in-house solution, the most recent Bazaarvoice Salesforce opportunity listed no competitors. This opportunity did not list “Internal Build” as a competitor nor did it list PowerReviews, even though it was a PR customer at the time. Only an opportunity from 2009 listed PowerReviews as a competitor. Newlin Tr. 20:25-21:7, 23:18-24:2.
1054. The Coldwater Creek Salesforce opportunities list no competitors. Coldwater Creek uses an in-house solution for R&R. Williams Tr. 35:10-12. This opportunity did not list “Internal Build” as a competitor, though this was an option recognized by Bazaarvoice.
1055. The Blue Nile Salesforce opportunities list no competitors even though Blue Nile left Bazaarvoice for an in-house solution. Sainsbury Tr. 18:13-15. This opportunity did not list “Internal Build” as a competitor, though this was an option recognized by Bazaarvoice.
1056. The Shoebuy.com Salesforce opportunities list no competitors. Shoebuy.com uses an in-house solution for R&R. Keller Tr. 33:11-15. This opportunity did not list “Internal Build” as a competitor.

1057. The Salesforce opportunities for Systemax list no competitors. However, Systemax uses an in-house solution and documents indicate that Reevo and Zuberance have competed for the account at various points in time. B. Matthews Tr. 23:9-16; DX1237.
1058. [REDACTED] Salesforce opportunities list no competitors. [REDACTED] uses an in-house solution for R&R. DX0350; DX1433 at ¶ 52 (citing source code of <https://www.alice.com/buy/1056989-poise-incontinence-pads-liners-moderate-absorbency>. Accessed June 20, 2013). This opportunity did not list “Internal Build” as a competitor.
1059. The American Apparel Salesforce opportunities list no competitors. American Apparel uses an in-house solution for R&R. DX1433 at ¶ 91 (citing source code at <http://store.americanapparel.net/product/index.jsp?productId=rsa8305p>. Accessed June 30, 2013). This opportunity did not list “Internal Build” as a competitor.
1060. The Shop.com Salesforce opportunities list no competitors. Shop.com uses an in-house solution for R&R. Brady Tr. 16:8-13. This opportunity did not list “Internal Build” as a competitor.
1061. The Crate & Barrel Salesforce opportunities since 2008 list no competitors, whereas testimony indicates Pluck, Viewpoints and Reevo were all recently competing for the account. Seebeck Tr. 24:13-17.
1062. The Golfsmith Salesforce opportunities list no competitors, whereas testimony indicates that Pluck was a serious competitor for this account. Maki Tr. 22:4-8.
1063. The Home Depot Salesforce opportunities list Pluck as a competitor on one opportunity and internal build on a few other opportunities, whereas documents indicate that Viewpoints and Lithium have also competed for the account. DX1433 at ¶ 130; DX1343.
1064. The L.L. Bean Salesforce opportunities list no competitors, whereas testimony indicates that they were considering an in-house solution. Wilson Tr. 13:15-13:20.
1065. [REDACTED]
[REDACTED] Heverley Tr. 27:8-22.

h. The two “innovations” cited by DOJ were not competitive responses by Bazaarvoice or PowerReviews; they were failed marketing tactics

i. Smart SEO

1066. Smart SEO was not a product Bazaarvoice released in response to PowerReviews’ In-Line SEO. Trial Tr. 497:5-9; 545:12-21.
1067. When Bazaarvoice first released its R&R solution, all content (including reviews) lived in the cloud, which meant that it was not searchable by search engines and

therefore not SEO friendly. This solution was requested by Bazaarvoice's customers who did not want Bazaarvoice content on their product pages because it would detract from their independent SEO efforts. Trial Tr. 540:12-543:3, 543:13-545:21.

1068. A few years later, Google changed its algorithm. The algorithm now valued "dynamic content" which included UGC like R&R. Bazaarvoice's customers began asking to include R&R content on their pages in order to assist their SEO efforts. Bazaarvoice responded by developing solutions for those customers. The solution was called "Search Voice Inline." After it released Search Voice Inline, Bazaarvoice had the same SEO capabilities of all other R&R providers, including PowerReviews. Trial Tr. 499:18-500:19, 540:12-543:3, 114:6-18. Search Voice Inline was later re-named "Smart SEO" and marketed to customers. Trial Tr. 540:12-543:3.

1069. Bazaarvoice actually felt that its Search Voice Inline product was better than PowerReviews' In-Line SEO. Bazaarvoice's solution allowed Google to read reviews, but also give the user the ability to see the most recent reviews without affecting SEO. Trial Tr. 542:18-23.

ii. Open Syndication

1070. In July 2011, PowerReviews announced the "open social commerce network" also called "BrandShare." GX0029; Trial Tr. 361:24-362:6, 393:19-22. PowerReviews noted that there would be no additional fees for retailers already using the PowerReviews platform. GX0029. PowerReviews did not create any new technology in conjunction with its announcement of BrandShare. Trial Tr. 393:23-394:4.

1071. Bazaarvoice believed the announcement was marketing move as PowerReviews tried to break into the brand market where it had historically had little success. Trial Tr. 148:13-149:13, 545:22-547:10; GX0030. Bazaarvoice believed that PowerReviews' syndication product, BrandShare, was "either not in market or at the very least extremely new and aspirational." Trial Tr. 772:1-7.

1072. Bazaarvoice believed PowerReviews used word "open" to make Bazaarvoice's network seem "closed." Trial Tr. 148:13-149:2. But Bazaarvoice's network was never closed. Bazaarvoice customers owned their own data, which meant they were free to syndicate it to whomever they wished. Trial Tr. 515:16-516:2. And Bazaarvoice was already sharing content with third-parties such as Google and Facebook and agency Facebook pages. Trial Tr. 148:13-149:13, 153:3-16. In fact, prior to PowerReviews' announcement, Bazaarvoice was working on a syndication product for non-Bazaarvoice clients. Trial Tr. 487:9-20.

1073. The announcement bothered Bazaarvoice because, by giving away syndication for free, PowerReviews made it seem like syndication was not valuable. Trial Tr. 150:5-13.

1074. Following the announcement, Bazaarvoice received roughly ten emails from Bazaarvoice brands inquiring about syndicating to PowerReviews' retailers

through PowerReviews' BrandShare. Trial Tr. 488:1-7. This prompted Bazaarvoice executives to convene and think about how they would support syndication to PowerReviews' retailers. Trial Tr. 487:21-25. Supporting syndication to PowerReviews' retailers would cause Bazaarvoice to incur costs as it required Bazaarvoice to build technology and provide extra service. Trial Tr. 151:7-14, 150:19-151:6, 712:13-22. Bazaarvoice wanted to keep the same quality of service it had historically provided with respect to syndication. Trial Tr. 150:19-151:6. As such, Bazaarvoice would need to charge for the syndication services. Trial Tr. 712:18-22, 2027:9-2028:13. How Bazaarvoice approached BrandShare was not different from how Bazaarvoice strategized and built technology to support Google as a partner. Trial Tr. 154:5-13. Supporting syndication interoperability between the PowerReviews and Bazaarvoice networks would have taken work on the part of Bazaarvoice in order to maintain the same quality of service Bazaarvoice had historically provided.

1075. PowerReviews later requested, as part of its BrandShare program, that Bazaarvoice enter into agreements with PowerReviews, the Bazaarvoice manufacturer and the PowerReviews retailer. Bazaarvoice wanted to read these agreements carefully, and make changes where necessary. Bazaarvoice was concerned that it would become obligated to provide quality reviews to PowerReviews retailer, but not have control over the final display of the reviews. GX1215; Trial Tr. 516:19-519:16. For example, for Proctor and Gamble ("P&G"), Bazaarvoice would send reviews for a bar of soap from P&G's website to Drugstore.com, and if those reviews were displayed on a page for shampoo, Bazaarvoice would be liable. Bazaarvoice exercised caution as it contemplated whether to enter into any such agreement. GX1215; Trial Tr. 517:11-519:21.

1076. It was outside Bazaarvoice's power to inhibit PowerReviews from syndicating content. Trial Tr. 516:3-9. Bazaarvoice did not try to stop PowerReviews from syndicating content from a Bazaarvoice manufacturer to a PowerReviews' retailer. Trial Tr. 515:16-516:2. Indeed, Bazaarvoice communicated that it was willing to syndicate to PowerReviews retailers. In December 2011, Erin Defosse wrote that Bazaarvoice was "eager and open to syndicating to Staples." GX1112 at BZ-00194264.

1077. Bazaarvoice did not respond to PowerReviews' announcement by commercializing any products. Trial Tr. 243:6-11, 487:9-20, 547:5-10.

1078. In the end, PowerReviews' open syndication did not get much traction, and it did not succeed in converting any Bazaarvoice brands to PowerReviews. Trial Tr. 154:2-9, 243:6-11, 362:4-19. Only a handful of Bazaarvoice brands signed up for the initiative. Trial Tr. 362:3-19. PowerReviews' open syndication was not part of the motivation to acquire PowerReviews. Trial Tr. 158:20-23.

i. Dr. Shapiro's competitive effects analysis is flawed

1079. The issue for competitive effects is whether the market will replace the competitive constraint PowerReviews would have provided absent the acquisition. Trial Tr. 1713:16-1714:11.

1080. Dr. Shapiro concedes that a competitor need not win business to provide a competitive constraint. Trial Tr. 1058:13-17.
1081. Dr. Shapiro acknowledges that the key act of competition in this market is trying to win business, not necessarily winning business. Trial Tr. 988:7-989:6.
1082. High quantity, low-revenue competitors can “have competitive significance.” Trial Tr. 1042:8-13.
1083. Dr. Shapiro’s theory of the case is not that PowerReviews should have been purchased by another company. Trial Tr. 1048:14-16.
1084. Dr. Shapiro does not put forward a theory of coordinated effects. Trial Tr. 912:19-21.
1085. Dr. Shapiro does not articulate a theory of harm to the market as a whole. Trial Tr. 1876:1-1877:5.
1086. Dr. Shapiro concedes price effects will vary from customer to customer. Trial Tr. 997:18-998:1.
1087. Dr. Shapiro’s opinion does not depend on “customer-by-customer” price discrimination. Trial Tr. 1038:10-19. The evidence shows that such discrimination would be required to make a hypothetical price increase profitable because many similarly situated customers testified that they have competitive alternatives other than Bazaarvoice. PFF ¶¶1003-1028.
1088. Dr. Shapiro performed no analysis to show harm to in-house customers from the merger. Trial Tr. 1879:5-12, 2071:14-20.
1089. Dr. Shapiro acknowledges that customers can threaten to turn to in-house solutions and other competitors. Trial Tr. 999:15-20, 1000:19-25.
1090. Dr. Shapiro concedes that in-house development is “a significant choice” for many customers. Trial Tr. 1022:22-23.
1091. In-house development is included in Dr. Shapiro’s market definition. Trial Tr. 1082:10-12.
1092. In-house development accounts for 41% of the market in Dr. Shapiro’s revenue measure. Trial Tr. 1067:3-6.
1093. Dr. Shapiro cannot identify any customer who threatened to go in-house and was not taken seriously. Trial Tr. 1074:13-18.
1094. Dr. Shapiro cannot identify any customer who cannot use Pluck, Gigya, and in-house as leverage in negotiating with Bazaarvoice. Trial Tr. 2073:18-2074:8.
1095. Dr. Shapiro has not evaluated whether Pluck or Gigya’s products are lower-cost than PowerReviews Enterprise was. Trial Tr. 1040:14-1041:3.

1096. Dr. Shapiro performed no analysis to show harm to customers of R&R suppliers other than Bazaarvoice and PowerReviews. Trial Tr. 1879:14-21.
1097. Dr. Shapiro's claim that legacy Bazaarvoice customers will be harmed is incorrect because other options than PowerReviews took away more customers, PowerReviews was unsuccessful in pursuing Bazaarvoice accounts, and PowerReviews was unlikely to provide a competitive constraint going forward due to its weak financial position. Trial Tr. 1880:22-1883:7, 1883:21-1889:2; DX1883; DX1387.001.
1098. Dr. Shapiro's claim that legacy PowerReviews customers will be harmed is incorrect because such customers could use in-house development and other competitors for better leverage against Bazaarvoice than PowerReviews would have provided going forward, the evidence shows that Bazaarvoice is offering small-to-medium sized customers with services comparable to PowerReviews' Enterprise platform, and Bazaarvoice has changed its pricing model to charge lower prices to the types of small-to-medium sized customers PowerReviews served. Trial Tr. 1889:6-1891:25.
1099. Dr. Shapiro does not analyze a theory of price discrimination against syndication customers in his report. Trial Tr. 1039:5-20, 1100:18-1101:4.
1100. Dr. Shapiro's claim that customers who value syndication will be harmed is incorrect because PowerReviews did not have a significant syndication presence and syndication can be done separately from R&R. Trial Tr. 1896:5-1900:3.
1101. The market includes customers that use and do not use syndication. Trial Tr. 1083:1-5.
1102. The market includes customers that use and do not use moderation. Trial Tr. 1083:6-21.
1103. Dr. Shapiro has never evaluated R&R competition prior to this case. Trial Tr. 2073:8-9.
1104. Dr. Shapiro relies on a backward-looking, formulaic approach and gives insufficient weight to post-merger evidence showing competition has been maintained. GX0983; GX0984 at 14-15; DX1736 at ¶¶ 153-58.
1105. Dr. Shapiro gives insufficient weight to the customer testimony in this case. Trial Tr. 2043:18-2046:10, 2076:15-2078:12, 2083:18-2084:18.
1106. Dr. Shapiro acknowledges customers can be the "best source" of market information. Trial Tr. 1030:19-1031:2.
1107. Dr. Shapiro read a "relatively small fraction" of the documents listed in his reports. Trial Tr. 1026:3-6.
1108. Dr. Shapiro's staff selected what he would read. Trial Tr. 1026:7-10, 1080:25-1082:6.

1109. Dr. Shapiro's analysis based on only a small, unrepresentative sample of customer interviews for support renders his opinions unreliable. The government interviewed 123 customers during its investigation of the acquisition. Pl.'s Obj. and Resp. to Interrog. 1. Dr. Shapiro interviewed only ten of those customers (or less than 10%). GX0983 at 30, fn. 150.

1110. Dr. Shapiro was unaware of Pluck and Reevo's partnerships with IBM, Gigya's partnership with Oracle, and Yotpo's partnership with Magento. Trial Tr. 1077:3-11.

1111. Dr. Shapiro did not know that lack of syndication did not prevent Gigya, Pluck, Amazon Webstore, and others from securing major accounts like Pacific Sunwear, Bose, and Fruit of the Loom. Trial Tr. 1057:16-1058:7.

1112. Dr. Shapiro relies on data sources like Bazaarvoice's salesforce.com database and data from the Internet Retailer 500 publication that are incomplete, inaccurate, unreliable, and/or not appropriate for the uses Dr. Shapiro seeks to make of them. DX1736 at ¶¶ 34-46, 175-177.

1113. Dr. Shapiro and a co-author have described *United States v. Syufy Enterprises*, 903 F.2d 659 (9th Cir. 1990), and *United States v. Oracle Corp.*, 331 F. Supp. 2d 1098 (N.D. Cal. 2004), as "Judicial Decisions With Dubious Economic Reasoning." Jonathan B. Baker & Carl Shapiro, *Reinvigorating Horizontal Merger Enforcement*, in *How the Chicago School Overshot the Mark* 235, 240-44 (Robert Pitofsky ed., 2008). Trial Tr. 1027:19-1030:8. Dr. Shapiro disagrees with Ninth Circuit precedent. Trial Tr. 1028:2-1030:8, 2072:5-2073:7.

j. Dr. Shehadeh relies on sufficient facts and data.

1114. Dr. Shehadeh reviewed all the materials in his list of materials considered. Trial Tr. 1713:2-7; DX1433; DX1736.

1115. Dr. Shehadeh conducted independent research in the document and deposition databases, including conducting his own searches and having his staff find information as well. Trial Tr. 1713:2-15; DX1433; DX1736.

1116. Dr. Shehadeh properly considered the documentary evidence as one piece of a broader economic analysis. Trial Tr. 1715:14-25, 1720:5-15; DX1433; DX1736.

1117. Dr. Shehadeh considered all the evidence presented at trial. Trial Tr. 1711:24-25.

k. Dr. Shehadeh's competitive effects analysis is correct

1118. Dr. Shehadeh correctly concludes that PowerReviews was not a unique competitive constraint and that other market forces are sufficient to prevent anticompetitive unilateral effects going forward. Trial Tr. 1716:6-14.

1119. Dr. Shehadeh correctly concludes that PowerReviews' strategy of targeting Bazaarvoice customers in 2011 was a failure. Trial Tr. 1716:15-1717:20.

1120. Dr. Shehadeh correctly concludes that there is nothing inappropriate about charging for syndication services. Trial Tr. 2026:25-2029:2.

1121. Dr. Shehadeh correctly concludes that Bed Bath & Beyond did not suffer harm from the merger because it added more functionality and negotiated down Bazaarvoice's initial offer by two-thirds without looking into an alternative solution. Trial Tr. 1892:6-1893:17.

1122. Dr. Shehadeh correctly concludes Warner Brothers did not suffer harm from the merger because Bazaarvoice acted to end a PowerReviews policy that would have raised Warner Brothers' pricing and in fact gave Warner Brothers a discount. Trial Tr. 1894:2-1895:22; DX1892; DX1894.

1123. Dr. Shehadeh correctly concludes that a sufficient number of customers would leave Bazaarvoice in the event of a price increase to make an increase unprofitable. Trial Tr. 1900:5-1901:5.

13. Bazaarvoice's Acquisition of PowerReviews has Resulted in Significant Efficiencies.

a. Customers have benefitted from the combination of Bazaarvoice and PowerReviews

i. More syndication for customers

1124. Bazaarvoice began syndicating content from Bazaarvoice customers to legacy PowerReviews customers in October 2012. [REDACTED] DX0015 at BV-INT-00000027.

1125. [REDACTED] DX0015 at BV-INT-00000231.

1126. The acquisition has provided customers with more syndication opportunities more efficiently than when Bazaarvoice and PowerReviews were independent firms. DX0749; Trial Tr. 841:12-842:1. Dr. Shapiro acknowledges this benefit. Trial Tr. 1031:10-1032:8.

1127. Customers believe that the additional syndication opportunities enabled by the acquisition has benefited them.

- B&H Photo testified that Bazaarvoice's acquisition of PowerReviews "brought a lot of syndication capabilities that were not there when PowerReviews was running the show because now there's a lot larger network and the capabilities are a lot more robust." Meisels Tr. 26:12-16.
- Post-acquisition, Clorox can now syndicate R&R content to PowerReviews retailers. The ability to syndicate content to

PowerReviews' retailers post-acquisition is a benefit and is helpful to Clorox. Levin Tr. 79:23-81:2; Trial Tr. 321:16-24, 1031:15-22.

- PowerReviews customer hhgregg Appliances testified that it benefits from the merger because it can syndicate content to and from more companies since Bazaarvoice's acquisition of PowerReviews. Vitale Tr. 12:3-18.
- PowerReviews customer Recreational Equipment Inc. ("REI") did not embrace syndication pre-merger because PowerReviews did not have many brand clients and offered syndication only "on a smaller scale." Gephart Tr. 32:5-17. Post-acquisition, REI is more enthusiastic about syndication because Bazaarvoice has a more robust syndication network. REI estimates that its R&R content would double by utilizing Bazaarvoice's syndication functionality, which would benefit REI's business. Gephart Tr. 39:15-40:20.
- Toys"R"Us testified that "if the merger brought more review coverage through syndication or any other means" and if "it was free [] and gave [] customers and [Toys"R"Us] are a benefit of more reviews," Toys"R"Us would support the acquisition. Caine Tr. 51:5-18. Post-acquisition, Toys"R"Us has received approximately 38,000 additional reviews, which is a huge benefit for Toys"R"Us. Parsons 30(b)(6) Tr. 30:12-31:1.
- Step2 "expects Bazaarvoice's syndication network will be of particular value to Step2." With Bazaarvoice's syndication network, Step2 will be able to send Step2 reviews to "mass retailers like Wal-Mart." Step2 products that previously had only one or two reviews on Wal-Mart.com will see an influx of hundreds of reviews. DX1399 at ¶ 7.

1128. Legacy PowerReviews' customers have benefited from the transaction.

- The acquisition of PowerReviews by Bazaarvoice resulted in many legacy PowerReviews retailers receiving "substantial incremental benefit for free," as over 50 Bazaarvoice brand customers signed up for full-network syndication. DX0649 at BZ-01448284. Retailers that were legacy PowerReviews customers could opt-in to syndication for free, which "lower[ed] the cost per review that they pay [Bazaarvoice] while providing greater value at the same time." DX0649 at BZ-01448284. Receiving syndicated content from the Bazaarvoice brand customers resulted in more reviews for a customer's website which "improves their business results for their site." DX0649 at BZ-01448284; Collins Tr. 840:7-842:1.
- PowerReviews' retailers such as Abt Electronics and Adorama, among others, have benefitted from the ability of Bazaarvoice brand customers to syndicate R&R to PowerReviews' retail customers. Parsons 30(b)(6) Tr. 30:6-11.

- PowerReviews customer Staples receives 12 times more R&R as a result of the acquisition. Prior to the acquisition, Staples received approximately 5,000 syndicated reviews. Post-acquisition, Staples received approximately 60,000 or 65,000 additional reviews from more brands. It is a “huge benefit” to Staples “to be able to bridge the gap of content that they’ve been able to create with supplementing it with brand content.” Parsons 30(b)(6) Tr. 31:2-12.

1129. Bazaarvoice’s acquisition of PowerReviews has enabled PowerReviews’ small and medium retailers and “long-tail” retailers (retailers with low sales volume or that focus on producing or selling a specific category of products, like cameras) to receive content from a greater number of brands. This in turn assists retailers increase sales via conversion. For many SMBs and long-tail retailers, “their key to conversion (sales) success with their customers. . . is syndication from brands.” “Brands will help [SMB and long-tail retailers] with content, which drives conversion.” DX0496 at BZ-00878242.

1130. Absent syndication of content, “[t]hese small retailers get almost no traffic online – therefore, it is very difficult for them to collect content.” Often, “there is no way these long tail retailers will generate a lot of content on their own.” DX0496 to BZ-00878242.

1131. As SMBs and long-tail retailers syndicate content from Bazaarvoice brand businesses and drive conversion, the value proposition for brands increases as well.” [A] consumer is a consumer – whether they are on Walmart or a very small retailer – and brands care about word of mouth content reach to consumers with scale because they know it drives sales.” As Bazaarvoice connects SMB and long-tail retailers with brand businesses, “[e]veryone wins – consumers, brands, and retailers. DX0496 at BZ-00878242.

ii. More innovation for customers

1132. PowerReviews customers now benefit from Bazaarvoice’s over \$30 million a year investment in R&D, an amount nearly triple PowerReviews’ entire annual revenues. DX0749; DX1623 at 6.

1133. Bazaarvoice is developing new services, and improving its software architecture to be able to develop and implement new solutions. Trial Tr. 785:22-786:15, 788:20-790:4; DX1802 at 46, 50, 52.

1134. Bazaarvoice is investing significant amounts in R&D in connection with its efforts to better utilize data clients collect and manage through the use of its solutions. DX1382 at 22; Trial Tr. 861:18-862:11, 863:1-864:18.

1135. Bazaarvoice has made this investment “very deliberately to ensure that [the company is] making the necessary investments to scale [its] technology and to enable [it] to bring new solutions to the marketplace in the coming years as the market evolves.” DX1376 at 7; Trial Tr. 861:18-862:11

1 1136.

2 [REDACTED] DX0015 at BV-INT-
 3 00000231.
 4 [REDACTED]
 5 [REDACTED] Trial Tr. 1135:19-1136:10.

6 1137.

7 [REDACTED]
 8 [REDACTED] DX0476 at BZ-00850083-85.
 9 [REDACTED] DX0015
 10 at BV-INT-00000246.

11 1138. Superior product-matching will facilitate Bazaarvoice's development of the
 12 Commerce Graph, a predictive analytics tool that will provide customers with
 13 relevant data around causes and effects of consumer purchasing decisions.
 14 DX1382.

15 1139. PowerReviews customers expect to have access to better features because of the
 16 merger.

- 17 • Step2 believed that there were certain features, including enhanced
 18 reporting capabilities and content syndication capabilities, which
 19 PowerReviews could not provide because of PowerReviews' size and
 20 scale. Since Bazaarvoice's acquisition of PowerReviews, Bazaarvoice has
 21 made available these additional features that PowerReviews could not
 previously provide. DX1399 at ¶ 6.
- Vitamin Shoppe stated that the effect of the acquisition of PowerReviews
 by Bazaarvoice would be such that "more services" are available to it as a
 PowerReviews customer, and that it "hoped to benefit from those new
 functionalities" Trial Tr. 1373:16-1374:3.

22 1140. Bazaarvoice's acquisition of PowerReviews has allowed PowerReviews
 23 customers to take advantage of Bazaarvoice's "Software as a Service" ("SaaS")
 24 platform in which Bazaarvoice, rather than the customers, hosts and stores the
 25 UGC. Customers can then "consume the content on an as-needed basis." Meisels
 26 Tr. 16:2-10.

27 1141. Prior to the acquisition, PowerReviews did not offer a SaaS-based platform.
 28 Rather, PowerReviews would transfer files containing the content using "File
 Transfer Protocol" ("FTP") files. PowerReviews would transfer these files to the
 customer on a nightly basis. This approach proved problematic as R&R "just
 disappeared" sometimes and customers would receive an empty file. Meisels Tr.
 13:23-14:13, 16:2-14, 17:23-18:8.

1142. Post acquisition, PowerReviews customers can now take advantage of Bazaarvoice's SaaS-based platform. SaaS-based platform has "multiple" advantages over PowerReviews' FTP file-transfer method. With Bazaarvoice's SaaS-based platform, PowerReviews customers can consume UGC "on an as-needed basis rather than just getting everything every night and wiping it out from scratch," which was required under the PowerReviews FTP file-transfer method. Meisels Tr. 16:8-14.

1143. With Bazaarvoice's SaaS-based platform, PowerReviews customers can "have reviews in a lot of different channels other than just e-commerce . . . for example, on mobile" channels. Meisels Tr. 16:11-25.

1144. Bazaarvoice will continue to operate PowerReviews Express for long-tail retailers and "to help open up new geographies." DX0015 at BV-INT-00000245.

iii. More business growth opportunities for customers

1145. The acquisition of PowerReviews by Bazaarvoice resulted in additional value to Bazaarvoice's retail and brand customers through increased data analytics, advertising and media opportunities. PFF ¶¶64-74.

1146. Bazaarvoice now has access to a large amount of data and will be able to provide more value to its clients with additional and more powerful data analytics products. DX0735; Trial Tr. 836:21-839:18, 1391:6-1392:5, 1429:5-1430:19.

1147. In addition, Bazaarvoice can begin expanding its social commerce marketing solutions focused on the retail channel for brands. With a larger network of retailers, Bazaarvoice will be able to offer additional advertising and opportunities to engage with a wider audience for brands. DX0649 at BZ-01448284; Trial Tr. 791:9-793:3, 840:7-841:21.

14. The Balance of Equities Favors Finding in Favor of Bazaarvoice

a. *PowerReviews faced a difficult future as an independent company*

1148. Pre-merger, PowerReviews faced significant financial challenges and was unlikely to be able to adapt its product offerings to changing market conditions.

1149. In April 2010, CEO Pehr Luedtke noted that Buzzillions' poor performance in search traffic was hurting PowerReviews' revenues. DX0067. Buzzillions continued to perform poorly in search traffic at least as recently as 2011. DX0076.

1150. In December 2010, PowerReviews faced continuing slow sales and customer dissatisfaction. DX0071 at BZ-00058312.

1151. Early the next year, PowerReviews pursued a new round of financing but had trouble finding a willing investor. Sequoia, Scale, Jafco, and Andreessen Horowitz all chose not to invest. DX0075.

- 1 1152. Other companies in social commerce have not had the same challenges in raising
2 capital. For example, in August 2011 Buddy Media, now owned by Salesforce,
3 raised \$54 million in funding, bringing its total funding at the time to over \$90
4 million. DX456 at BZ-00833081, BZ-00833088.
- 5 1153. In February 2011, another social commerce market participant Vitruve, now owned
6 by Oracle, raised \$17 million, bringing their total capital at the time to over \$30
7 million. DX0456 at BZ-00833089.
- 8 1154. Pluck's parent company, Demand Media, held its IPO in January 2011. The
9 company was valued at over \$1 billion and as a publicly traded company has
10 access to significant capital.
- 11 1155. Bazaarvoice competitor Lithium has secured significant funding since its
12 inception in 2007. For example, Lithium raised \$9 million from Shasta Ventures
13 and Emergence Capital Partners in its first round of funding, and secured \$12
14 million from Benchmark Capital and its two existing investors in 2009. DX1546
15 at 2. Funding raised by Lithium in late 2011 gave Bazaarvoice cause to expect "a
16 harder competitive run." DX0594 at BZ-01268098. [REDACTED]
17 [REDACTED] DX1204.
- 18 1156. Bazaarvoice was aware of Gigya raising capital in September 2012. DX0900.
19 Gigya is funded by Mayfield Fund, First Round Capital, Benchmark Capital and
20 Adobe.
- 21 1157. [REDACTED] O'Malley Tr. 60:25-
22 61:2; DX1273; DX1332.
- 23 1158. Venture capital funds continue to invest heavily in social commerce. In July 2013,
24 Revolution Fund invested \$40 million in e-commerce start-up Bigcommerce.
25 DX1747.
- 26 1159. In March 2011, PowerReviews' sales team failed to meet its quarterly projections,
27 losing deals it projected it would secure. DX0077.
- 28 1160. PowerReviews' "massive degradation in financial performance" resulted from
"the decline in the enterprise business" and put the company two months behind
its plan. DX0507 at BZ-00904367; Trial Tr. 381:19-382:9.
1161. PowerReviews missed its sales estimates again in July 2011. DX0203 at BZ-
00171115.
1162. PowerReviews missed its sales target for August 2011. DX0087 at BZ-00070513.
After this miss, members of the board questioned the company's strategic
direction and suggested that PowerReviews "spend more time going after new
markets" and focus less on large retailers. DX0322.
1163. In October 2011, a PowerReviews board member, Ben Boyer, expressed serious
concerns about the company's business strategy and future, noting: "I'm starting

to get worried this thing is broken beyond repair in a reasonable period of time.” DX0088 at BZ-00071887.

1164. Following its third consecutive quarter of missed sales projections, PowerReviews again changed its sales strategy in late 2011. DX0088; DX0509.

1165. PowerReviews decided to focus on clients in the mid-market and develop a social marketing suite that would appeal to them. DX1433 at ¶ 276. PowerReviews management and board of directors presumed that, with the shift to “Blue Ocean,” PowerReviews would compete less with Bazaarvoice. DX0092 at BZ-00073913; Trial Tr. 1044:5-12

b. Bazaarvoice and PowerReviews have successfully integrated into one company to better serve both sets of customers

1166. PowerReviews customers have benefitted enormously from the transaction and divestiture would pose significant harm to these customers. Section 13.

1167. Bazaarvoice and PowerReviews have integrated their business operations, technology and operations. The integration of PowerReviews into Bazaarvoice was “time-consuming” and “expensive.” DX1802 at 15.

1168. Bazaarvoice exited “redundant” executives. DX728 at BZ-01697127; DX0016. These executives have since taken positions at new employers.

1169. Bazaarvoice has discontinued the PowerReviews brand. DX728 at BZ-01697134.

1170. Bazaarvoice and PowerReviews have combined technologies and are actively working toward one unified and improved R&R platform for all customers. DX1382 at 4; DX0015 at BV-INT-00000227; DX1093 at BZ-02286596.

1171. Bazaarvoice “integrated the engineering teams [of the two companies] almost immediately.” Godfrey Tr. 30(b)(6) 32:16-33:3.

15. Proposed Ultimate Findings of Fact

a. The structure of the market is conducive to entry and expansion by competitors

1172. The structure of the market and industry trends are consistent with customer and competitor testimony as to why the acquisition will not harm competition. There are no barriers to entry and market trends have induced and will continue to induce firms to extend their offerings into R&R. Sections 7, 8.

1173. There is no evidence of any intellectual property or other tangible assets that impede entry or expansion into R&R. Section 7.

1174. The technology needed to develop a commercially acceptable R&R solution – either for in-house use or for sale to websites – is widely available. Section 7.

1175. The SaaS infrastructure necessary to operate an R&R platform is already in place at numerous firms supplying similar products to the same customer-base that uses R&R. Today, a significant portion of the software code needed to develop an R&R product is available via existing software libraries. Section 7.
1176. The incremental resources necessary to extend existing assets to the sale of R&R is not substantial. Sections 7, 8.
1177. Gigya and other firms have made such R&R product extensions, which suggests that the costs associated with adding R&R are not prohibitive. Sections 7, 8.
1178. This market is conducive to rapid entry. Numerous firms possess production and distribution assets that can be extended to R&R quickly and without significant sunk costs. Amazon has testified that it can provide R&R functionality to websites as a vendor. Section 7.
1179. Market trends provide supply-side incentive for firms to add R&R to their product offerings. The inefficiencies associated with e-commerce platform “plug-in” features have resulted in customer demand for more integrated solutions that ameliorate these inefficiencies. The new demand correspondingly creates incentives for third-party vendors to add features like R&R to their existing product lines. Pluck, Gigya, Lithium, Adobe, hybris and Magento are examples of firms that have used this market trend to add and market R&R as part of a bundle of social commerce features or as a native part of their e-commerce platforms. Section 7.
1180. Similarly, firms with major e-commerce platforms that run the online business of customers throughout the world, including IBM Websphere and Oracle/ATG (among others), have expanded into R&R by partnering with [REDACTED] Reevo and Gigya, in addition to Bazaarvoice. Doing so elevates the credibility of [REDACTED] Reevo and Gigya as stand-alone R&R providers. Sections 7, 8.
1181. Market trends also make in-house an option for websites of all types. Customers desiring to differentiate their websites can develop their own R&R solution, which can have the added benefit of improving website performance as compared to third-party solutions. Sections 7, 8.
1182. Developing an in-house solution is easier than ever, owing to more robust e-commerce platforms that incorporate key infrastructure components that can be leveraged in implementing an in-house R&R solution and to the more widely available code libraries that can be used to develop an R&R feature. Sections 7, 8.
1183. This trend is corroborated by several retailers, including Walmart, Staples and Target, having created their own e-commerce labs for the purpose of developing website functionality in-house. Sections 7, 8.

1184. Another market trend is that other forms of user generated content (“UGC”) are growing in prominence at the expense of R&R provided by third-party vendors like Bazaarvoice. New competitors to Bazaarvoice arise because there are new opportunities for consumers to express their opinions about products beyond R&R.

1185. For example, social networks have recently taken technical steps to commercialize their UGC by enabling retailers to integrate their content at or close to the point of sale – thereby bringing them closer to competing against Bazaarvoice. Facebook APIs let a website use Facebook “likes and comments” on the website’s product detail page in the same way it would use R&R. Pinterest’s recent introduction of “RichPins” enables a retailer to place price and availability information in a pinned image, together with the ability to click through to the retailer’s product detail page where a purchase can be made. Google’s “Write a Review” feature lets Google collect reviews directly from consumers and display them on a Google Shopping page that encourages consumers to directly click through to a retailer’s website where a purchase can be made. Section 7.

1186. New competition also arises because there are more places a consumer can go to read R&R beyond a retailer or manufacturer website. Many consumers today do not necessarily follow the so-called “happy path” of evaluating products predominantly on a retailer’s website. Instead, consumers can start their shopping experience on sites like Amazon and Google Shopping, which offer product reviews. The availability of R&R on sites beyond a retailer’s product detail page reduces the expected return on investment (“ROI”) of R&R for that retailer, and so diminishes the value (price) of Bazaarvoice’s R&R product to the retailer vis-à-vis competitive alternatives. Section 7.

1187. Another market trend in this and other technology-based industries is that innovation creates opportunities for new competitors and can be disruptive for incumbent competitors. The government presents insufficient evidence in this case that innovation will be thwarted by the loss of PowerReviews. Innovation is spurred by many forces, such as Amazon, an innovation leader in R&R, and likely will not stop. Sections 7, 8.

b. The market need only replace PowerReviews to ensure ongoing competition

1188. The competitive significance of PowerReviews, and therefore the amount of competition that needs to be replaced post-merger, was limited.

1189. At the time of the merger, PowerReviews had limited financial resources and prospects for obtaining new funds. In 2011, investments by PowerReviews to increase sales and marketing in an effort to win customers from Bazaarvoice

failed, leaving it with only \$5.4 million in cash on hand in December 2011. Section 12.

1190. In early 2012, PowerReviews had changed its business strategy to target more “blue ocean” opportunities that would result in less of the head-to-head competition with Bazaarvoice that is reflected in Bazaarvoice’s business documents from 2011. Section 12.

1191. PowerReviews product offering was not well suited for larger enterprise customers who valued customization and differentiation. Nor did PowerReviews have sufficient personnel to offer customers hands-on customer support. PowerReviews Enterprise was attractive to customers who did not want a customizable solution and did not need significant customer support resources from its R&R vendor. Many firms today can fit the void left by PowerReviews. Section 12.

1192. The loss of PowerReviews does not leave a void to fill with respect to syndication. Only 3.4% of PowerReviews customers used syndication. PowerReviews “open syndication” offering which was announced in a press release, added no new functionality. Section 12.

1193. PowerReviews failed to dislodge Bazaarvoice customers. It won just three Bazaarvoice IR500 customers between 2009 to 2012. Section 12.

1194. The competitive significance of PowerReviews is that before being acquired, it was trying to compete against Bazaarvoice, but failed to win business. Today many firms are likewise trying to compete against Bazaarvoice, with similar commercial success. The lost competition has been replaced. Sections 8, 12.

c. R&R competitors today are as good as, if not better, than PowerReviews

1195. The competitive options available to customers today replace the competition lost as a result of the acquisition.

1196. The government presented no evidence indicating that competitors today have inadequate R&R functionality compared to PowerReviews. The government presented no evidence establishing any unique feature or quality about PowerReviews that cannot be or has not been replicated by another firm. Sections 8, 12.

1197. Competitors can more easily customize their R&R products than PowerReviews to meet the specific needs of individual customers. Section 8.

1198. [REDACTED] Gigya, Reevo and others have sold R&R to customers in the U.S. Sections 8, 10.

1199. Competitors have more substantial relationships with large manufacturers and retailers than PowerReviews, including their other social commerce offerings, thereby giving them equal if not greater access to large enterprise customers, of which PowerReviews had few customers. Sections 7, 8.

1200. Competitors are bigger companies than PowerReviews, with greater resources and product offerings than PowerReviews had. Sections 7, 8.

1201. In-house remains a significant alternative to PowerReviews, especially when customization is desired. Sections 7, 8.

d. Customers testified they will consider and have chosen these alternatives

1202. Approximately 100 customers testified at trial or by deposition. The customers were knowledgeable about their business and the competitive options available to them. Their testimony were credible. The customers testified that their options – in-house, e-commerce platforms and commercial vendors – are sufficient to replace the lost competition from PowerReviews. They testified that they have not been harmed by the merger. Section 8.

1203. The government did not present any testimony from any customer claiming that it had been harmed by the merger. Section 8.

1204. Since the merger, Bazaarvoice has continued to offer significant price concessions to new and existing customers. In many important metrics, Bazaarvoice's business is worse than before the merger. Section 8.

1205. Any post-merger price changes to customers have always been the result of changes in product quality or quantity. Section 8.

1206. There is no evidence of anticompetitive price increases, slowing of price decreases, or reduction in innovation. Section 8.

e. The government's market share statistics are flawed and provide no reliable basis to predict future adverse effects

1207. It is undisputed that this merger involves differentiated products and should be analyzed under a unilateral effects theory. Section 12.

1208. In a unilateral effects case involving differentiated products, market shares have limited predictive value about post-merger competition. Sections 11, 12.

1209. The government's market shares are backward-looking snapshots of an installed base that reflect customer decisions dating as far back as 2006. Section 11.

1210. The government's market shares are not reliable. The government relied on an unprecedented technique for analyzing market shares. The government overstates the competitive significance of PowerReviews by: (i) omitting sales to brands (even though brands are part of the government's market); (ii) omitting penetration by firms like Yotpo and others that have many customers; and (iii) omitting shares for rapid entrants. Omitting these factors makes the denominator smaller (but PowerReviews' market share larger). Section 11.

1211. The government's technique is further flawed because the market shares are based on the online revenues of customers. Reliance upon a customer's revenues for market share analysis inflates the market share of PowerReviews, because, among other things, Staples accounts for half of PowerReviews' market share even though Staples would rank only 82nd among Bazaarvoice customers. Section 11.

1212. The total addressable market for Bazaarvoice is larger than the installed base of customers the government relies on to compute market shares. Bazaarvoice's post-merger market share is no higher than 22% and its ordinary course of business documents show its market shares ranging from 8.5% to 10%. Section 11, PFF ¶¶881-895.

f. The government has not met its burden to establish barriers to entry

1213. Entry and expansion into R&R is easy. Section 7.

1214. The government failed to prove that syndication is a barrier to entry. Section 7.

1215. Only a small percentage of Bazaarvoice and PowerReviews customers use syndication. There are sufficient opportunities for competitors to capture business without syndication as a barrier. Section 7.

1216. Customers own their R&R content and can freely syndicate to any other entity without Bazaarvoice's participation, including usage of a third-party vendor. Section 7.

1217. The syndication of R&R is being overtaken by more comprehensive syndication needs and solutions beyond just R&R, and there are many competitors already capable of providing these services. Section 7.

1218. The government failed to prove that switching costs are a barrier to entry. Section 7.

1219. There are sufficient new opportunities for R&R that will provide enough business to support entry without any switching costs for those customers. Section 7.

1220. Significant website re-platforming is anticipated, in which the incremental cost to change the R&R provider would be trivial. Section 7.

1221. The government presented no evidence of whether the merger increased switching costs or whether the cost to switch to PowerReviews was lower than the cost to switch to another alternative. Section 7. For customers of Pluck and Gigya, who sell their R&R as part of a suite of social commerce tools, switching to Pluck and Gigya for R&R would be less costly than switching to PowerReviews. Section 7.

1222. Firms like [REDACTED] and Gigya added R&R functionality despite the purported existence of switching costs for customers. Sections 7, 8.

1223. The government failed to prove that reputation is a barrier to entry. Section 7.

1224. The customers who investigated Pluck, Gigya, Reevo and others, and purchased their products, have not found reputation to be a reason to shun these competitors. Sections 7, 8.

1225. Pluck and Gigya already have good reputations among large customers because their broad non-R&R social commerce offerings. Sections 7, 8.

1226. Reevo has a good reputation among the European divisions of many U.S. customers. Sections 7, 8, 10.

1227. Yotpo, Reevo, Pluck and Gigya each have relationships with major e-commerce platform providers. Sections 7, 8.

1228. Jason Goldberg, the only industry expert to testify at trial, stated that these alternatives are acceptable and are credible bargaining chips. Section 8. The government has no evidence that these alternatives are more costly or have less functionality than PowerReviews. Section 8.

g. *The predictions made in the parties' documents have not materialized, and the market structure and post-merger developments indicate that no harm should be anticipated*

1229. The documents relied upon by the government largely describe a competitive landscape that does not exist today. Section 12.

1230. PowerReviews' effort to dislodge Bazaarvoice's large customers did not succeed and would not be repeated. Section 12.

1231. Predictions that the merger would lead to price increases were not accepted by Bazaarvoice's board of directors. The testimony demonstrated that the basis for the transaction was the addition of PowerReviews' installed base of retailers to facilitate Bazaarvoice's effort to compete more effectively in the social commerce space for brands and retailers. Section 12.

1232. The statements and predictions in the pre-merger documents have not been corroborated by objective evidence. Among other evidence, customers have not complained about the acquisition and testified they have competitive alternatives.

1 Section 8. Competitors have said the acquisition provides them with an
2 opportunity to grow, and that they can and will compete against Bazaarvoice.
3 Sections 7, 8.

4 1233. The combination of Bazaarvoice and PowerReviews provides unique benefits to
5 customers of both companies. Several customers noted that they will (or likely
6 will) benefit from the acquisition because there will be more syndication
7 opportunities than existed before the merger. The acquisition may also generate
8 additional benefits for customers and Bazaarvoice in the social commere space
9 going forward. Section 13.