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

13 UNITED STATES OF AMERICA,
14 *Plaintiff,*

Case No. 13-cv-00133 WHO

**PLAINTIFF UNITED STATES OF
AMERICA'S POST-TRIAL
PROPOSED FINDINGS OF FACT**

15 v.

16 BAZAARVOICE, INC.
17 *Defendant.*

Judge: The Hon. William H. Orrick
Trial Date: September 23, 2013
Time: 8:00 a.m.

18 **PUBLIC VERSION**
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PLAINTIFF'S PROPOSED FINDINGS OF FACT

I. BACKGROUND

1. Product ratings and reviews (“PRR”) are online “word of mouth” feedback from consumers regarding their experiences with retail products. GX93 (Svatek Dep. 73:7-14). PRR platforms combine software and services to enable manufacturers and retailers to collect, organize, and display consumer-generated PRR online. PRR is displayed on a retailer’s or manufacturer’s website, allowing other consumers to read feedback from previous buyers before making a purchasing decision. GX986* at 3-6.¹

2. PRR is a valuable asset for retailers and manufacturers to feature on their websites because it tends to increase sales, decrease product returns, improve a website’s ranking by Internet search engines, and provide valuable information regarding consumer sentiment. *See* Trial Tr. 97:10-98:4 (Hurt); GX537 at -621, -626; GX486 at -031; GX75 (Moog Dep. 63:6-8, 63:11, 63:13-64:7); GX92 (Osborne Dep. 121:7-13); GX93 (Svatek Dep. 73:7-75:6); GX844 at -381; GX770 at -231; GX574* at -638; GX565 at -206-210; GX577* at -038, -045, -049, -056; GX64 (Gigya Dep. 82:19-83:4); GX73* (Reevoo Dep. 9:15-17, 9:20-10:12); GX81 (Collins Dep. 100:12-101:10) and Trial Tr. 752:1-20 (Collins). While PRR is just one type of user-generated-content (“UGC”) that retailers and manufacturers can use on their e-commerce sites, it serves a unique purpose. Other types of UGC do not serve as substitutes for PRR. *See infra* Section II.

A. Merging Parties, Venue and Jurisdiction

3. Bazaarvoice provides the market-leading PRR platform. GX839 at -547; GX81 (Collins Dep. 72:12-15, 72:17-73:12, 200:16-22); Trial Tr. 376:14-377:1 (Luedtke). The vast majority of Bazaarvoice’s customers purchase its PRR platform and PRR accounts for the majority of Bazaarvoice’s revenue. Trial Tr. 881:11-18 (Collins); Trial Tr. 1424:13-16 (Meredith). Bazaarvoice is a publicly traded Delaware corporation headquartered in Austin,

¹ For Exhibits with Bates numbering, the pinpoint cites refer to the last 3 digits of the Bates number. For Exhibits without Bates numbering, the pinpoint cite refers to any internal pagination or, if there is no internal pagination, to the physical page number. Documents or depositions with an * have an outstanding confidentiality issue.

1 Texas. GX318 (Def.'s Answer ¶ 11). During its 2012 fiscal year, Bazaarvoice earned
2 approximately \$106.1 million in revenue. GX318 (Def.'s Answer ¶ 11).

3 4. PowerReviews was Bazaarvoice's closest competitor in the provision of PRR
4 platforms to manufacturers and online retailers. *See infra* Section III.A. The vast majority of
5 PowerReviews' customers purchase its PRR platform and PRR accounts for the vast majority of
6 PowerReviews' revenue. Trial Tr. 420:17-23, 442:6-16 (Luedtke). PowerReviews was a
7 privately held Delaware corporation headquartered in San Francisco, California. GX318 (Def.'s
8 Answer ¶ 12). During the 2011 calendar year, the company earned approximately \$11.5 million
9 in revenue. GX318 (Def.'s Answer ¶ 12). PowerReviews closed the best quarter in its history
10 just prior to the acquisition. GX643 at -565; GX87 (Godfrey CID Dep. 181:21-182:5); GX88
11 (Hossain Dep. 196:4-6, 196:9-18).

12 5. The San Francisco Division of the District Court for the Northern District of
13 California is the proper venue for the Plaintiff's lawsuit and the Court has personal jurisdiction
14 over the Defendant. GX318 (Def.'s Answer ¶¶ 15-17).

15 **B. The Development of the Transaction**

16 **(i) PowerReviews Presented a Unique Threat to the Long-Term Value of 17 Bazaarvoice's Business**

18 6. Bazaarvoice charges its customers a subscription-based fee for the services it
19 provides. GX89 (Hurt Dep. 86:2-7). These fees can total hundreds of thousands of dollars
20 annually. GX203 at -104-107. Bazaarvoice uses a value-based pricing model. GX89 (Hurt
21 Dep. 111:6-10); Trial Tr. 696:22-697:4 (Osborne).

22 7. Several years after it launched, PowerReviews changed its business model from
23 one based on free services supported by advertising to a model based on charging subscription-
24 based license fees, just like Bazaarvoice. GX89 (Hurt Dep. 85:5-14, 87:1-15) and Trial Tr.
25 232:5-234:15 (Hurt). PowerReviews experienced rapid growth after switching its business
26 model. *See, e.g.*, GX610* at 3, 5.

27 8. PowerReviews' rapid growth did not go unnoticed by Bazaarvoice. Bazaarvoice
28 recognized that increasing competition from PowerReviews threatened the long-term value of

1 Bazaarvoice's business. Paul Dodd, Bazaarvoice's Vice President for Retail Sales, prepared an
2 analysis for Bazaarvoice executives concluding that price competition from PowerReviews could
3 result in Bazaarvoice losing significant revenues. GX553 at -439; *see also* GX86 (Dodd Dep.
4 30:17-23, 33:22-25).

5 9. Dodd's analysis compared Bazaarvoice's estimated "value-based" price for its
6 PRR platform to the price for PowerReviews' PRR platform that the Bazaarvoice sales force
7 observed in the market. GX86 (Dodd Dep. 61:10-62:13, 63:2-15). For example, for large
8 enterprise customers (or "A3 customers") Bazaarvoice's targeted value-based price was
9 [REDACTED], compared to PowerReviews' price of [REDACTED] GX553 at -440; *see also* GX86 (Dodd
10 Dep. 46:19-47:5, 61:10-20, 63:2-8). Matching PowerReviews' price for large enterprise
11 customers would result in a discount of [REDACTED]% off Bazaarvoice's estimated value-based price.
12 GX553 at -440. For medium-sized customers ("A2 customers"), Bazaarvoice's targeted value-
13 based price was [REDACTED] compared to PowerReviews' price of [REDACTED] GX553 at -440; *see also*
14 GX86 (Dodd Dep. 46:19-47:5, 61:10-20, 63:2-4). Matching PowerReviews' price for medium-
15 sized customers would result in a [REDACTED]% discount off Bazaarvoice's value-based price. GX553 at
16 -440. Dodd's analysis showed that competitive pressure from PowerReviews could result in
17 Bazaarvoice losing millions of dollars. GX553 at -437, -439; *see also* GX718 at -092 (Godfrey
18 replies to email thread regarding Dodd's analysis titled "Suffocate PR plan" and notes "we are
19 also seeing substantial pressure from PR on the high end"); Trial Tr. 1114:17-1115:9 (Godfrey).

20 10. PowerReviews also threatened to breach Bazaarvoice's syndication barrier to
21 entry. Bazaarvoice's network allows PRR content to be shared, or syndicated, for example,
22 between brand manufacturers and their retailers. It is a formidable barrier to entry in the market
23 for PRR platforms. *See infra* Section VI.A.(i). As more manufacturers sign up for
24 Bazaarvoice's PRR platform, the Bazaarvoice network has become more valuable to retailers
25 because it allows them to gain access to a greater volume of PRR by publishing "syndicated"
26 PRR content received from manufacturers onto retailers' websites. Trial Tr. 121:24-122:10,
27 123:6-16 (Hurt). Similarly, as more retailers purchase Bazaarvoice's PRR platform, the
28 Bazaarvoice network becomes more valuable for manufacturers because it allows them to

1 syndicate content to a greater number of retail outlets. Trial Tr. 121:24-122:10, 123:6-16 (Hurt).
2 The feedback between the manufacturers and retailers creates a network effect that is a
3 significant competitive advantage for Bazaarvoice. Trial Tr. 357:16-358:5, 423:6-25 (Luedtke);
4 711:4-8 (Osborne); GX1220 at -614; *see also infra* Section VI.A.(i). In 2011, before the
5 transaction, PowerReviews had approximately [REDACTED] customers, including marquee retail
6 customers like Toys R Us and Staples. GX610* at 4, 10; GX1110 at -509; *see also* Trial Tr.
7 164:12-165:2 (Hurt). PowerReviews' large retail customer base posed a unique threat to
8 Bazaarvoice's syndication advantage because a PRR network becomes more valuable to
9 manufacturers if the network can provide access to a large number of retail customers. GX491
10 (Meredith Dep. 139:1-17, 117:19-25); Trial Tr. 1001:5-1002:3, 1013:15-1014:14, 1018:22-
11 1019:14 (Shapiro); GX983* at 76-77; GX1110 at -508; *see also infra* Section VI.A.(i).

12 11. In July 2011, PowerReviews announced the Open Social Commerce Network,
13 offering a free one year trial to syndication customers in an attempt to diminish Bazaarvoice's
14 network advantage. GX90 (Luedtke Dep. 213:14-214:1, 214:4-17, 216:16-218:14, 218:16-18,
15 219:3-8); GX412 at -494-96. PowerReviews' "open" syndication offering posed a significant
16 threat to Bazaarvoice because it would facilitate syndication between manufacturers that were
17 not PowerReviews customers (including Bazaarvoice customers) and retailers using the
18 PowerReviews platform. GX916; GX88 (Hossain Dep. 148:6-150:2, 150:5-17); Trial Tr.
19 482:18-483:1, 484:20-485:19 (Defossé); *see also infra* Sections IV.B & VI.A.(i).

20 12. Bazaarvoice's Vice President of Product Strategy, Erin Defossé, monitored these
21 developments and detailed to Bazaarvoice co-founder and then-CEO, Brett Hurt, and others on
22 Bazaarvoice's Executive Team Bazaarvoice's competitive response to PowerReviews offer of
23 free syndication. *See* GX89 (Hurt Dep. 281:18-283:11); GX412 at -494-96. Hurt testified that
24 PowerReviews' free and open syndication network was a "call to action." GX89 (Hurt Dep.
25 285:2-4, 285:6-10); *see also* Trial Tr. 154:2-155:7 (Hurt). When apprised of the PowerReviews
26 move and Bazaarvoice's response, Bazaarvoice's then-CFO and current CEO, Stephen Collins,
27 suggested to Hurt that Bazaarvoice could either compete against PowerReviews and "crush"
28 them, or "damnit lets just buy them now." GX412 at -495; *see infra* Section IV.B.

1 13. Finally, the fact that PowerReviews was a potential acquisition target for other
2 companies threatened the value of Bazaarvoice’s business. Bazaarvoice was motivated to
3 purchase PowerReviews because it would prevent PowerReviews from being acquired by
4 another company with deeper pockets who could compete even more vigorously with
5 Bazaarvoice. Hurt suggested acquiring PowerReviews, because:

6 PowerReviews, while considerably smaller than us today in terms of
7 revenue, still has a relatively significant reach and from this base they
8 could mount a significant challenge especially if acquired by a well
capitalized player in the social commerce or social media marketing
solutions space. Thus, leaving them out there is a significant risk.

9 GX1175 at -904; *see also* GX326 at -200; GX81 (Collins Dep. 328:3-329:23, 368:15-
10 369:11, 372:1-7); GX82 (Barton Dep. 185:23-188:20, 217:12-218:14) and Trial Tr.
11 650:12-651:4 (Barton); Trial Tr. 755:9-23 (Collins).

12 (ii) **Bazaarvoice Acquired PowerReviews to Eliminate Its Primary**
13 **Competitor**

14 14. Bazaarvoice had been pursuing PowerReviews as an acquisition target since early
15 2011 and the parties engaged in three separate rounds of negotiations leading up to the merger:
16 (1) during April/May 2011, (2) during November/December of 2011, and (3) during April/May
17 2012. Trial Tr. 174:8-176:11 (Hurt). On each occasion Bazaarvoice carefully examined the
18 business rationale for the acquisition, and in each instance the primary benefit considered was
19 the elimination of Bazaarvoice’s primary competitor in order to diminish price competition.

20 15. On April 21, 2011, Bazaarvoice co-founder and executive Brant Barton sent an
21 email to other Bazaarvoice executives regarding why the company should consider acquiring
22 PowerReviews, saying that “taking out one of your biggest competitors can be game-changing.”
23 GX514 at -810²; Trial Tr. 645:21-646:10 (Barton). He listed the “Pros” of the deal, including
24 “[e]limination of our primary competitor” and “relief from the price erosion that Sales
25 experiences in 30-40% of deals . . . of up to 15-30%.” GX514 at -810; *see also* GX82 (Barton
26 Dep. 202:10-203:16) and Trial Tr. 646:11-647:10 (Barton). He also recognized “the market will

27 _____
28 ² Another version of this document, GX513, omitting the latest strings of the email, was used at trial; the portions cited herein are substantively identical.

1 place a premium on us having such a dominant market position, which is a powerful competitive
2 moat.” GX514 at -810. He further anticipated that “we will be able to retain an extremely high
3 percentage of PR’s customers due to scarce/low quality alternatives.” GX514 at -810. He
4 reported that Hurt, Collins, Chief Revenue Officer Michael Osborne and Chief Strategy Officer
5 Mike Svatek were all “supportive.” GX220 at -112; GX219 at -258.

6 16. Michael Osborne, Bazaarvoice’s Chief Revenue Officer, shared this view of the
7 market. He wrote an email to Barton on April 24, 2011, stating, “[i]f we buy them
8 [PowerReviews] it changes everything for our model . . . Because 10-20% price erosion will
9 disappear . . . Because this is competitively HUGE . . .” GX221 at -528; Trial Tr. 718:7-25
10 (Osborne). Osborne testified that he believed that Bazaarvoice’s acquisition of PowerReviews
11 would remove price erosion. GX92 (Osborne Dep. 311:25-312:2, 312:6-7, 312:19-21, 312:24-
12 313:4, 313:8) and Trial Tr. 718:20-25 (Osborne). Although Osborne testified that he had not
13 conducted a quantitative analysis of the impact of PowerReviews on Bazaarvoice’s pricing, he
14 testified that, based on his experience, price erosion of 10-20% would disappear. Trial Tr.
15 725:15-21, 728:11-16 (Osborne).

16 17. On May 4, 2011, in an email to Bazaarvoice’s Board of Directors, Hurt informed
17 the Board of an upcoming meeting between Bazaarvoice executives Hurt, Barton, and Collins
18 and senior PowerReviews executives to explore a potential acquisition of PowerReviews.
19 GX518 at -474-475. He wrote, “[p]otentially taking out our only competitor, who is both
20 suppressing our price points (by as much as 15% according to Osborne) . . . could be a highly
21 strategic move . . .” GX518 at -475 and Trial Tr. 170:20-171:11 (Hurt). In his notes from the
22 meeting, Barton wrote that the transaction would enable the combined company to “avoid
23 margin erosion” caused by “tactical ‘knife-fighting’ over competitive deals.” GX519 at -751;
24 *see also* GX82 (Barton Dep. 239:14-240:20, 240:23-242:14).

25 18. PowerReviews also believed the merger would allow Bazaarvoice to raise prices.
26 In May 2011, PowerReviews’ then-CEO, Pehr Luedtke, wrote to Bazaarvoice’s Hurt that one of
27 the obvious benefits of a merger between Bazaarvoice and PowerReviews was “margin
28 expansion.” GX249 at -940. Luedtke testified that one of the ways margins can expand is

1 through the elimination of competitive discounting that occurred due to competition between
2 Bazaarvoice and PowerReviews. GX90 (Luedtke Dep. 284:8-285:2, 285:5-16, 285:19-25,
3 286:12-22, 287:1) and Trial Tr. 329:8-15 (Luedtke). Luedtke recognized that Bazaarvoice would
4 likely be willing to pay a premium to acquire PowerReviews because it would allow Bazaarvoice
5 to eliminate the “knife fighting” between the two companies competing for customers. GX90
6 (Luedtke Dep. 289:10-15, 289:18-24) and Trial Tr. 329:8-15 (Luedtke). He further noted that
7 “[e]liminating competitive risk and an acquisition of PowerReviews by a larger player is worth
8 another . . . \$30-50M.” GX253 at -188. At trial, Luedtke testified that he was referring to the
9 Gartner “Hype Cycle,” *see* GX1213 at 5, when he said that the transaction could “avoid margin
10 erosion (due to tactical knife fighting),” GX519 at -751 and Trial Tr. 390:19-391:8 (Luedtke).
11 He explained that this meant “we wanted to avoid this period, as Gartner explains it, of intense
12 competition and occasionally price compression” Trial Tr. 404:10-405:2 (Luedtke).

13 19. On May 20, 2011, Bazaarvoice executives represented to the company’s Board of
14 Directors that the acquisition of PowerReviews would “[e]liminate [Bazaarvoice’s] primary
15 competitor” and “reduc[e] comparative pricing pressure.” GX521 at -088; Trial Tr. 653:19-
16 654:2 (Barton).

17 20. Bazaarvoice continued to explore its interest in PowerReviews in October 2011,
18 when Collins wrote: “[h]ow much longer does it take us to win deals because [PowerReviews is]
19 out there and how much does the price competition impair our long-term value as a company?”
20 GX522 at -035. Collins expected the combined company to receive a higher valuation as a
21 public company because it would have “[l]iterally, no other competitors,” and the combined
22 company’s “share of the IR 500 [an annual ranking of the 500 largest Internet retailers in North
23 America] would move close to 50% in absolute terms and higher in retail sales coverage.”
24 GX522 at -035 and Trial Tr. 754:10-18 (Collins). He anticipated “[p]ricing accretion due to
25 combination.” GX522 at -035.

26 21. In November 2011, Hurt suggested a “second round” of discussions with
27 PowerReviews, because:

28 Combined, we would be approaching the 50% share point of the IR500. There is
no other US competitor with more than 10 clients and 104 [of the IR 500] do not

1 have any solution or are using an in-house solution. The cost in time and money
2 to displace PowerReviews from these clients is surely a very big number. . . .
Here is a list of other potential benefits from a combination:

- 3 1. No meaningful direct competitor. Shortened sales cycles, less pricing dilution.
- 4 2. Dramatic increase in reach and overall market share making future competition
extremely difficult and will increase switching costs. . . .
- 5 7. Help us to focus 100% of our strategy without the whipsaw effect of reacting to
a competitor that will only be focused on disrupting our lead position

6 GX1175 at -904 and Trial Tr. 175:22-176:11 (Hurt). Hurt claims that this message was actually
7 written by Collins, who has since been promoted to CEO. Trial Tr. 177:9-13, 201:6-8 (Hurt).
8 However, Hurt agreed with many of these points. Trial Tr. 192:23-193:8, 199:12-200:1, 200:22-
9 201:1 (Hurt). Further, he sent the email to the Board under his own name, not Mr. Collins', after
10 making some changes to the email. Trial Tr. 177:9-13, 178:3-7, 217:8-9 (Hurt).

11 22. On December 9, 2011, Bazaarvoice held a six hour meeting with PowerReviews.
12 Afterwards, Bazaarvoice's Collins wrote a memorandum in which he summarized the benefits of
13 the deal, including the ability to "eliminat[e] feature driven one-upmanship and tactical
14 competition on retail." GX324 at -921. He also noted the acquisition would "[c]reate[]
15 significant competitive barriers to entry and protect[] [Bazaarvoice's] flank." GX324 at -922.
16 As a result of the transaction, he believed the combined company would have "[c]lear market
17 leadership with almost 50% of the IR500 and influence over \$80BB in US online retail sales or
18 nearly half of all U.S. online retail sales." GX324 at -922. Bazaarvoice Director Chris Pacitti
19 passed along these notes to his partners at Bazaarvoice-investor Austin Ventures, adding that
20 "[PowerReviews is] the only other credible player in the space. Buying them removes any cheap
21 entry point for a future competitor It improves our pricing power (they are the low cost
22 alternative) and gives us complete ownership of the category and data asset." GX1181 at -158.

23 23. During this round of negotiations, Bazaarvoice placed merger discussions on hold
24 in order to conduct its initial public offering ("IPO"). GX954; GX328* at -268; Trial Tr.
25 1393:12-25 (Meredith). Bazaarvoice filed its final amendment to its S-1 registration statement
26 with the SEC on February 9, 2012, one day before it began a series of IPO roadshow
27 presentations for potential investors. GX964. The S-1 only identified two firms by name in its
28

1 discussion of “direct and indirect” competitors: PowerReviews and Reviewworld (the parent
2 company of Reevo, Bazaarvoice’s European competitor). GX964 at 11.

3 24. PowerReviews executives recognized that Bazaarvoice would likely have a higher
4 public market valuation if it acquired PowerReviews prior to the IPO, as the merger would
5 eliminate Bazaarvoice’s closest competitor. GX90 (Luedtke Dep. 292:22-293:17, 293:20-294:1)
6 and Trial Tr. 329:22-25 (Luedtke). Bazaarvoice’s Board, however, concluded the acquisition
7 could wait. At the time, Hurt wrote, “I honestly believe that PowerReviews is trying very hard to
8 disrupt us and provoke us to buy them. And it may make sense to buy PowerReviews after the
9 IPO.” GX417 at -035.

10 25. In preparing for the IPO roadshow, Bazaarvoice prepared Q&As which were
11 drafted by senior executives in preparation for presentations to analysts to answer questions
12 about the company. GX89 (Hurt Dep. 418:3-419:25) and Trial Tr. 126:24-127:3 (Hurt). In the
13 Q&As, Bazaarvoice was prepared to state that:

- 14 • It “currently represent[s] 145 of the top 500 Internet Retailers, which is close to 30%
15 market share in US retail online”;
- 16 • It “believe[s] the barriers to entry are very high in our current market”; and
- 17 • The “most significant barriers to entry” are “[Bazaarvoice’s] network, connecting
18 retailers and brands It would be very difficult, and one could argue almost
impossible, for a competitor to replicate our network of both retailers and brands
given the lead we have and the value we are providing.”

19 GX425 at -919, -927, -929, -931. Hurt testified that he did not ever “say anything to investors
20 that [he] thought was not truthful.” Trial Tr. 221:14-16 (Hurt).

21 26. Bazaarvoice issued its IPO on February 23, 2012, raising \$114 million. GX805 at
22 -097-98.

23 27. After the IPO, Bazaarvoice entered its final round of negotiations to acquire
24 PowerReviews in April 2012. PowerReviews executives prepared a presentation in which they
25 described the benefits of a merger with Bazaarvoice. Those benefits included:

- 26 • “Monopoly in the market”;
- 27 • “More predictable revenue growth (less competition)”;
- 28 • “Better monetization w/o pricing pressure”;

- 1 • “Not having us in the hands of a competitor, especially one with deep pockets and existing channels”;
- 2 • “Removing competitor clears up [Bazaarvoice’s] story to customers, analysts, employees.”

3
4 GX610* at 27-28.

5 28. By mid-May 2012, Bazaarvoice executives had prepared a due diligence
6 memorandum recommending that the company finally acquire PowerReviews. The
7 memorandum noted in furtherance of Bazaarvoice’s goal to “becom[e] the de facto solution for
8 retailers to capture and use digital word-of-mouth across online, mobile, and in-store channels,”
9 the transaction:

10 accelerates this strategy in two ways. First, [PowerReviews’] customer base
11 includes 86 IR500 retailers who have resisted becoming Bazaarvoice customers
12 despite significant attempts to displace [PowerReviews] from these accounts. It is
13 unlikely that we can attract these retailers to our platform in the foreseeable future
14 nor without significant cost. Estimated costs to acquire the [PowerReviews]
15 customer base is \$32-50m with a substantial percentage of that being attributed to
16 displacing them in large accounts . . . Further, by addressing the mid-market,
Bazaarvoice blocks market entry by competitors and therefore we “cover our
flank” to ensure our retail business is protected from direct competition and
premature price erosion . . . The addition of major retail hubs such as Staples and
Toys R Us strengthens our value proposition to brands and further increases the
switching costs, and therefore deepens our protective moat, for brands and
retailers alike.

17 GX925 at -941, -943;³ *see also* GX93 (Svatek Dep. 252:16-253:9); GX87 (Godfrey CID Dep.
18 22:3-24:24, 25:2-27:7, 28:7-29:3, 29:23-31:6).

19 29. Collins sent an email to various employees asking them to discuss with
20 PowerReviews’ Luedtke “ways we can very very quickly market Connections (including
21 BrandVoice) [Bazaarvoice’s syndication feature] to PowerReviews clients” GX5. Collins
22 noted that “[m]any of [PowerReviews’] clients may have been hearing a ‘syndicate for free’
23 message, so we’ll have to navigate that,” suggesting Bazaarvoice could charge PowerReviews
24 customers for the syndication feature that they previously obtained for free prior to the merger.
25 GX5.

26
27
28 ³ Another copy of this document, GX1148, was also used during the trial.

1 30. By late May of 2012, Bazaarvoice discussed with its Board a presentation
2 regarding the acquisition of PowerReviews. The presentation emphasized the “[e]nhanced value
3 of network economics” and that “[a] combined entity would command 49% of the Internet
4 Retailer 500 . . . [t]he other remaining IR 500 generally have an internal solution or no solution
5 at all A combined entity would influence 52% of the U.S. online retail sales” GX332
6 at -287, -289. The presentation also identified as likely benefits arising from the acquisition
7 “Foregone Customer Acquisition Costs” including the “cost premium to achieve competitive
8 steals which if, on average, was 25% to 50% equates to an aggregate cost of \$40 to \$50 million.”
9 GX332 at -292.

10 31. When explaining the PowerReviews acquisition to Bazaarvoice employees,
11 Bazaarvoice executives noted that it would take years and significant resources to continue
12 competing with PowerReviews for enterprise customers. GX838 at -392.

13 32. Bazaarvoice acquired PowerReviews on June 12, 2012. The purchase price for
14 the transaction, including cash and non-cash consideration, was approximately \$168.2 million.
15 GX318 (Def.’s Answer ¶ 10). Hurt testified that it was a “very rich deal” and a “very high
16 amount to pay.” GX89 (Hurt Dep. 449:8-25) and Trial Tr. 250:20-251:2 (Hurt). Bazaarvoice
17 also was concerned about the price and the “message it will send to the Street about BV
18 overpaying, desperation, fearing PR who is 10x smaller.” GX1260 at -826; Trial Tr. 1822:19-
19 1823:10 (Comée).

20 33. Barton testified that “by acquiring PowerReviews we would be acquiring the
21 company that we most often competed with in the U.S. for ratings and reviews.” GX82 (Barton
22 Dep. 202:10-203:16) and Trial Tr. 633:10-15 (Barton). As a result of the merger, Bazaarvoice
23 was able to acquire every customer that it had lost to PowerReviews. GX222 at -679.

24 **C. The Defendant’s Executive and Former Executive Witnesses Have**
25 **Significant Personal Interests in the Outcome of this Litigation**

26 34. Stephen Collins, Bazaarvoice’s CEO and member of the Board of Directors,
27 owns 65-75,000 shares of Bazaarvoice stock. GX81 (Collins Dep. 37:1-4). He has also been
28 sued in his personal capacity in a private lawsuit in Texas state court alleging that he knew that

1 the acquisition would lessen competition and create a monopoly, and failed to disclose the
2 anticompetitive nature of the acquisition (the “Texas securities fraud action.”). Trial Tr. 749:20-
3 751:4 (Collins); GX1202.

4 35. Brett Hurt, Bazaarvoice’s co-founder and former CEO and current Vice-Chairman
5 of the Board of Directors, owns 6,000,000 shares of Bazaarvoice stock worth, at the time of his
6 testimony, in excess of \$59,000,000. Trial Tr. 83:25-84:8 (Hurt). Mr. Hurt has also been sued in
7 his personal capacity in the Texas securities fraud action. Trial Tr. 80:2-82:17 (Hurt); GX1202.

8 36. Thomas Meredith, Chairman of Bazaarvoice’s Board, owns Bazaarvoice stock
9 and has also been sued in his personal capacity in the Texas securities fraud action. Trial Tr.
10 1402:4-16 (Meredith); GX1202.

11 37. Brant Barton, Bazaarvoice’s co-founder, owns Bazaarvoice stock worth
12 approximately \$500,000 as well as 100,000 Bazaarvoice stock options. Trial Tr. 626:17-21
13 (Barton).

14 38. Michael Osborne, Bazaarvoice’s former Chief Revenue Officer, owns
15 approximately 511,000 shares of Bazaarvoice stock. His new company, Handshakez, received
16 \$3 million in financing from Austin Ventures. As a result of that investment, Austin Ventures
17 holds two of five seats on the Handshakez Board of Directors. Austin Ventures is one of
18 Bazaarvoice’s largest shareholders. Trial Tr. 691:16-693:4 (Osborne).

19 39. Kenneth Comée, PowerReviews’ former CEO, owns approximately 100,000
20 shares of Bazaarvoice stock. Trial Tr. 1811:25-1812:2 (Comée).

21 **II. THE RELEVANT PRODUCT MARKET IS PRR PLATFORMS**

22 **A. The Nature of the Products**

23 **(i) Overview of PRR**

24 40. PRR platforms are generally sold to retailers or manufacturers looking to display
25 ratings and reviews on their websites. PRR platforms enable manufacturers and retailers to
26 collect, organize, and display consumer-generated PRR online. These ratings and reviews are
27 displayed on a retailer’s or manufacturer’s website, allowing other consumers to read feedback
28 from previous buyers before making a purchasing decision. GX986* at 3-6.

1 41. The software component of a PRR platform provides the user interface and
2 review form for the collection and display of PRR. Most review forms prompt consumers to rate
3 a product on a five-star scale and offer consumers an option to write an open-ended comment
4 about their experience with the product. Other forms also allow consumers to rate products
5 along several dimensions (*e.g.*, product appearance, ease of assembly, value). *See generally*
6 Trial Tr. 91:3-94:25 (Hurt); GX1113*; GX359 at -699-701; GX815; GX77 (Heverley/BFG Dep.
7 70:4-73:21). The content collected using PRR platforms combines the structured data (product
8 ratings/attributes) and unstructured data (free-form comments). GX82 (Barton Dep. 62:9-63:1).

9 42. PRR platforms publish approved submissions in a display interface on a
10 customer's website. GX1134 at -058. The display interface may also allow consumers to filter
11 reviews according to their interests. GX1134 at -059.

12 43. PRR platforms vary in their level of sophistication, features offered, and other
13 available capabilities that may be bundled with the platform or sold separately. In addition to the
14 basic ratings and reviews components of PRR platforms, sophisticated PRR platforms also allow
15 manufacturers to share, or "syndicate," ratings and reviews with their retail partners. GX537 at
16 -625. Through the syndication network, retailers can display PRR that were originally collected
17 by a product's manufacturer. GX85 (Defossé Dep. 152:21-153:7); GX81 (Collins Dep. 130:2-
18 14); GX166 (OneCall Dep. 25:20-26:13). Syndication is an important selling feature for any
19 PRR platform provider. GX82 (Barton Dep. 44:14-45:20); [REDACTED]
20 [REDACTED]; GX146 (Home Depot Dep. 62:4-9); *see also* GX537 at -625.

21 44. Manufacturers and retailers both benefit from the ability to display more reviews
22 at the point of sale. Trial Tr. 94:20-95:14 (Hurt); GX181 (Sears Dep. 61:5-62:12) and Trial Tr.
23 1692:14-22 (Massuda/Sears); GX932 at -779, -781, -784; [REDACTED]
24 [REDACTED] GX93 (Svatek Dep. 141:2-142:14).
25 Syndication helps retailers obtain more content than they could independently. Trial Tr. 117:14-
26 21 (Hurt); GX166 (OneCall Dep. 28:15-24; 29:15-22); GX181 (Sears Dep. 61:5-62:12) and Trial
27 Tr. 1692:14-1694:7 (Massuda/Sears); GX932 at -779, -783; GX146 (Home Depot Dep. 25:15-
28 26:3). The increase in PRR content helps retailers sell more products and further reduce returns.

1 GX92 (Osborne Dep.141:15-142:2) and Trial Tr. 703:10-21 (Osborne); GX932 at -779, -781,
2 -783; GX146 (Home Depot Dep. 25:15-26:3); GX78 (Cunningham/BJ's Wholesale Dep. 45:20-
3 46:1, 46:4, 46:6-14, 46:17-18, 46:20-21, 46:24); GX79 (Caine Dep. 28:6-29:22, 30:5-31:20,
4 41:21-42:23). Because PRR increases conversion rates, manufacturers also see a benefit in the
5 form of increased sales of their products through retailers. GX92 (Osborne Dep. 138:6-139:16,
6 140:2-16) and Trial Tr. 703:18-21 (Osborne); GX932 at -782.

7 45. Sophisticated PRR platform providers also offer moderation services. GX1020;
8 GX484 at -015; GX485 at -130, -132. Moderation refers to the review process that occurs after a
9 consumer submits a review, but before that review is posted on the manufacturer's or retailer's
10 website. GX93 (Svatek Dep. 109:1-110:3). After a consumer submits a review, the PRR
11 platform provider applies software algorithms to scan the submission for inappropriate or
12 fraudulent content. Trial Tr. 103:21-105:1 (Hurt); GX485 at -130; GX62* (Pluck Dep. 37:8-16,
13 39:1-13, 40:5-41:7); GX131 (Dillard's Dep. 28:24-30:19). After the automated scan, a human
14 moderator examines each submission to ensure it complies with a particular customer's
15 moderation standards. Trial Tr. 105:18-106:17 (Hurt); GX484 at -015; GX485 at -130.

16 46. Customers of PRR platforms find moderation necessary to ensure that the PRR is
17 credible, not offensive, and otherwise complies with the company's business rules. Trial Tr.
18 101:23-102:17 (Hurt); GX77 (Heverley/BFG Dep. 32:8-33:12); GX131 (Dillard's Dep. 28:24-
19 30:19).

20 47. Some PRR platforms also include analytics software that manufacturers and
21 retailers use to analyze information collected from PRR. GX82 (Barton Dep. 56:19-58:4); GX93
22 (Svatek Dep. 105:3-15); GX62* (Pluck Dep. 42:9-19); GX932 at -793. With these tools,
23 manufacturers and retailers can track and analyze real-time consumer sentiment. GX484 at -016;
24 GX485 at -140. Manufacturers and retailers can use this information to identify product design
25 defects, make product design decisions, or identify consumers for targeted marketing efforts.
26 GX82 (Barton Dep. 58:5-17); GX662 at -271; GX485 at -140; *see generally* GX782.

1 (ii) **Bazaarvoice’s and PowerReviews’ PRR Platforms**

2 48. Before the transaction, both Bazaarvoice and PowerReviews offered sophisticated
3 PRR platforms to large enterprise manufacturers and retailers. The PowerReviews Enterprise
4 PRR platform was a full-featured PRR platform competing directly against Bazaarvoice. GX641
5 and Trial Tr. 347:17-24 (Luedtke). The target market for PowerReviews’ Enterprise PRR
6 platform was companies with over \$5 million in annual online sales. GX88 (Hossain Dep.
7 24:18-25:2, 25:5-18); *see also* GX454 at -335. Bazaarvoice’s Conversations product is a full
8 featured PRR platform similar to the PowerReviews Enterprise PRR platform. GX965 at 5, 7-8.
9 In describing the complexity of its product, PowerReviews explained that reviews are aptly
10 described as “a system, not a feature.” GX272 at -218. PowerReviews noted that a comparable
11 PRR service would require (among other features) a front end display compatible with thousands
12 of websites, detailed analytic reporting capability, and integration with third-party applications.
13 GX272 at -218.

14 49. Both companies’ PRR platforms offer syndication of PRR content to retailers and
15 manufacturers. BrandShare, the PowerReviews syndication service, allowed PowerReviews
16 retail customers to receive syndicated reviews from their manufacturing partners. GX90
17 (Luedtke Dep. 57:1-12) and Trial Tr. 355:13-25 (Luedtke). Bazaarvoice also offers the ability to
18 syndicate reviews between retailers and manufacturers. Trial Tr. 787:13-788:10 (Collins);
19 GX965 at 7; GX125 (Clorox Dep. 148:22-23, 148:25-149:2, 149:5-10). Bazaarvoice’s
20 syndication volumes have been increasing “30-50% year over year.” Trial Tr. 889:25-890:15
21 (Collins).

22 50. Both Bazaarvoice and PowerReviews also offer moderation services to their PRR
23 platform customers. Trial Tr. 101:20-102:20 (Hurt); GX90 (Luedtke Dep. 81:21-82:14); GX484
24 at -015; GX965 at 8.

25 51. Both the PowerReviews and Bazaarvoice PRR platforms include analytics
26 software. GX90 (Luedtke Dep. 39:7-16); GX484 at -016; GX93 (Svatek Dep. 105:3-19); GX965
27 at 8.

1 52. In addition to its Enterprise PRR platform, PowerReviews also offered a turn-key
2 PRR solution called PowerReviews Express. PowerReviews Express lacks the features and
3 functionality available in the enterprise PRR platforms offered by Bazaarvoice and
4 PowerReviews. PowerReviews Express was marketed as a low cost, self-service solution for
5 small-and-medium-sized Internet retailers who have different needs than larger companies.
6 GX90 (Luedtke Dep. 41:8-21, 42:19-44:10, 44:12-45:1, 197:21-24, 198:6-19) and Trial Tr.
7 346:24-347:16 (Luedtke); GX87 (Godfrey CID Dep. 175:9-22); GX82 (Barton Dep. 212:15-
8 213:18); GX88 (Hossain Dep. 69:20-70:15). Customers purchased PowerReviews Express
9 directly from the PowerReviews website or their e-commerce platform provider's app store.
10 GX90 (Luedtke Dep. 48:24-49:7, 49:12-19). Customers commonly purchased the
11 PowerReviews Express platform using a credit card, and the monthly license fee for
12 PowerReviews Express was never more than several hundred dollars per month. *See generally*
13 GX232 at -767; GX90 (Luedtke Dep. 44:12-45:1).

14 53. Bazaarvoice stated that PowerReviews Express faced a different set of
15 competitors than more full-featured enterprise solutions offered by PowerReviews and
16 Bazaarvoice, and PowerReviews Express did not compete with either the PowerReviews
17 Enterprise platform or the Bazaarvoice platform. GX90 (Luedtke Dep. 53:12-23, 199:20-23,
18 200:1-7, 112:22-25, 113:6-10, 113:24-114:1, 114:3-7, 114:10-13, 115:4-116:1, 116:22-117:9);
19 GX235; GX16; GX85 (Defossé Dep. 43:13-43:21, 48:13-48:25). PowerReviews Express'
20 competitors offered similar self-service solutions with low-cost, limited functionality. *See*
21 GX235 at -501-502.

22 **(iii) Both Bazaarvoice and PowerReviews Price Each Customer**
23 **Independently**

24 54. Enterprise-level PRR platforms are sold in a direct sales process that requires a
25 significant amount of time and negotiation. GX87 (Godfrey CID Dep. 146:8-17); GX92
26 (Osborne Dep. 103:12-22) and Trial Tr. 705:8-22 (Osborne); *see* GX405*.

27 55. Prices are individually negotiated, and each customer's price is independent of the
28 prices other customers pay. GX90 (Luedtke Dep. 91:24-92:8, 129:10-13, 129:23-130:4) and

1 Trial Tr. 348:23-349:2, 353:22-25, 355:2-5 (Luedtke); GX840 at -944-945; GX92 (Osborne Dep.
2 105:23-106:1, 111:8-10, 111:12, 115:11-12) and Trial Tr. 704:4-7 (Osborne); GX81 (Collins
3 Dep. 69:11-70:5, 76:17-77:16) and Trial Tr. 800:13-24 (Collins); *see also* GX305; GX405*.
4 Accordingly, customers commonly receive different prices, even when purchasing similar
5 products and services. GX92 (Osborne Dep. 146:19-147:5, 162:12-20) and Trial Tr. 704:4-7
6 (Osborne); GX361*; GX81 (Collins Dep. 77:24-78:4) and Trial Tr. 800:25-801:4 (Collins).

7 56. PRR platform providers negotiate prices in light of each customer's demand
8 characteristics, taking into account competitive alternatives. Bazaarvoice calls this method of
9 setting prices "value-based" pricing, meaning "[t]he more value the [customer] perceives, the
10 higher [Bazaarvoice's] price point." GX87 (Godfrey Dep. 103:10-16); *see also* GX203 at -100;
11 GX86 (Dodd Dep. 10:18-12:5); GX185 (Smithsonian Dep. 28:9-20, 29:10-14, 35:19-38:5,
12 38:16-39:15); GX81 (Collins Dep. 108:4-109:9, 113:24-115:22). To develop a pricing
13 proposal, Bazaarvoice collects detailed information from a customer, including total online sales,
14 number of online transactions, and expected sales growth. GX203 at -104; *see also* GX92
15 (Osborne Dep. 162:21-163:14, 163:17-18, 164:13-16, 164:19-21) and Trial Tr. 699:25-704:7
16 (Osborne).

17 57. During the sales process, it is typical for a salesperson to ask the prospective
18 customer to divulge detailed information related to its business, which may include information
19 related to (1) annual volume of online sales; (2) product return rates; (3) historic conversion
20 rates; (4) e-commerce vendor relationships; or (5) project budgets. GX92 (Osborne Dep.
21 118:12-119:8) and Trial Tr. 699:25-704:7 (Osborne); GX361*; GX15* at -275; GX354* at -235;
22 GX233 at -594-595. Bazaarvoice sales representatives will also seek information from
23 customers to determine the customer's best alternative to purchasing a PRR platform from
24 Bazaarvoice. GX92 (Osborne Dep. 288:1-289:8) and Trial Tr. 706:8-16 (Osborne).

25 58. Both Bazaarvoice and PowerReviews also took into account a customer's average
26 order volume, average product price, and the customer's PRR budget, when developing pricing
27 proposals. GX90 (Luedtke Dep. 86:2-22, 86:24-87:1, 87:4-5, 87:20-88:1, 89:4-22, 91:14-19,
28

1 98:13-99:5) and Trial Tr. 352:12-353:5 (Luedtke); GX87 (Godfrey CID Dep. 135:14-24, 163:20-
2 164:7); GX779* at -400-401, -403, -405; GX354* at -235; GX900.

3 59. After acquiring as much information as possible about the prospect, the PRR
4 platform provider offers a price that aligns closely with its perception of the prospect's
5 willingness to pay for its product. *See, e.g.*, GX836 at -113-114; GX204* at -683-684, 2, 4. This
6 price is derived from a Return on Investment ("ROI") calculator. GX92 (Osborne Dep. 121:22-
7 122:4, 122:7-126:7, 126:13-128:11, 128:14-131:1, 132:21-134:14, 134:17-22) and Trial Tr.
8 699:25-700:10 (Osborne); GX933; GX81 (Collins Dep. 76:17-77:11); GX89 (Hurt Dep. 115:25-
9 116:20).

10 60. Both Bazaarvoice and PowerReviews used an ROI calculator to sell their PRR
11 platforms, pricing their products based upon the ROI it projected the customer to achieve using
12 PRR. GX90 (Luedtke Dep. 120:18-121:10, 127:22-128:20) and Trial Tr. 349:9-23, 353:6-14
13 (Luedtke); GX87 (Godfrey CID Dep. 169:23-170:8); GX203 at -104; GX779* at -400-401, -403,
14 -405. Since Bazaarvoice relies on this value-based pricing method, Bazaarvoice's costs are not
15 "a meaningful consideration in how [Bazaarvoice] price[s]." GX81 (Collins Dep. 119:5-21).

16 61. Once a value-based price is calculated, "[o]ther factors such as market
17 competition and budgetary constraints may reduce [Bazaarvoice's] pricing range." GX203 at
18 -105. The Bazaarvoice sales force was trained to ask whether a prospective customer is
19 considering other competitive alternatives. The Bazaarvoice sales force frequently learned what
20 prices PowerReviews was offering to customers. *See, e.g.*, GX92 (Osborne Dep. 173:25-174:8)
21 and Trial Tr. 706:12-707:20 (Osborne); GX1119 (Godfrey Dep. 19:11-14); GX193 (Walgreens
22 Dep. 54:2-5); Trial Tr. 299:2-12 (Levin/Clorox). In most cases, the presence of competition is
23 relatively transparent. GX494 (Godfrey 30(b)(6) Dep. 69:5-9, 69:11-12).

24 62. Prospects routinely reveal the identity of competitors during negotiations and may
25 even reveal the terms of competitive offers to improve their bargaining positions. *See, e.g.*,
26 GX92 (Osborne Dep. 172:11-21, 172:24-173:6); GX77 (Heverley/BFG Dep. 64:12-16); *see also*
27 Trial Tr. 456:8-457:19 (Cunningham/BJ's Wholesale). Accordingly, Bazaarvoice and
28 PowerReviews adjusted their pricing to account for other competitive offers, depending on the

1 nature of the threat posed by the competition. GX92 (Osborne Dep. 173:25-174:8, 225:21-24,
 2 226:3, 252:22-253:4, 253:8-9) and Trial Tr. 709:1-11 (Osborne); GX58 at -691-693; GX193
 3 (Walgreens Dep. 52:1-15, 52:25-53:7, 53:21-54:5); GX77 (Heverley/BFG Dep. 65:18-20,
 4 65:22-67:4); GX480 at -293, -295; GX279* at -122. *See generally* GX200 at -156; GX56 at
 5 -815; GX900. For example, there were circumstances where Bazaarvoice offered to match the
 6 PowerReviews price, offered a lower price, or offered products for free. Trial Tr. 709:1-710:14
 7 (Osborne). When aware of a competitive threat, one Bazaarvoice sales person said that [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] GX405* at -003.

11 When there was not a [REDACTED] however, the sales representative [REDACTED]
 12 [REDACTED] GX405* at -002.

13 63. Hurt requested the following example of value-based pricing to share with
 14 potential investors: for [REDACTED] “the value delivered was in the [REDACTED]
 15 [REDACTED] of lift for [year] 1. This drove an initial pricing of [REDACTED], which was discounted down to
 16 [REDACTED] to win against PowerReviews, at [REDACTED].” GX203 at -105; *see also* GX405* at -002-3.

17 64. A PRR platform vendor seeking to unseat an incumbent PRR platform provider at
 18 a prospective customer can identify the incumbent by viewing the source code of the company’s
 19 website, even if the customer did not reveal it during negotiations. GX90 (Luedtke Dep. 259:20-
 20 260:4); GX130 (Dick’s Sporting Goods Dep. 45:1-7, 45:10-12).

21 65. Bazaarvoice and PowerReviews have also been able to use information obtained
 22 during the sales process to determine whether an in-house PRR solution is an economically
 23 viable alternative for a particular customer. GX781 at -631-645; GX627 at -997; *see also*,
 24 GX365*; GX279* at -120; GX807 at -791.

25 **(iv) PRR has Become a Must-Have Feature for Retailers and**
 26 **Manufacturers**

27 66. PRR is considered “critical” to the business of many online retailers and it is
 28 unlikely that most online retailers would ever eliminate PRR entirely, as consumers now expect

1 ratings and reviews to be a part of their online shopping experience. GX302 at 2; GX81 (Collins
2 Dep. 339:3-8) and Trial Tr. 752:17-20 (Collins); Trial Tr. 1195:7-16 (Friedland/Build.com);
3 GX193 (Walgreens Dep. 43:4-6, 43:12-13); GX111 (Bon-Ton Dep. 44:16-45:1); GX141
4 (Golfsmith Dep. 36:12-21, 58:10-19) and Trial Tr. 1218:16-22 (Maki/Golfsmith); GX160 (Lord
5 & Taylor Dep. 32:18-25, 33:5-7, 33:10-14); GX108* (Black & Decker Dep. 88:22-89:15);
6 GX168 (Onlineshoes.com Dep. 31:21-24, 32:3-9); GX144 (Hayneedle Dep. 47:5-25); GX105
7 (Belk Dep. 30:8-18); GX196 (World Kitchen Dep. 76:3-22) and Trial Tr. 1303:11-16
8 (Bausch/World Kitchen); GX171 (Pacific Sunwear Dep. 48:19-49:7); GX79 (Caine Dep. 25:8-
9 17); Trial Tr. 568:13-20 (Waltzinger/BBBeyond); Trial Tr. 1353:19-1354:11 (Hughes/Astral
10 Brands).

11 67. As PowerReviews' former CEO, Ken Comée, explained, "[PRR] was table stakes.
12 You had to have it." GX84 (Comée Dep. 41:5-11, 41:14-42:8). An online retailer without PRR
13 is at a competitive disadvantage. GX131 (Dillard's Dep. 35:5-36:4); GX577* at -038; GX76
14 (Waltzinger/BBBeyond Dep. 38:11-13, 38:16-22) and Trial Tr. 568:13-20
15 (Waltzinger/BBBeyond).

16 68. PRR is a valuable asset for retailers and manufacturers to feature on their websites
17 because it tends to increase sales, decrease product returns, and provide valuable information
18 regarding consumer sentiment. *See* GX537 at -621, -626; GX486 at -031; GX181 (Sears Dep.
19 59:3, 59:5-8); GX75 (Moog Dep. 63:6-8, 63:11, 63:13-64:7); GX92 (Osborne Dep. 121:7-13);
20 GX93 (Svatek Dep. 73:7-75:6); GX844 at -381; GX770 at -231; GX574* at -638; GX565 at
21 -206-209; GX577* at -038, -045-49, -056; GX73* (Reevoo Dep. 9:15-17, 9:19-10:12); GX81
22 (Collins Dep. 100:12-101:10); GX170 (Overstock.com Dep. 61:25-62:1, 62:4-22); GX89 (Hurt
23 Dep. 257:22-258:5) and Trial Tr. 97:10-20 (Hurt); Trial Tr. 1353:19-1354:11 (Hughes/Astral
24 Brands).

25 69. Both Bazaarvoice and PowerReviews believed and marketed that their respective
26 PRR platforms increase conversion rates, which represent the rate at which website visits
27 translate to sales to consumers. GX90 (Luedtke Dep. 125:3-6, 125:9-13) and Trial Tr. 349:24-
28 350:10 (Luedtke); GX92 (Osborne Dep. 119:14-120:4, 120:24-121:4); GX482 at -108, -110;

1 GX485 at -122, -134. Conversion uplift attributed to PRR can be anywhere from 50-150%.

2 GX87 (Godfrey CID Dep. 80:11-16, 81:12-13); GX846 at -082; *see also* [REDACTED]

3 [REDACTED].
4 70. Retailers and manufacturers can conduct tests to confirm the extent to which a
5 PRR platform increases the conversion rates on their website. GX168 (Onlineshoes.com Dep.
6 29:18-31:3). Online retailers confirm that PRR does in fact increase conversion on their
7 websites. GX193 (Walgreens Dep. 40:14-41:5); GX179 (REI Dep. 48:12-49:8); GX109
8 (Blinds.com Dep. 38:17-39:3); GX195 (Wine.com 29:15-30:6).

9 71. PRR provides valuable data about consumer preferences and behavior, which
10 retailers and manufacturers can use to make inventory purchasing or product design decisions.
11 GX193 (Walgreens Dep. 42:15-17, 42:22-43:3); GX77 (Heverley/BFG Dep. 37:18-38:8, 38:10-
12 12); GX146 (Home Depot Dep. 54:4-15); GX159 (LL Bean Dep. 27:18-30:5, 30:20-33:7); GX89
13 (Hurt Dep. 259:1-9).

14 72. PRR can help improve a website's ranking on Internet search engine results,
15 which increases traffic to the website. GX82 (Barton Dep. 21:25-22:21, 22:24-24:1); GX193
16 (Walgreens Dep. 41:6-8, 41:10-12, 41:14-23); GX485 at -135; GX537 at -615, -618, -659; Trial
17 Tr. 97:21-25; 113:13-114:25 (Hurt); 1218:19-22 (Maki/Golfsmith). Internet search engine
18 algorithms generally assign higher rankings to websites with fresh and unique content. PRR is
19 often frequently updated, and this content is highly tailored to the retailer's or manufacturer's
20 product catalog. Accordingly, when PRR is indexed by a search engine, the underlying product
21 pages will likely receive a higher ranking on the search engine's results page. GX484 at -017;
22 GX485 at -124-125. Syndication further helps improve a website's visibility because "authentic
23 content is prioritized" by search engines. Trial Tr. 826:13-827:1 (Collins); *see also* GX1248.

24 73. Search engine optimization ("SEO") functionality provides the ability for PRR to
25 be indexed by a search engine. GX90 (Luedtke Dep. 134:12-18, 135:11-16, 136:20-23, 136:25-
26 137:3, 158:11-15); GX484 at -017; GX485 at -135; Trial Tr. 368:10-13 (Luedtke). PRR has a
27 "very positive" effect on SEO. GX141 (Golfsmith Dep. 36:1-11) and Trial Tr. 1218:19-22
28 (Maki/Golfsmith); *see also* GX195 (Wine.com 30:7-30:14); GX125 (Clorox Dep. 111:23-

1 112:18). Bazaarvoice's and PowerReviews' respective enterprise platforms offer SEO benefits
2 to their customers. GX90 (Luedtke Dep. 55:2-4, 55:7-11) and Trial Tr. 350:20-351:10
3 (Luedtke); GX1113* at -176, -177; GX484 at -017.

4 74. Consumers often seek out PRR online even when making in-store purchases, so
5 PRR can have a positive effect on a retailer's in-store sales in addition to its online sales. GX662
6 at -267-268; GX141 (Golfsmith Dep. 36:22-23, 36:25-37:7, 37:9-11) and Trial Tr. 1218:23-
7 1219:1 (Maki/Golfsmith); GX131 (Dillard's Dep. 70:2-4, 70:7-71:6); GX146 (Home Depot Dep.
8 52:25-53:4, 53:9-12); GX108* (Black & Decker Dep. 86:19-21, 86:23-87:12).

9 **(v) PRR is a Valuable Tool for Consumers**

10 75. Consumers find PRR useful because it provides consumers authentic information
11 regarding another consumer's experience with a particular product. Feedback from other
12 consumers can help a prospective buyer make a more informed purchasing decision. GX81
13 (Collins Dep. 61:13-62:3); GX838 at -392; [REDACTED];
14 GX142 (Green Mountain Coffee Dep. 19:15-20:2, 41:22-42:24); GX78 (Cunningham/BJ's
15 Wholesale Dep. 15:3-15); GX125 (Clorox Dep. 112:22-25, 113:2-20) and Trial Tr. 284:4-17
16 (Levin/Clorox).

17 76. PRR also gives consumers more confidence in making a purchase. GX82 (Barton
18 Dep. 25:7-26:20); GX96* (Acer Dep. 28:13-29:6); GX189 (Tempur-Pedic Dep. 23:9-21);
19 GX141 (Golfsmith Dep. 36:1-11); GX131 (Dillard's Dep. 70:2-4, 70:7-71:6).

20 77. PRR provides information that is not easily ascertainable when shopping online
21 (e.g., sizing, comfort, weight). GX846 at -080; GX160 (Lord & Taylor Dep. 32:9-25).

22 78. Consumers are more comfortable purchasing products that have high average
23 ratings and content-filled reviews. GX185 (Smithsonian Dep. 25:19-26:13). Negative reviews
24 also have a positive impact on purchasing decisions because they confirm the authenticity of all
25 PRR. GX82 (Barton Dep. 41:21-43:12); GX928 at -926.

1 **B. Other “Social Commerce” Products are not Sufficient Substitutes for PRR**
2 **Platforms**

3 79. Manufacturers and retailers use a number of Internet-based applications to interact
4 with consumers, in addition to PRR. Social commerce refers to applications that allow Internet
5 users to create and exchange user-generated content (“UGC”) in a commercial environment
6 online. GX986* at 2, 3. In addition to PRR platforms, social commerce products include
7 forums, question and answer (“Q&A”) platforms, blogs, microblogs, and social networks, such
8 as Facebook. GX986* at 3-13.

9 80. These other social commerce products are not substitutes for PRR platforms.
10 They do not collect the same type of structured, product-level data that is associated with PRR.
11 GX840 at -941. Bazaarvoice Director Chris Pacitti agreed that “[w]ithin the umbrella of social
12 commerce engagement tools there are also companies that are not directly competitive with one
13 another on the basis of the features and functionality that they offer to their clients” including
14 “Bazaarvoice’s ratings and review product.” GX492 (Pacitti Dep. 81:4-15, 82:10-15).

15 81. The UGC collected by other social commerce products serves a different purpose
16 than PRR. Trial Tr. 461:5-462:7 (Cunningham/BJ’s Wholesale). These other social commerce
17 products are often focused on brand advertising rather than driving the sale of individual
18 products. GX169 (Orchard Supply Dep. 11:5-22, 22:6-10, 22:12-18, 22:20-24:3). In some
19 cases, other social commerce tools are used to manage customer service inquiries after a product
20 purchase. *See, e.g.*, GX131 (Dillard’s Dep. 31:18-34:17). Customers on social sites, such as
21 Facebook and Twitter, are “not in an eCommerce state of mind, so to speak, she’s not in the
22 mind to purchase” GX131 (Dillard’s Dep. 33:3-23); *see also* GX193 (Walgreens Dep.
23 73:24-74:11, 74:14-18, 74:20-22, 74:24-25, 75:2-5, 75:8, 75:10-11, 75:13, 75:15-21, 75:24);
24 GX179 (REI Dep. 54:14-55:5, 55:8-15). Online retailers do not want consumers considering a
25 product to leave the retailer’s site in favor of a social site because the consumer may not return to
26 the retail site to finish the transaction. GX986* at 14; GX168 (Onlineshoes.com Dep. 31:4-19);
27 GX181 (Sears Dep. 60:5-19).

1 82. Products that influence consumers immediately prior to making the purchase
2 decision, as PRR does, are fundamentally different than products that attempt to influence
3 consumer behavior at other times. *See* GX82 (Barton Dep. 81:7-82:20, 82:22-83:7); Trial Tr.
4 284:18-285:23 (Levin/Clorox).

5 83. Because PRR platforms and other social commerce products serve different
6 purposes, retailers and manufacturers routinely use PRR platforms in combination with one or
7 more other social commerce products. GX87 (Godfrey CID Dep. 33:1-12); GX90 (Luedtke Dep.
8 94:14-20); GX142 (Green Mountain Coffee Dep. 20:3-21:6, 22:7-23:17). Many online retailers
9 have PRR in addition to a Facebook page and Twitter account. It is competitively necessary for
10 retailers that have a Facebook page and a Twitter account to also have PRR. [REDACTED]

11 [REDACTED] GX143 (Guess? Dep. 49:8-11, 49:14-15); Trial
12 Tr. 461:5-24 (Cunningham/BJ's Wholesale). In other words, other social commerce products are
13 complements to PRR, not substitutes.

14 84. Other social commerce products do not compete directly with PRR platforms, are
15 not substitutes for PRR platforms, and do not constrain the prices of PRR platforms. Trial Tr.
16 936:24-939:20 (Shapiro); GX983* at 48-51; *see also infra* Section II.E; GX74* (TurnTo Dep.
17 155:4-8, 155:11-157:13); GX492 (Pacitti Dep. 88:14-89:9).

18 (i) **Social Networks Like Facebook and Google+ are Not Substitutes for**
19 **PRR**

20 85. Facebook is a social network used by retailers and manufacturers to communicate
21 with customers and generate brand awareness. It serves a different purpose than PRR. Trial Tr.
22 461:516 (Cunningham/BJ's Wholesale). From a commercial standpoint, Facebook is more
23 conducive to building brand awareness, rather than driving purchasing decisions. GX130
24 (Dick's Sporting Goods Dep. 25:9-23, 26:1); GX166 (OneCall Dep. 36:2-24); GX193
25 (Walgreens Dep. 70:1-71:12, 71:20-22, 72:2-9, 72:21-22, 72:25, 73:2-11); GX192 (Vitamin
26 Shoppe Dep. 44:5-45:7, 45:9-14); GX77 (Heverley/BFG Dep. 31:5-8, 31:11-18); GX105 (Belk
27 Dep. 25:24-26:22); GX179 (REI Dep. 52:4-55:5, 55:8-56:3); GX110 (Blue Nile Dep. 38:1-
28 39:18, 39:23-40:20); *see also* GX986* at 13-14.

1 86. Individual product reviews are generally found on a retailer's website rather than
2 on its Facebook page. GX157 (K-Swiss Dep. 21:18-20, 21:22-22:3).

3 87. Retailers and manufacturers use Facebook as a complement to PRR; they would
4 not substitute PRR with a Facebook page. GX76 (Waltzinger/BBBeyond Dep. 38:23-39:7,
5 39:10-23); GX130 (Dick's Sporting Goods Dep. 41:8-13, 41:16); GX193 (Walgreens Dep.
6 73:12-14, 73:16, 73:18-19, 73:22); GX98 (American Eagle Dep. 29:20-23, 30:1-8, 30:13);
7 GX197 (XO Group Dep. 51:25-52:7, 52:9-13, 52:16); GX160 (Lord & Taylor Dep. 36:9-17,
8 37:1-5, 37:8-9, 37:11-12, 37:16); GX170 (Overstock.com Dep. 66:2-4, 66:6); GX78
9 (Cunningham/BJ's Wholesale Dep. 28:16-18, 29:4-7, 29:10, 29:12-21); GX179 (REI Dep.
10 58:15-59:2).

11 88. Bazaarvoice and PowerReviews viewed Facebook as a complement to their PRR
12 platforms and developed ways for their respective PRR platforms to integrate with Facebook.
13 GX82 (Barton Dep. 142:18-144:10); GX655 at -916; GX392 at -104; GX530; GX88 (Hossain
14 Dep. 96:4-5, 96:8-97:3).

15 89. Bazaarvoice states in its pre-acquisition, ordinary course of business documents
16 that companies in the business of helping to enhance retailers' and manufacturers' use of
17 Facebook, like Buddy Media, are not competitive. *See* GX837 at -077-78; GX85 (Defossé
18 Dep. 114:4-114:13, 114:15-114:20); Trial Tr. 891:20-892:3 (Collins). In a recent Form 10-Q
19 filed with the SEC, Bazaarvoice states that it does not yet face competition from Facebook and
20 that Facebook "do[es] not currently focus on [Bazaarvoice's] market." GX969 at 36.
21 Bazaarvoice's co-founder cannot identify a single potential customer that they have lost because
22 the customer elected to work exclusively with Facebook. GX82 (Barton Dep. 149:12-150:9) and
23 Trial Tr. 641:6-9 (Barton). Even today, one of Bazaarvoice's directors testified that Facebook
24 does not compete "in any market in which Bazaarvoice competes today. . . ." GX492 (Pacitti
25 Dep. 44:8-13). PowerReviews did not consider Facebook a competitor. GX88 (Hossain Dep.
26 96:11-97:3).

27 90. Google+ is another social networking site. Google+ does not offer a competing
28 PRR platform. GX82 (Barton Dep. 170:1-3, 170:8-171:13). Google+ also does not provide the

1 same functionality as PRR and, like Facebook and other social commerce products, online
2 retailers and manufacturers would not abandon PRR in favor of Google+. GX181 (Sears Dep.
3 62:13-63:11) and Trial Tr. 1695:17-20, 1697:7-10 (Massuda/Sears); GX179 (REI Dep. 57:4-5,
4 58:15-59:2). Bazaarvoice has never lost a PRR platform customer to any Google product.
5 GX82 (Barton Dep. 173:17-174:15) and Trial Tr. 641:6-11 (Barton); GX1119 (Godfrey Dep.
6 34:19-24).

7 91. PowerReviews did not view Google as a direct competitor. GX88 (Hossain Dep.
8 97:20-98:5). In its SEC filings, Bazaarvoice stated that it does not yet face competition from
9 Google and that Google “do[es] not currently focus on [Bazaarvoice’s] market.” GX969 at 36;
10 GX970 at 8.

11 92. Instagram and Pinterest are photo-sharing and social networking sites. Instagram
12 and Pinterest do not provide the same functionality as PRR and, like Facebook and other social
13 commerce products, online retailers would not abandon PRR in favor of Instagram or Pinterest.
14 GX98 (American Eagle Dep. 31:2-4, 31:7-13, 31:14-16, 31:18-21, 31:24); GX195 (Wine.com
15 Dep. 34:25-35:5, 35:7-11); GX111 (Bon-Ton Dep. 45:4-14); GX78 (Cunningham/BJ’s
16 Wholesale Dep. 30:17-31:3, 31:7-12); GX179 (REI Dep. 57:21-58:17).

17 93. YouTube is a video-sharing website. Online retailers would not consider
18 abandoning PRR functionality in favor of YouTube videos. GX181 (Sears Dep. 59:9-12, 64:15-
19 19) and Trial Tr. 1696:23-1697:2 (Massuda/Sears); GX98 (American Eagle Dep. 31:25-32:3,
20 32:5-6, 32:20-22, 33:5).

21 **(ii) Microblogs are Not Substitutes for PRR**

22 94. Twitter is one of the most prominent microblogging sites. Twitter allows users to
23 post short messages called “tweets” that followers of the poster can see on their Twitter feed.
24 GX986* at 11-12. Businesses use Twitter to engage with their customers and create brand
25 awareness; Twitter serves a different purpose than PRR. GX130 (Dick’s Sporting Goods Dep.
26 26:5-9, 26:12-20); GX192 (Vitamin Shoppe Dep. 45:15-18, 45:20-46:13, 46:15-17); GX77
27 (Heverley/BFG Dep. 31:5-8, 31:11-18); GX147 (HSN Dep. 49:22-51:1, 51:4-52:21); GX195
28

1 (Wine.com Dep. 33:4-15, 33:18-25, 55:10-11, 55:14-15); GX179 (REI Dep. 55:10-15, 56:22-
2 57:3); GX153 (Jockey Dep. 37:24-38:4, 38:6-7, 38:9-11, 38:14-16).

3 95. Individual product reviews are generally found on a retailer's website, not on its
4 Twitter feed. GX171 (Pacific Sunwear Dep. 37:25-38:1, 38:3-15, 38:17-39:9); GX109
5 (Blinds.com Dep. 84:16-86:1, 86:4).

6 96. PowerReviews did not consider Twitter a competitor. GX88 (Hossain Dep. 97:4-
7 19).

8 97. Retailers and manufacturers use Twitter as a complement to PRR and would not
9 substitute PRR with Twitter. GX181 (Sears Dep. 59:13-16, 64:2-6, 64:8-14) and Trial Tr.
10 1696:12-22 (Massuda/Sears); GX130 (Dick's Sporting Goods Dep. 41:17-22, 41:25); GX141
11 (Golfsmith Dep. 51:17-18, 51:20-52:3, 52:5); GX193 (Walgreens Dep. 73:12-14, 73:16); GX98
12 (American Eagle Dep. 30:14-17, 30:20-23, 31:1); GX178 (Redbox Dep. 62:18-24, 63:1-4, 63:7);
13 GX160 (Lord & Taylor Dep. 37:17-38:1, 38:5-8); GX78 (Cunningham/BJ's Wholesale Dep.
14 30:1-6, 30:10, 30:12-16); GX179 (REI Dep. 58:15-59:2).

15 **(iii) Blogs, Forums, and Q&A are Not Substitutes for PRR**

16 98. Blogs serve a different function than PRR. Blogs are a way to build brand
17 awareness and interact with customers outside of a commercial setting. Retailers and
18 manufacturers use blogs as complements to PRR and would not substitute PRR with a blog.
19 GX183 (Shoplet Dep. 53:21-54:18); [REDACTED]
20 [REDACTED]; GX181 (Sears Dep. 59:17-20) and Trial Tr. 1697:3-6 (Massuda/Sears); *cf.*
21 GX170 (Overstock Dep. 66:12-67:7).

22 99. Retail blogs allow additional editorial content to be provided to customers and are
23 distinct from the UGC available through PRR. GX195 (Wine.com Dep. 34:3-18, 34:21-24,
24 55:17-19); GX72* (Lithium Dep. 22:24-23:17, 32:9-15). Indeed, a company's prior adoption
25 of a blog for its online retail site was viewed by Bazaarvoice as a "positive" in trying to identify
26 early customers. GX82 (Barton Dep. 32:6-23) and Trial Tr. 627:14-17 (Barton).

27 100. Community forums allow users to interact and provide assistance in using a given
28 product in a different manner than the UGC provided in PRR. GX72* (Lithium Dep. 26:20-

1 27:3, 28:9-19, 29:7-9, 29:12-30:22). Retailers and manufacturers do not view forums as
2 substitutes for PRR. GX77 (Heverley/BFG Dep. 46:21-24, 47:3-8); Trial Tr. 1623:12-14
3 (Ahmed/Amazon.com).

4 101. Q&A tools allow customers to ask questions that may not be answered by the
5 existing product description provided by the retailer or manufacturer on the product page. Q&A
6 complements the functionality and content provided by PRR. GX89 (Hurt Dep. 331:17-332:2);
7 GX81 (Collins Dep. 134:8-13); GX109 (Blinds.com Dep. 46:2-8, 64:2-4, 64:6-25, 65:3-12);
8 GX192 (Vitamin Shoppe Dep. 40:23-43:25, 44:4, 70:17-71:19, 71:23-72:2, 72:4-9, 72:11);
9 GX181 (Sears Dep. 57:13-58:18, 58:21-59:2) and Trial Tr. 1694:8-16 (Massuda/Sears); GX146
10 (Home Depot Dep. 57:11-58:8); GX73* (Reevoo Dep. 10:13-15, 10:23-11:20); GX72* (Lithium
11 Dep. 23:21-24:20, 33:7-22); GX125 (Clorox Dep. 113:25-114:20) and Trial Tr. 286:14-287:1
12 (Levin/Clorox); GX93 (Svatek Dep. 75:23-77:1, 77:10-78:13).

13 102. Q&A applications do not serve the same purpose as PRR platforms. GX74*
14 (TurnTo Dep. 116:8-11, 116:16-117:11); [REDACTED]
15 [REDACTED]. Rather, Q&A fills the gaps left in customers' minds after they read PRR.
16 GX74* (TurnTo Dep. 107:3-6, 107:9-108:21). Bazaarvoice is not aware of any of its customers
17 that have replaced its PRR platform with a Q&A application. GX1119 (Godfrey Dep. 24:2-6);
18 *see also* Trial Tr. 1623:9-11 (Ahmed/Amazon.com).

19 103. Other Q&A providers do not consider Q&A a substitute for PRR, and they do not
20 sell their Q&A products as a substitute for PRR platforms. GX74* (TurnTo Dep. 21:14-16,
21 21:23-22:4, 22:8-24, 23:15-24, 24:3-13, 24:14-26:19, 26:22-24, 27:3-28:13, 28:16-19); GX73*
22 (Reevoo Dep. 9:2-5, 11:21-24, 12:6-20).

23 **C. Bazaarvoice's and PowerReviews' Documents Recognize PRR Platforms as a**
24 **Distinct Market and Recognize They were Duopolists in the Market**

25 104. In the ordinary course of business, Bazaarvoice and PowerReviews recognized
26 that PRR platforms comprise a distinct market. For example, in the materials Bazaarvoice
27 regularly sent to its board members, Bazaarvoice only named other PRR platform providers in
28 the slides titled "Competitive Update." *See* GX1030* at -018; GX1031* at -661; GX1032* at

1 -844. Bazaarvoice and PowerReviews' descriptions of market share and market size also reflect
2 the view that they consider PRR platforms to be a distinct market. *See, e.g.*, GX798 at -937;
3 GX1128 at -404; GX524 at -722; Trial Tr. 628:25-630:10 (Barton).

4 105. Before this litigation commenced, PowerReviews and Reevo, Bazaarvoice's
5 European competitor, were the only named direct competitors in Bazaarvoice's SEC filings. *See*
6 GX964 at 11; GX965 at 13; GX967 at 25; GX968 at 31. It was only after the United States filed
7 this action that Bazaarvoice identified Pluck, Gigya, and Viewpoints by name as competitors in
8 its public securities filings. *See* GX970 at 8; Trial Tr. 759:12-17 (Collins). Bazaarvoice CEO
9 Collins acknowledged that this lawsuit may have influenced the decision to start naming these
10 companies in Bazaarvoice's SEC filings. GX81 (Collins Dep. 223:2-224:1).

11 106. Bazaarvoice recognizes that the PRR platform market is highly concentrated.
12 Before the merger, Bazaarvoice's Vice President of Strategy, Erin Defossé, recognized that the
13 number of PRR platform alternatives available to enterprise customers is limited: "My take is
14 that there really isn't a market for them to understand (as it relates R&R), it is us or
15 PowerReviews and in the game of big clients: we win." GX540 at -252.

16 107. Similarly, Bazaarvoice co-founder Brett Hurt recognized the duopolistic nature of
17 the PRR platform market when remarking that one of the benefits of acquiring PowerReviews
18 would be "[p]otentially taking out our only competitor, who is both suppressing our price points
19 (by as much as 15% according to Osborne)" GX518 at -475. At trial, Hurt testified that
20 prior to the merger he believed that PowerReviews was Bazaarvoice's biggest competitor "for
21 the U.S. market and ratings and reviews." Trial Tr. 130:7-12 (Hurt).

22 108. PowerReviews executives similarly saw the PRR platform market as a duopoly
23 between Bazaarvoice and PowerReviews. As recently as April 2012, shortly before the
24 transaction, PowerReviews' CEO, Pehr Luedtke, noted "wide recognition" of the "duopoly"
25 between Bazaarvoice and PowerReviews. GX254 at 3 and Trial Tr. 340:22-342:8 (Luedtke).
26 Luedtke repeatedly recognized the absence of other meaningful competitors, calling the PRR
27 platform market a "duopoly" on several occasions. *See* GX255 at -698; GX955 at -568; GX275
28 at -093; GX489 at -172; Trial Tr. 345:24-346:14 (Luedtke).

1 109. PowerReviews' head of marketing, Cathy Halligan, also saw that PowerReviews
2 was in a "duopoly" with Bazaarvoice. GX683 at -339; GX776 at -766. Halligan wrote that it
3 was well-known in the industry that the only viable commercial options for potential customers
4 of PRR platforms were Bazaarvoice and PowerReviews. GX683 at -339. Other PowerReviews
5 executives also recognized the duopolistic nature of the market when they described their firm as
6 "the #2 company in a two-horse race (with Bazaar[v]oice, out of Austin, TX)." GX636 at -834.

7 110. Consistent with its view that the PRR platform market was a duopoly,
8 PowerReviews noted that a merger of Bazaarvoice and PowerReviews would eliminate
9 competition by creating a "[m]onopoly in the market" when evaluating the anticipated benefits
10 of the acquisition. *See, e.g.*, GX612 at 28.

11 **D. The Industry Recognizes PRR Platforms as a Separate Market**

12 111. Competitors and former competitors in the PRR platform market recognize that it
13 is a distinct market and that after the merger there is now "one dominant player" in the PRR
14 platforms space. GX75 (Moog Dep. 104:15-105:2, 105:5, 106:19-20, 106:23-107:3); *see also*
15 GX952* at -258; GX72* (Lithium Dep. 133:6-21).

16 112. Industry analysts also recognize that PRR platforms are a distinct market.
17 Gartner, in its published industry research, noted that "[c]ustomer product reviews are the most
18 important tool that consumers use in determining where to shop. As such, customer product
19 reviews have become a must-have feature for multichannel retailer e-commerce sites
20 PowerReviews is one of the two dominant providers of community review applications for
21 multichannel and pure e-commerce retailers." GX271 at -732, -737, -742; *see also* GX604 at
22 -404; GX1017 at -579-580. Gartner noted that through the merger "Bazaarvoice . . . will acquire
23 its sole rival, PowerReviews . . ." and further noted that PowerReviews legacy clients should
24 "[p]repare for potential migration to Bazaarvoice products and potential price increases to cover
25 the cost of this transaction as well as historically higher-priced Bazaarvoice offerings." GX1214
26 at -133-134.

27 113. Equity analysts also note the absence of other meaningful competitors in the PRR
28 platform market. For example, following Bazaarvoice's IPO, Credit Suisse described

1 Bazaarvoice as “the market leader by at least a factor of two in an apparent duopoly for the
2 ratings and review space.” GX604 at -401; *see also* GX1017 at -579-80; GX687 at -075, -091,
3 -105 (Credit Suisse, Piper Jaffray, Deutsche Bank).

4 **E. Economic Analysis Confirms that PRR Platforms Sold to U.S. Customers are**
5 **a Relevant Market**

6 114. Professor Carl Shapiro evaluated the likely competitive effects of the acquisition
7 of PowerReviews by Bazaarvoice. Trial Tr. 900:3-6 (Shapiro). Professor Shapiro earned his
8 Ph.D. in economics from M.I.T. and specializes in the field of industrial organization generally
9 and antitrust specifically. Trial Tr. 894:11-14, 895:1-4 (Shapiro). Over the past 30 years he has
10 published extensively. Trial Tr. 895:5-11 (Shapiro). He twice served as the Deputy Assistant
11 Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice.
12 Trial Tr. 895:18-22 (Shapiro). He was also a member of President Obama’s Council of
13 Economic Advisors. Trial Tr. 897:23-898:10 (Shapiro). Professor Shapiro is currently the
14 Transamerica Professor of Business Strategy at the Haas School of Business at U.C. Berkeley.
15 Trial Tr. 894:19-25 (Shapiro). Professor Shapiro has focused his academic and professional
16 work on technology markets, intellectual property issues, and network competition. Trial Tr.
17 899:8-23 (Shapiro).

18 115. The economic framework for analyzing mergers is the same for consummated and
19 unconsummated mergers. Trial Tr. 900:13-21 (Shapiro). In order to assess the likely effects of a
20 merger, the *Horizontal Merger Guidelines* jointly promulgated by the DOJ and the Federal Trade
21 Commission (“the *Merger Guidelines*”) suggest identifying a relevant market, consisting of a
22 relevant product market and relevant geographic market, to determine the areas where a
23 substantial lessening of competition may be observed. GX981 §4; Trial Tr. 900:22-901:19
24 (Shapiro).

25 116. Professor Shapiro employed the *Merger Guidelines* to define the relevant product
26 market. GX983* at 40-41. The *Merger Guidelines* apply the “hypothetical monopolist test,”
27 which has often been applied by the courts and is the standard methodology employed by
28 antitrust economists to define the relevant product market. *See, e.g.*, GX984* at 1. The purpose

1 of the hypothetical monopolist test is to assess whether there would be significant customer harm
2 if one firm controlled all of the products in the candidate market relative to pre-merger
3 competition. Trial Tr. 901:20-902:11 (Shapiro). This test asks whether a profit-maximizing
4 hypothetical monopolist would impose at least a small but significant non-transitory increase in
5 price of 5-10% (“SSNIP”) on a proposed candidate set of products. GX983* at 40-41; GX981
6 §4.1; *see also* Trial Tr. 901:20-903:16 (Shapiro).

7 117. The test boils down to whether enough current users of PRR platforms would
8 drop PRR platforms in response to a SSNIP to make that price increase unprofitable. Trial Tr.
9 901:20-903:16 (Shapiro); GX983* at 42. As Professor Shapiro notes, “the smaller the number of
10 customers who would shift from products in the candidate market to products outside that market
11 in response to a SSNIP imposed on products in the candidate market, the more likely that market
12 will satisfy the test.” GX983* at 42. The hypothetical monopolist will impose a SSNIP on a
13 product if the profit gained from the SSNIP outweighs the total profit lost from customers who
14 will no longer purchase the product at the higher price and will not switch to another product in
15 the market. GX983* at 45.

16 118. The *Merger Guidelines* describe the appropriate methodologies for defining the
17 relevant geographic market as focusing on the customer location “[w]hen the hypothetical
18 monopolist could discriminate based on customer location.” GX981 §4.2.2. As described by
19 Professor Shapiro, in the PRR platform market a hypothetical monopolist can identify and target
20 price increases to a particular group of customers based on geography and those customers
21 cannot engage in arbitrage with customers in another geographic area. The geographic market is
22 defined around those customers to whom a hypothetical monopolist would profitably impose at
23 least a SSNIP. GX983* at 41-42. A supplier in a different area “that has provided or attempted
24 to provide” a relevant product to customers in the geographic market should be included in the
25 market. GX983* at 42; GX984* at 4.

26 **(i) PRR Platforms Satisfy the Hypothetical Monopolist Test**

27 119. Professor Shapiro identified PRR platforms as the “candidate” relevant product
28 market. Trial Tr. 901:10-19 (Shapiro). In applying the hypothetical monopolist test, he asked

1 the question “[i]f a single firm controlled all of the ratings-and-reviews software to customers in
2 the United States, would that be a significant harm to customers?” Trial Tr. 924:22-24 (Shapiro).
3 The hypothetical monopolist would control Bazaarvoice, PowerReviews, all in-house solutions,
4 and the fringe suppliers. Trial Tr. 924:25-925:6 (Shapiro). Applying this test, Professor Shapiro
5 concludes that the relevant market is PRR platforms for U.S. retailers and manufacturers. Trial
6 Tr. 936:17-23 (Shapiro). Professor Shapiro’s opinion is supported by both qualitative and
7 quantitative evidence.

8 120. Customer substitution patterns support Professor Shapiro’s relevant product
9 market. The relevant question is, if the price of PRR platforms went up 5%, would customers
10 drop the product in significant numbers. Trial Tr. 925:18-22 (Shapiro). Professor Shapiro
11 concluded the evidence was clear that “no or almost none of them would” drop their PRR
12 platforms if faced with such a price increase. Trial Tr. 926:11-13 (Shapiro). Having a PRR
13 platform is “table stakes” that has become “a necessary part of being a major online retailer.”
14 Trial Tr. 926:3-5 (Shapiro); *see also supra* Section II.A.(iv).⁴

15 121. Over the past five years, an increasing number of online retailers have adopted
16 PRR platforms. In 2009, over 300 firms in the IR 500 did not use PRR platforms. By 2013, only
17 about a little over 100 firms in the IR 500 did not use PRR platforms. Trial Tr. 928:14-18
18 (Shapiro); GX1038. This trend among top retailers suggests PRR platforms have become a
19 necessary component of an online retail website. *See* Trial Tr. 926:25-927:17 (Shapiro).

20 122. Another category of qualitative evidence supporting Professor Shapiro’s relevant
21 product market is the companies’ ROI analysis. Trial Tr. 926:14-24 (Shapiro). As part of their
22 sales process, Bazaarvoice and PowerReviews typically prepared ROI analyses for potential
23 customers to convince the potential customer to adopt their PRR platform. GX983* at 43-44;
24 *supra* Section II.A.(iii). Bazaarvoice’s ROI estimates of the benefits of PRR to manufacturers
25 and retailers are further evidence that a small but significant nontransitory increase in price “will
26 not cause customers to drop ratings and reviews.” Trial Tr. 926:22 (Shapiro).

27 _____
28 ⁴ Even Defendant’s economic expert admits that many customers are “unlikely to consider giving up” PRR. Trial Tr. 1721:14-15 (Shehadeh).

1 123. The companies' documents, particularly the deal documents, are also directly
2 relevant for product market definition. Trial Tr. 929:11-17 (Shapiro). The documents indicate
3 party executives believed the merger would avoid price erosion and allow the merged firm to
4 profitably raise prices at least 5% above pre-merger levels. Trial Tr. 930:2-8 (Shapiro). Based
5 on Bazaarvoice and PowerReviews' belief that the merged firm could increase prices post-
6 merger, Professor Shapiro concludes that "the hypothetical monopolist who controls not only
7 Bazaarvoice and PowerReviews but also controls all in-house and the fringe players, can raise
8 price even more and profitably." Trial Tr. 930:9-12 (Shapiro).

9 124. In head-to-head competition, Bazaarvoice and PowerReviews often discounted
10 their PRR platform prices in excess of the 5-10% assumed by a SSNIP. The hypothetical
11 monopolist would not face the same pressure to discount its prices and the customer would still
12 purchase PRR platforms, in essence accepting a SSNIP. This is direct evidence that PRR
13 platforms are a proper relevant product market. GX983* at 42-43 and App. C; *infra* Section
14 III.B.

15 125. Customer testimony that they would not abandon PRR platforms (or even their
16 current PRR platform provider) in the face of a price increase is also consistent with Professor
17 Shapiro's conclusion that PRR platforms are a relevant product market. *See* GX983* at 43-44;
18 GX130 (Dick's Sporting Goods Dep. 43:11-16); GX193 (Walgreens Dep. 83:22-23, 84:1-2,
19 84:4-5, 84:8-12, 84:14-17, 84:20-21, 85:5-14, 85:20-21); GX145 (h.h. gregg Dep. 23:23-24:7);
20 GX111 (Bon-Ton Dep. 37:18-38:7); GX76 (Waltzinger/BBBeyond Dep. 32:20-21, 32:25-33:9,
21 34:22-35:2, 37:14-16, 37:20-38:10) and Trial Tr. 566:4-11, 567:5-7, 567:25-568:12
22 (Waltzinger/BBBeyond); GX109 (Blinds.com Dep. 66:7-11, 66:13-16); GX131 (Dillard's Dep.
23 72:23-73:18); *see also* GX1106* at -617 (customer agreeing to [REDACTED] price increase).⁵

24 126. The quantitative evidence also supports Professor Shapiro's conclusion that PRR
25 platforms satisfy the hypothetical monopolist test. In order for a SSNIP imposed by a
26 hypothetical monopolist to be profitable, the recapture rate, that is, "the percentage of sales lost
27

28 ⁵ Even Defendant's proffered shopper marketing expert is not aware of anyone ever dropping PRR and replacing with another social commerce tool. Trial Tr. 1568:21-1570:6 (Goldberg).

1 by one product in the candidate market, when its price alone rises, that is recaptured by other
2 products in the candidate market” must be high enough that the incremental profits from the
3 increased price plus the incremental profits from the recaptured sales that goes to other products
4 in the candidate market exceeds the profits lost to products outside the candidate market.
5 GX983* at 45; GX981 §4.1.3. Professor Shapiro concludes that the minimum recapture rate
6 needed for PRR platforms to form a relevant market would be 17%. Trial Tr. 933:5-19
7 (Shapiro); GX983* at 46. Professor Shapiro estimated various possible recapture rates and
8 proxies for the recapture rate and concluded that all variations were substantially larger than
9 17%. Trial Tr. 935:13-936:14 (Shapiro); GX983* at 45-48. Professor Shapiro also estimated the
10 recapture rate based upon data cited by Bazaarvoice’s expert and concluded that the recapture
11 rate based on that data is also well above the 17% threshold necessary to show PRR platforms to
12 be a relevant market. GX984* at 3.

13 127. Dr. Shehadeh, Bazaarvoice’s economic expert, contends the relevant product
14 market is too narrow because it does not include Q&A, testimonials, forums and other social
15 commerce tools. *See* Trial Tr. 936:24-937:4 (Shapiro). Professor Shapiro criticizes this analysis
16 because Dr. Shehadeh did not perform the hypothetical monopolist test in expanding the relevant
17 product market to include these other social commerce tools. Trial Tr. 937:5-15 (Shapiro).
18 Professor Shapiro’s analysis confirms that other social commerce tools, including social
19 networking sites, Q&A, and forums, either serve a different purpose than PRR or are insufficient
20 substitutes such that customers would not switch to another social commerce tool in the face of a
21 SSNIP. GX983* at 48-51; *supra* Section II.B.

22 128. Dr. Shehadeh also contends that the ability of “rapid entrants” to enter the market
23 should be considered at the market definition stage of the analysis. Trial Tr. 940:5-19 (Shapiro).
24 A rapid entrant is a firm that is not currently selling a PRR platform, but could enter the market
25 very quickly and easily without making a substantial investment or incurring risk. Trial Tr.
26 970:1-13, 972:7-10 (Shapiro); GX981 §5.1.

27 129. Professor Shapiro testified that considering rapid entrants at this stage of the
28 analysis will lead to “errors.” Trial Tr. 940:23-941:5 (Shapiro). Product market definition

1 focuses on the demand side, “what do the customers need?” Trial Tr. 941:4 (Shapiro). The
2 “standard” merger analysis considers supply-side substitution, including rapid entrants, when
3 calculating markets shares and analyzing entry. Trial Tr. 940:9-941:5 (Shapiro); GX981 §4;
4 *see also* Sections V and VI *infra*.

5 **(ii) The United States is the Relevant Geographic Market**

6 130. The *Merger Guidelines* also apply the hypothetical monopolist test to determine
7 the relevant geographic market. Trial Tr. 905:11-20 (Shapiro); GX981 §§4.2.1 and 4.2.2. The
8 purpose of the test with respect to the geographic market is to identify “the zone where the prices
9 would be profitably elevated in comparison with competition.” Trial Tr. 905:19-20 (Shapiro).
10 Where, as here, a hypothetical monopolist could price discriminate, *i.e.* price differently, based
11 on customer location, geographic market is based on the location of the customers, not the
12 suppliers. GX981 §4.2.2. Professor Shapiro concluded that to properly assess the competitive
13 effects of the merger, the relevant market should be defined as the United States, specifically
14 focused on U.S. retailers and manufactures. Trial Tr. 943:7-11 (Shapiro).

15 131. Although Professor Shapiro concluded the geographic market is the United States,
16 he includes in the market foreign suppliers that serve U.S. customers. Trial Tr. 941:6-25
17 (Shapiro). However, in counting foreign suppliers, Professor Shapiro only considered their
18 success in the United States in order to meaningfully measure their significance to customers
19 with U.S. facing websites. Trial Tr. 942:1-8 (Shapiro); *infra* Section VI.

20 132. The evidence supports Professor Shapiro’s conclusion that the relevant
21 geographic market is the United States. PRR platform providers license their products for
22 specific websites, often limited by geography. Manufacturers and retailers who maintain
23 separate websites for prospective consumers located in different countries often have different
24 managers and contracts for the different websites. *See, e.g.*, Trial Tr. 1167:18-1168:7
25 (Friedland/Build.com); [REDACTED] GX79 (Caine Dep. 11:23-
26 12:4, 63:14-17); GX92 (Osborne Dep. 39:8-16). Because PRR platforms are provided under a
27 software-as-a-service (“SaaS”) or cloud-based model, arbitrage is not available to defeat price
28 discrimination. In other words, it is not possible to resell the PRR platform to other websites,

1 including the customer's own websites located in other territories. *See, e.g.*, GX121* at -251,
2 -258; GX437 at -049, -054; GX369* at -611-612, -620; GX338* at -340; GX688* at -319.

3 133. As Professor Shapiro notes, because “such geographic arbitrage is impossible, we
4 can perform the hypothetical monopolist test looking only at the responses of U.S. customers to
5 the SSNIP.” GX983* at 41-42. Because foreign suppliers' PRR platforms cannot be resold to
6 U.S. customers, foreign suppliers who are not selling into the U.S. do not affect the prices
7 charged to U.S. customers and therefore including any such suppliers would not reflect market
8 realities. Professor Shapiro therefore concludes that “the United States is a relevant geographic
9 market.” GX983* at 40-42. [REDACTED]

10 [REDACTED] Bazaarvoice's former CEO
11 agrees, testifying that prior to the merger he believed that PowerReviews was Bazaarvoice's
12 biggest competitor “for the U.S. market and ratings and reviews.” Trial Tr. 130:7-12 (Hurt); *see*
13 *also* Trial Tr. 131:1, 131:19-20, 193:5-7, 231:14-17 (Hurt); *cf.* Trial Tr. 665:17-666:5, 682:23-25
14 (Barton) (discussing Reevo's history as a “European competitor”).

15 134. When announcing the PowerReviews acquisition, Bazaarvoice's then-CEO, Brett
16 Hurt, asserted that “we found in serving large Fortune 500 clients that it's very important to
17 serve them from a local presence. People want to deal with each other from that local presence
18” GX840 at -943. Retailers and manufacturers agree. *See, e.g.*, GX146 (Home Depot Dep.
19 67:3-68:4); GX125 (Clorox Dep. 121:25-123:4).

20 135. Consistent with this understanding of the market, when expanding internationally,
21 Bazaarvoice prioritized hiring a local salesperson in that new country. GX82 (Barton Dep.
22 87:25-88:9) and Trial Tr. 630:19-632:6 (Barton); GX92 (Osborne Dep. 26:9-12, 27:17-28:7);
23 GX81 (Collins Dep. 198:7-23). Bazaarvoice's U.S. sales personnel focus on selling to U.S.-
24 facing websites, even while sales personnel in other countries negotiate the sale of Bazaarvoice's
25 PRR platform for the same company's foreign websites. GX92 (Osborne Dep. 38:9-21, 39:3-16)
26 and Trial Tr. 704:19-25 (Osborne). Bazaarvoice also faced different competitive dynamics in
27 different geographies. Trial Tr. 705:5-7 (Osborne). For example, Bazaarvoice did not compete
28 with PowerReviews in any significant way in Europe. Trial Tr. 735:10-12 (Osborne).

1 136. Customers often prefer to have U.S.-based, native English speakers perform the
 2 moderation of their PRR. GX248 at -595; GX90 (Luedtke Dep. 279:10-20, 280:9-14, 280:17-
 3 281:2, 281:13-14) and Trial Tr. 371:8-372:2 (Luedtke); GX89 (Hurt Dep. 264:11-17, 264:20-24)
 4 and Trial Tr. 106:7-17 (Hurt); *cf.* GX87 (Godfrey CID Dep. 84:21-85:3).

5 137. Finally, to offer a commercial syndication service in the U.S., a PRR platform
 6 provider must have a base of PRR written by U.S. consumers. Few companies attempt to
 7 syndicate PRR between the U.S. and other countries due to even slight differences in the
 8 products or their product SKUs (stock-keeping units) across geographies that make it difficult to
 9 map products across regions. GX87 (Godfrey CID Dep. 84:9-20); [REDACTED]
 10 [REDACTED] GX96* (Acer Dep. 73:4-14).⁶

11 **III. THE TRANSACTION WILL SUBSTANTIALLY LESSEN COMPETITION AND** 12 **RESULT IN HIGHER PRICES**

13 **A. PowerReviews was Bazaarvoice's Closest and Most Significant Competitor**

14 138. Bazaarvoice executives have repeatedly expressed that PowerReviews was its
 15 most significant, and often only, PRR platform competitor. Bazaarvoice's former CEO, Brett
 16 Hurt, described PowerReviews as Bazaarvoice's "fiercest competitor" (GX417 at -036; GX89
 17 (Hurt Dep. 348:3-7)), "only real competitor" (GX416 at -683), and "biggest competitor" (GX418
 18 at -912; GX89 (Hurt Dep. 367:17-369:11)) and Trial Tr. 130:7-12 (Hurt). Hurt viewed
 19 PowerReviews as Bazaarvoice's number one competitor that was "challenging [Bazaarvoice's]
 20 price points" and winning "key accounts like REI and Staples." GX408 at -667; GX417 at -036.

21 139. Former Bazaarvoice Chief Revenue Officer Michael Osborne testified that most
 22 of Bazaarvoice's retail deals involved PowerReviews. Trial Tr. 708:11-23 (Osborne); GX223.
 23 Hurt testified that PowerReviews was Bazaarvoice's largest threat for retail customers (GX89
 24 (Hurt Dep. 219:4-7, 219:10-220:8)) as well as manufacturer customers (GX89 (Hurt Dep.
 25 372:18-373:8)). Draft talking points prepared for Hurt to announce the acquisition to
 26 Bazaarvoice employees state that "[s]ix years into our respective journeys, we are both respected
 27 _____

28 ⁶ Even Defendant's economic expert testified that he was not surprised that syndication across geographies was uncommon. Trial Tr. 2013:15-18 (Shehadeh).

1 leaders in our space - No. 1 and No. 2.” GX838 at -391; *see also* Trial Tr. 509:5-11 (Defossé)
2 (quoting GX37 at 7, “[PowerReviews] is currently in 80% of our sales pipeline”); Trial Tr.
3 757:3-16 (Collins); *cf.* GX492 (Pacitti Dep. 151:8-13, 160:20-23, 161:1-3).

4 140. Bazaarvoice’s co-founder Brant Barton wrote in an email to Facebook that “last
5 Thursday we announced the acquisition of PowerReviews, our primary competitor.” GX507 at
6 -412. Bazaarvoice’s CEO, Stephen Collins, similarly testified that for “ratings and reviews,
7 United States, PowerReviews was, I would say, our – the competitor we looked at as the next
8 best competitor.” GX81 (Collins Dep. 143:7-17). At trial, he described PowerReviews as
9 Bazaarvoice’s “primary competitor in retail.” Trial Tr. 830:19-23 (Collins).

10 141. Bazaarvoice’s sales organization also repeatedly focused its sales efforts on
11 competing with PowerReviews. For example, in July 2011, PowerReviews convinced [REDACTED]
12 to reevaluate its relationship with Bazaarvoice. Afterwards, Bazaarvoice’s Chief Strategy
13 Officer, Mike Svatek, expressed concern that Bazaarvoice was “seeing new competitive
14 pressure” from PowerReviews through an “aggressive blitz campaign.” GX541 at -266; GX914
15 at -275. Svatek believed Bazaarvoice needed to “eradicate” PowerReviews, and he proposed a
16 counterattack on the PowerReviews base. GX914 at -274. He advocated an “aggressive”
17 approach to “unseat” PowerReviews from three of its largest accounts. GX541 at -265.
18 “Whatever the package, I want to screw PR and out them on their heels by wrecking a few of
19 their big accounts and getting us a couple supernodes. You in? Let’s crush these MFs.”
20 GX397* at -058.

21 142. Bazaarvoice launched an extraordinary initiative, which it called “Project
22 Menlogeddon,” so named in a nod to PowerReviews’ primary financial backer Menlo Ventures
23 (GX1084 at -022), to respond to heightened competition from PowerReviews. GX34. Collins
24 described Project Menlogeddon as “a special project to defeat our only meaningful competitor”
25 GX334 at -684; GX81 (Collins Dep. 417:24-418:5, 418:14-25); *see also* GX37; GX39.

26 143. Project Menlogeddon specifically targeted PowerReviews and sought to bring
27 greater focus in competing against it. GX85 (Defossé Dep. 212:8-19) and Trial Tr. 490:10-491:4
28 (Defossé); GX93 (Svatek Dep. 201:7-21); GX420 at -846; GX40; GX92 (Osborne Dep. 242:14-

1 243:3, 265:18-266:3, 266:6-7) and Trial Tr. 719:9-17 (Osborne); GX34; GX492 (Pacitti Dep.
2 152:10-13). Under the Project Menlogeddon banner, Bazaarvoice sought to fend off the
3 PowerReviews assault by “building moats” around its most significant customers and enticing
4 large PowerReviews customers to switch to Bazaarvoice’s PRR platform. GX33. As
5 Bazaarvoice’s Chief Marketing Officer, Erin Nelson, put it: “Important we show that we’ve got
6 a plan of action that’s broad and bold[;] Take their top customers[;] Build moats around our top
7 clients[;] Take their data[;] Shake their confidence[.]” GX33; *see also* GX334 at -684. As part
8 of its plan to “[t]ake it to PowerReviews” (GX40 at -033), Bazaarvoice created pricing
9 guidelines to steal “marquee” PowerReviews customers “at all costs.” GX39 at -941; *see also*
10 Trial Tr. 501:18-22 (Defossé).

11 144. Bazaarvoice’s Vice President of Retail Sales, Paul Dodd, reported to his team that
12 he had met with Collins and other members of Bazaarvoice’s Executive Leadership Team and
13 Collins wanted to “squeeze PR at every point” including “dropping the price floor” to win
14 certain key accounts. GX558; GX86 (Dodd Dep. 125:12-128:6); *see also* GX81 (Collins Dep.
15 122:3-6, 122:8-11, 155:8-15). Mr. Defossé recommended that the mascot for Project
16 Menlogeddon be the AC-130 military ground attack aircraft because “[i]t is badass and frankly
17 very intimidating.” GX716 at -961. In a “Menlogeddon Update” email, Bazaarvoice Vice
18 President of Product Strategy Erin Defossé wrote “The BV battleship (or AC-130 gunship,
19 rather) and its guns have kicked in and lead rain is starting to drop on PR” The update
20 detailed both defensive and offensive strategies targeting PowerReviews. GX37 at -947; *see also*
21 GX36; GX35; GX755.

22 145. Project Menlogeddon was a significant undertaking at all levels of the
23 Bazaarvoice corporate hierarchy, and the executive team received regular updates on the
24 progress of the campaign. Trial Tr. 505:15-17 (Defossé); *see also, e.g.*, GX35.

25 146. Bazaarvoice’s competitive response to PowerReviews was unique. No other
26 competitor had the necessary customer base from which to launch a credible attack on the
27 Bazaarvoice syndication network. *See infra* Section VI.A.(i). Accordingly, Bazaarvoice’s
28 competitive response to PowerReviews was unique. There is no evidence that Bazaarvoice ever

1 instituted another competitive initiative targeting Facebook, Amazon, Twitter, Gigya, Lithium or
2 any other competitor that reached the scale or significance of Project Menlogeddon. GX92
3 (Osborne Dep. 266:22-267:10, 267:25-268:16, 268:24-269:17) and Trial Tr. 719:18-720:12
4 (Osborne); GX81 (Collins Dep. 159:13-21); GX85 (Defossé Dep. 260:25-261:6, 261:13-18,
5 261:21-262:5, 262:8-9) and Trial Tr. 501:18-502:18, 503:17-504:13 (Defossé); GX492 (Pacitti
6 Dep. 152:14-18, 154:6-155:18).

7 147. Bazaarvoice created documents called “battle cards” that showed side-by-side
8 analyses of Bazaarvoice’s and its competitors’ products. GX92 (Osborne Dep. 262:23-263:12);
9 Trial Tr. 537:13-538:3 (Defossé). In its battle card analyzing PowerReviews, Bazaarvoice said
10 that “PowerReviews appears in many sales cycles in the US and their summary pitch is that they
11 do everything BV does but at a lower price” and that “[f]or enterprise clients and head-to-head
12 capabilities, PR’s price is typically between 1/3 and 2/3 of BV's price.” GX837 at -098, -101.

13 148. PowerReviews executives also repeatedly acknowledged that Bazaarvoice was its
14 most significant, and often, only competitor. PowerReviews’ former CEO, Ken Comée, testified
15 that Bazaarvoice was PowerReviews’ number one competitor. GX84 (Comée Dep. 96:24-97:4,
16 97:6-9). Similarly, PowerReviews’ former Vice President of Marketing, Nadim Hossain,
17 testified that he could only think of one U.S. customer that PowerReviews lost to another
18 competitor besides Bazaarvoice. GX88 (Hossain Dep. 55:13-56:22). He also thought that
19 PowerReviews had the ability to surpass Bazaarvoice to become number one. GX88 (Hossain
20 Dep. 121:25-122:2). PowerReviews also regularly tracked deals where it went head-to-head
21 with Bazaarvoice (GX1019) and held weekly “BV Flip” calls to discuss PowerReviews’ attempts
22 to get Bazaarvoice customers to switch to PowerReviews. GX642 at -310.

23 149. Would-be competitors likewise viewed Bazaarvoice and PowerReviews as each
24 other’s top competitor. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 150. Retailers and manufacturers also view Bazaarvoice and PowerReviews as the two
2 most significant providers of PRR platforms. GX193 (Walgreens Dep. 44:1-6, 44:12-14, 44:20-
3 23, 45:1, 49:9-51:8, 51:12-14, 51:17, 66:10-67:3, 67:6); GX192 (Vitamin Shoppe Dep. 40:13-20,
4 40:22, 61:2-61:9, 61:21-63:18, 63:21-23, 63:25-64:8, 64:10-21, 66:19-21, 66:23-67:8, 67:10-11,
5 67:16-68:7, 68:9-11, 68:13-69:17, 69:19-70:4, 70:7-11, 70:14-16) and Trial Tr. 1378:1-7
6 (Beebe/Vitamin Shoppe); GX77 (Heverley/BFG Dep. 84:23-85:19); GX145 (h.h. gregg Dep.
7 13:24-14:25, 15:8); GX142 (Green Mountain Coffee Dep. 31:23-33:6). Customers often looked
8 exclusively at Bazaarvoice and PowerReviews when searching for a PRR platform. GX193
9 (Walgreens Dep. 66:10-67:3, 67:6); GX125 (Clorox Dep. 126:19-22, 127:1-10, 127:12-15,
10 130:17-21, 130:23-131:1); GX76 (Waltzinger/BBBeyond Dep. 96:7-17) and Trial Tr. 571:18-25
11 (Waltzinger/BBBeyond).

12 151. Bazaarvoice salespeople were generally expected to send a How the Deal Was
13 Done (“HTDWD”) email to a specific group email list at the company at the close of each
14 transaction explaining how the transaction was accomplished. GX92 (Osborne Dep. 269:19-
15 270:23, 271:1-272:17, 272:20, 283:7-283:19). These HTDWD emails regularly reported selling
16 Bazaarvoice’s PRR platform to customers in direct, and often intense, competition with
17 PowerReviews. These emails sometimes outlined the next steps Bazaarvoice planned to take to
18 sell additional products which would complement, and not replace, the PRR platform. For
19 example:

20 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED] in a deal where
21 “PowerReviews was brought in after [Bazaarvoice]” and noting that Bazaarvoice offered
22 a [REDACTED] discount “because of powerreviews.” GX673 at -894; GX422* at -469.

23 [REDACTED] Bazaarvoice competed to win [REDACTED] PRR platform business in
24 what was described as a “MASSIVE Power Reviews steel [sic].” GX225 at -253.

25 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED] in a sale described as a
26 “PR Steal” where Bazaarvoice used “some aggressive pricing to win their business. With
27 PR offering syndication to one of [REDACTED] big retailers [REDACTED] this was tougher
28 than expected.” GX227.

1 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED] in an “Extremely
2 PowerReviews competitive” sale. GX345 at -222.

3 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED]
4 taking the business away from Power Reviews in what Bazaarvoice described as a
5 “HUGE Power Reviews steal.” GX56 at -815.

6 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED] in a competitive
7 sale against Power Reviews. GX389.

8 [REDACTED] Bazaarvoice sold its PRR platform, among other things, to [REDACTED] in
9 a sale that was described as a “PowerReviews STEAL!” GX261; *see also* GX228 at -
10 419.

11 [REDACTED] Bazaarvoice sold its PRR platform and BrandVoice (syndication)
12 to [REDACTED] in a “very PR competitive” deal that was “won
13 based on [Bazaarvoice’s] network,” among other things. GX543.

14 [REDACTED] Bazaarvoice sold its PRR platform to [REDACTED]
15 bragging that “[a]nother IR500 account chooses Bazaarvoice over PR” and that [REDACTED]
16 [REDACTED] “cancelled a scheduled onsite w/ PowerReviews . . . and signed with us TODAY.”
17 GX531 at -973.

18 [REDACTED] Bazaarvoice sold its PRR platform, along with Ask & Answer, to
19 [REDACTED] in a deal described as “head to head competition with PowerReviews” that
20 required “a reduction in price to bring it home.” GX230.

21 **B. Bazaarvoice and PowerReviews Competed Aggressively on Price, Resulting**
22 **in Significant Savings to Customers**

23 152. PowerReviews positioned itself as a low-price alternative to Bazaarvoice (GX81
24 (Collins Dep. 367:11-13, 367:15-19, 403:18-404:16) and Trial Tr. 774:6-10 (Collins)) and set an
25 internal goal to “[b]e in every deal [Bazaarvoice] is in,” and encourage price competition by
26 building a “cost structure to support price compression.” GX277 at -870; GX490 at -727; *see*
27 *also* GX88 (Hossain Dep. 82:17-85:7, 95:13-16).

1 153. Bazaarvoice employees viewed PowerReviews as “an ankle-biter that cause[d]
2 price pressure in deals” and acknowledged that many customers brought PowerReviews into
3 negotiations as a “lever to knock [Bazaarvoice] down on price.” GX477* at -466. Bazaarvoice
4 acknowledged that competition between Bazaarvoice and PowerReviews resulted in lower prices
5 to its customers, saying it was “common for PowerReviews to provide extremely low pricing to
6 our clients to push them in their favor.” GX87 (Godfrey CID Dep. 149:25-150:18); Trial Tr.
7 762:3-5 (Collins); *see also* GX90 (Luedtke Dep. 278:2-10) and Trial Tr. 372:21-373:5 (Luedtke);
8 GX82 (Barton Dep. 254:13-256:7).

9 154. PowerReviews’ aggressive approach to pricing frequently forced Bazaarvoice to
10 defend its more expensive prices. Responding to competitive pressure from PowerReviews in
11 July 2011, Bazaarvoice’s Vice President of Retail Sales, Paul Dodd, warned that PowerReviews
12 had adopted a “scorched earth approach to pricing,” which “force[d] all of [Bazaarvoice’s]
13 current prospects and customers to at least understand how and why there is such a delta in
14 price.” GX208* at -475.

15 155. If a prospective customer was unwilling to pay a premium over the
16 PowerReviews price, Bazaarvoice frequently matched the PowerReviews price or offered a more
17 favorable price than PowerReviews. GX293 at -118; GX804 at -084; GX1119 (Godfrey Dep.
18 65:23-67:10); GX92 (Osborne Dep. 205:9-12, 205:15-22, 205:25) and Trial Tr. 709:1-11
19 (Osborne). For example, Walgreens forwarded PowerReviews’ offer to Bazaarvoice and asked
20 “can you do better . . .?” GX269 at -045-46; *see also* GX193 (Walgreens Dep. 54:11-55:1, 55:7-
21 56:18, 56:21-23, 56:25-57:2, 57:25-58:3, 58:8-59:19, 59:22, 59:24-60:16, 60:22-61:5).

22 156. Bazaarvoice offered to meet PowerReviews’ price to Vitamin Shoppe and add an
23 additional 5% discount. GX192 (Vitamin Shoppe Dep. 49:10-50:1, 51:16-52:19, 52:21-53:1,
24 53:4-18, 53:21-24, 54:2-22, 54:25-55:9, 55:12, 72:17-22, 72:25) and Trial Tr. 1378:8-1379:25
25 (Beebe/Vitamin Shoppe). Bazaarvoice’s Vice President of Sales, Tony Capasso, described this
26 trend in a 2011 email regarding an apparel manufacturer’s consideration of PowerReviews:
27 “[L]ate adopters see us as the stronger brand but struggle to justify 2X-3X greater costs for a
28 solution that looks somewhat the same. Even when we do show differences some [prospects]

1 don't put enough stock in those differences to justify the price [difference]. We may need to
2 battle on price in this case" Bazaarvoice ultimately offered to match the price that
3 PowerReviews had offered the apparel retailer, which represented a substantial discount from its
4 initial proposal. GX293 at -120.

5 157. Bazaarvoice and PowerReviews also aggressively pursued each other's installed
6 base of customers. Before the acquisition, a number of manufacturers and retailers switched
7 between the Bazaarvoice and PowerReviews PRR platforms. Many times these switches were
8 spurred by aggressive offers that were intended to displace the incumbent PRR platform
9 provider. *See, e.g.*, GX828 at -564-565; GX480; GX774 at -561; GX423.

10 158. PowerReviews actively sought opportunities to steal Bazaarvoice customers by
11 offering lower pricing or other incentives to those customers to switch to PowerReviews. In the
12 summer of 2011, PowerReviews was "[a]ggressively going after [Bazaarvoice's] existing
13 customer base" and "[d]isrupting our new client sales efforts" by "[l]owering price floors."
14 GX212 at 14; *see also* Trial Tr. 1114:10-1115:9 (Godfrey); GX1119 (Godfrey Dep. 45:2-10,
15 47:10-19, 48:14-49:6); GX85 (Defossé Dep. 229:2-16); GX422*. Bazaarvoice executive Alan
16 Godfrey commented that PowerReviews was convincing key customers like [REDACTED]
17 [REDACTED] "to evaluate alternatives, or at least, negotiate us to lower price points." GX915
18 at -689.

19 159. In some cases, PowerReviews convinced Bazaarvoice customers to switch
20 platforms. GX753 at -574; GX736; GX737; Trial Tr. 373:16-18 (Luedtke). In other cases, an
21 offer from PowerReviews provided additional leverage for the customer to negotiate more
22 favorable terms from Bazaarvoice. GX956. Even if PowerReviews was unable to win a
23 customer's business, its low prices set the bar for negotiations and compressed Bazaarvoice's
24 margins. *See, e.g.*, GX386* at -414.

25 160. Bazaarvoice recognized the pricing pressure that PowerReviews imposed and
26 developed competitive strategies to respond. GX785*; GX497* at -953; GX771. For example,
27 in response to a PowerReviews campaign targeting Bazaarvoice's manufacturing customers,
28 Bazaarvoice put into motion a plan to "steal one or more major [PowerReviews] clients . . . by

1 offering them something that they can't refuse." GX544 at -797. This strategy was intended to
2 send a signal to PowerReviews that Bazaarvoice was willing "to absorb some pain in return for
3 handing [PowerReviews] major client losses." GX544 at -797. On some occasions, Bazaarvoice
4 persuaded PowerReviews customers to switch. *See, e.g.*, GX471; GX358 at -612.

5 161. Bazaarvoice now claims that PowerReviews shifted to a "Blue Ocean" strategy in
6 2012 because it had been unsuccessful targeting Bazaarvoice enterprise clients. *See, e.g.*, Trial
7 Tr. 386:19-387:9, 420:24-421:12 (Luedtke). However, there is no doubt that up to the time of
8 the merger PowerReviews continued to compete with Bazaarvoice. Trial Tr. 424:21-425:2
9 (Luedtke); Trial Tr. 1804:14-21, 1825:3-4, 1826:22-1827:5, 1828:17-22, 1829:12-1830:13,
10 1837:10-1838:11 (Comée); Trial Tr. 758:17-20 (Collins). At the time of the merger,
11 PowerReviews executives pitched the merger as one that would result in a "monopoly in the
12 market." Trial Tr. 1819:11-14, 1820:16-1821:1 (Comée). In fact, leading up to the merger, a
13 member of the PowerReviews Board pushed its CEO to "push hard on BV flips with very
14 aggressive pricing." Trial Tr. 1827:9-1828:3(Comée). Bazaarvoice's CEO acknowledged that
15 "prior to the merger, PowerReviews put pricing pressure on Bazaarvoice." Trial Tr. 762:3-5
16 (Collins). Further, even under the Blue Ocean strategy, PowerReviews contemplated that PRR
17 would remain the foundation of its offering. Trial Tr. 1845:9-12 (Comée). In fact, despite
18 telling Bazaarvoice that his plan was to "pivot the company and focus downmarket," Trial
19 Tr.1833:20-25 (Comée), PowerReviews' CEO issued a press releases to "send a message to
20 Bazaarvoice," Trial Tr. 1834:1-3 (Comée), and "emphasize[] the company's success with large
21 clients," Trial Tr. 1828:21-23 (Comée). After the merger, Bazaarvoice and PowerReviews
22 exchanged lists of each company's sales pipeline, and those lists confirm that the companies had
23 been pursuing many of the same customers up to the time of the transaction. *See* GX817*.

24 C. Illustrative Examples of Competition

25 (i) Bed Bath and Beyond

26 162. Bed Bath and Beyond ("BBBeyond") operates two online retail websites,
27 BuyBuyBaby.com and BedBathandBeyond.com selling home goods. BBBeyond had revenues
28 from online sales of more than half a billion dollars in 2012. GX76 (Waltzinger/BBBeyond Dep.

1 16:3-18, 16:21-24). In 2009, BBBeyond decided to add PRR to its websites because it was at a
2 competitive disadvantage without PRR and believed PRR would improve conversion. GX76
3 (Waltzinger/BBBeyond Dep. 20:17-24, 21:8-15, 21:18) and Trial Tr. 561:25-562:12
4 (Waltzinger/BBBeyond). BBBeyond determined that it would not make sense to build its own
5 in-house solution and that there were only two PRR platform providers that met its needs:
6 Bazaarvoice and PowerReviews. GX76 (Waltzinger/BBBeyond Dep. 21:19-22:6, 22:10-20,
7 22:23-23:19, 23:22-24:7, 24:11-16, 25:16-18, 90:12-14, 90:17-91:3) and Trial Tr. 562:13-564:3,
8 564:5-8, 564:21-23, 571:2-12 (Waltzinger/BBBeyond). In its negotiations with Bazaarvoice,
9 BBBeyond was able to obtain [REDACTED], which represented a cost savings of [REDACTED] by
10 threatening to pursue a deal with PowerReviews. GX659 at -477; GX1005; GX548. BBBeyond
11 renewed its contract with Bazaarvoice after the transaction closed. After Bazaarvoice attempted
12 to impose a [REDACTED]/year price increase, BBBeyond agreed to a smaller increase of 11%.
13 GX1026 at -847; GX76 (Waltzinger/BBBeyond Dep. 32:3-5, 32:8-16, 32:19-21, 32:25-33:23,
14 34:8-11, 34:14-35:5) and Trial Tr. 565:18-567:9 (Waltzinger/BBBeyond). BBBeyond believes
15 that the presence of a credible competitor “helps out the marketplace” during negotiations and
16 today does not believe there is another alternative to Bazaarvoice that would meet its PRR
17 platform needs. GX76 (Waltzinger/BBBeyond Dep. 98:2-24, 99:4-13, 106:23-107:23, 108:5-17,
18 109:13-17, 109:21-110:4, 110:12-15, 110:20-111:10) and Trial Tr. 572:1-574:18, 581:9-13
19 (Waltzinger/BBBeyond).

20 **(ii) Big Fish Games**

21 163. Big Fish Games (“BFG”) is a computer gaming company. GX77 (Heverley/BFG
22 Dep. 16:2-18). BFG decided to add PRR in order to “harness” their users’ opinions on their
23 games. GX77 (Heverley/BFG Dep. 34:6-20). BFG initially considered building its own in-
24 house PRR platform, since BFG has a large internal programming department, but decided that it
25 would be too costly to service any in-house solution on an on-going basis. GX77
26 (Heverley/BFG Dep. 49:14-52:5, 53:11-13, 53:16-24). BFG then looked at several possible
27 providers but quickly narrowed its choices down to Bazaarvoice and PowerReviews. GX77
28 (Heverley/BFG Dep. 53:25-54:24, 57:13-18). Bazaarvoice and PowerReviews competed

1 vigorously for BFG’s business, constantly keeping each other in mind as they prepared proposals
2 and counterproposals. GX376 at -321; GX77 (Heverley/BFG Dep. 58:15-64:11, 64:12-18,
3 64:21-65:16). BFG believed that it benefited from the competition between Bazaarvoice and
4 PowerReviews as it was able to secure additional price and contract concessions as a result of the
5 competition. GX77 (Heverley/BFG Dep. 65:18-20, 65:22-66:13, 90:4-7, 90:9-18). Ultimately,
6 BFG signed a contract with Bazaarvoice after Bazaarvoice [REDACTED] and
7 dropped its pricing three times due to competition with PowerReviews. GX488* at -011; GX77
8 (Heverley/BFG Dep. 66:14-67:4). Internally, Bazaarvoice’s sales representative described the
9 BFG engagement as “the most satisfying power reviews competitive (and internal build) win
10 I’ve experienced in my career at Bazaarvoice. Being a software developer, there was a lot of
11 internal pressure for BFG to do this themselves . . . at least initially. Once they saw that they’d
12 never be able to keep up with market demand by doing it themselves, they focused on us and
13 power reviews.” GX343* at -874.

14 **(iii) BJ’s**

15 164. BJ’s Wholesale Club (“BJ’s”), a warehouse club store, operates the BJs.com
16 online retail site. BJ’s made the decision to add PRR to its website based on its research
17 indicating that PRR was “a popular and desirable piece of functionality for our members . . .
18 because customers find feedback from other customers to be of more value, and to be more
19 reliable and more trustworthy than feedback from other sources.” GX78 (Cunningham/BJ’s
20 Wholesale Dep. 15:3-15) and Trial Tr. 450:7-12 (Cunningham/BJ’s Wholesale). BJ’s also
21 believed PRR would improve conversion. GX78 (Cunningham/BJ’s Wholesale Dep. 16:9-13).
22 BJ’s considered building its own in-house PRR platform but decided against it because “it was
23 considered not to be an easy project, in light of all of the other technical requirements that we
24 had on our Website at the time.” GX78 (Cunningham/BJ’s Wholesale Dep. 16:24-17:5, 17:8-24,
25 18:7-11) and Trial Tr. 450:13-23 (Cunningham/BJ’s Wholesale). During BJ’s search for a PRR
26 platform provider, BJ’s only considered three companies, and one was “vetted out of the
27 process” early, leaving only Bazaarvoice and PowerReviews to compete for BJ’s business.
28 GX78 (Cunningham/BJ’s Wholesale Dep. 21:14-22:4, 22:7-9) and Trial Tr. 455:10-23

1 (Cunningham/BJ's Wholesale). BJ's pitted the two firms against each other, telling Bazaarvoice
2 it wanted them "to present to us why Bazaarvoice is a better option over Powerreviews." GX445
3 at -142. During its negotiations, Bazaarvoice and PowerReviews presented initial and
4 subsequent offers reflecting improved pricing. GX78 (Cunningham/BJ's Wholesale Dep. 22:22-
5 24, 23:2, 23:4-10, 23:13-24:4, 24:7, 24:9-16, 24:19, 24:21-23) and Trial Tr. 458:13-20, 459:25-
6 460:12 (Cunningham/BJ's Wholesale); GX440; GX1196. Both Bazaarvoice and PowerReviews
7 met the company's needs. GX78 (Cunningham/BJ's Wholesale Dep. 24:24-25:2, 25:5, 25:7-8,
8 25:11) and Trial Tr. 460:13-20 (Cunningham/BJ's Wholesale). Ultimately, BJ's chose
9 PowerReviews after seeing the price drop significantly after the competition between
10 Bazaarvoice and PowerReviews. GX78 (Cunningham/BJ's Wholesale Dep. 25:13-16) and Trial
11 Tr. 460:21-25 (Cunningham/BJ's Wholesale).

12 **D. Fringe Providers of PRR Platforms Have Not Constrained Bazaarvoice's**
13 **Ability to Raise Prices**

14 165. Bazaarvoice acknowledges that other commercial suppliers of PRR platforms are
15 not sufficiently close substitutes to Bazaarvoice's platform to prevent a significant post-merger
16 price increase. *See, e.g.*, GX492 (Pacitti Dep. 156:6-10, 166:24-167:4, 167:9-12). In April 2011,
17 Bazaarvoice co-founder Brant Barton discussed the absence of competitive alternatives for
18 customers, concluding that Bazaarvoice would "retain an extremely high percentage of
19 [PowerReviews] customers," because available alternatives for disgruntled customers were
20 "scarce" and "low-quality." GX514 at -810; GX82 (Barton Dep. 208:20-212:14) and Trial Tr.
21 647:19-649:15 (Barton). Bazaarvoice now, post acquisition, faces virtually the same competitive
22 landscape of "scarce" and "low-quality" alternatives that Barton identified in April 2011.
23 GX514 at -810. This fact is borne out in Bazaarvoice's internal churn analyses immediately
24 following the merger that discovered that competitive losses had dropped. Trial Tr. 876:3-
25 878:25 (Collins); GX1216 at 17-18.

26 166. Customers similarly viewed Bazaarvoice and PowerReviews as the two most
27 significant providers of PRR platforms. *See supra* Section III.A. Post acquisition, a customer
28 wrote PowerReviews CEO Pehr Luedtke saying "from a retailers stand point I have to say I am a

1 little concerned that there is now only one option for customer reviews.” GX892 at -323.
2 Similarly, as described earlier, BBBeyond came to the conclusion that there were only two
3 options for them in 2009, Bazaarvoice and PowerReviews, and came to the same conclusion in
4 2012. GX76 (Waltzinger/BBBeyond Dep. 59:21-60:3, 60:6-11, 96:7-17) and Trial Tr. 571:18-25
5 (Waltzinger/BBBeyond); *see also* GX98 (American Eagle Dep. 21:10-14, 21:17-19).

6 **E. Bazaarvoice and PowerReviews Recognized That the Transaction Would**
7 **Allow Bazaarvoice to Raise Prices**

8 167. When outlining the benefits of the acquisition, Bazaarvoice’s Barton noted that
9 acquiring PowerReviews would “[e]liminat[e] [Bazaarvoice’s] primary competitor” and provide
10 “relief from . . . price erosion.” GX514 at -810; *see also* GX218 at -594; GX82 (Barton Dep.
11 94:2-24, 129:10-130:9) and Trial Tr. 646:11-647:10 (Barton). He later wrote that the transaction
12 would enable the combined company to “avoid margin erosion” caused by “tactical ‘knife-
13 fighting’ over competitive deals.” GX519 at -751; *see also* GX82 (Barton Dep. 239:14-240:20,
14 240:23-242:14).

15 168. Bazaarvoice Chief Revenue Officer Michael Osborne wrote, “[i]f we buy
16 [PowerReviews] it changes everything for our model ... [b]ecause 10-20% price erosion will
17 disappear,” (GX221 at -528) and admits that he believed that Bazaarvoice’s acquisition of
18 PowerReviews would remove price erosion. GX92 (Osborne Dep. 311:25-312:2, 312:6-7,
19 312:19-21, 312:24-313:4, 313:8) and Trial Tr. 718:20-25 (Osborne).

20 169. Bazaarvoice’s then-CEO, Brett Hurt, saw the acquisition of PowerReviews as an
21 opportunity to “tak[e] out [Bazaarvoice’s] only competitor, who . . . suppress[ed] [Bazaarvoice]
22 price points . . . by as much as 15% . . .” GX518 at -475. He later observed that Bazaarvoice
23 would have “[n]o meaningful direct competitor” after acquiring PowerReviews, thereby reducing
24 “pricing dilution.” GX899 at -817-818; *see also* GX1181 at -158; Trial Tr. 259:20-260:13 (Hurt).

25 170. Bazaarvoice CFO Stephen Collins’ perspective regarding the potential acquisition
26 was that Bazaarvoice had “[l]iterally, no other competitors,” and he expected “[p]ricing accretion
27 due to [the] combination” of the two firms. GX522 at -035. Collins also wrote that the
28 acquisition of PowerReviews would “eliminate the cost in time and money to take

1 [PowerReviews’] accounts” and “reduce [Bazaarvoice’s] risk of account losses as
2 [PowerReviews] compete[d] for survival.” GX324 at -922. The Bazaarvoice “executive team’s
3 views of the transaction’s ability to improve Bazaarvoice’s pricing power” did not change prior
4 to the acquisition of PowerReviews. GX492 (Pacitti Dep. 168:13-18).

5 171. PowerReviews’ CEO, Pehr Luedtke, also believed the benefits of the merger
6 between Bazaarvoice and PowerReviews included “margin expansion” (GX249 at -940), the
7 “possibility of reducing the discounting that we had seen in the marketplace,” and the fact that it
8 would “[e]liminate[e] competitive risk and an acquisition of PowerReviews by a larger player . .
9 . .” GX253; *see also* GX90 (Luedtke Dep. 289:10-15, 289:18-24) and Trial Tr. 329:2-15, 332:7-
10 333:5 (Luedtke).

11 **F. Economic Testimony Supports the Conclusion That the Transaction Will**
12 **Lead to Substantially Higher Prices for Many Bazaarvoice and**
13 **PowerReviews Customers**

14 172. The merger of Bazaarvoice and PowerReviews will result in significant
15 anticompetitive unilateral effects. A “unilateral” effect is one that arises solely through the
16 altered behavior of Bazaarvoice without the necessity of coordinated behavior with other PRR
17 platform suppliers. Trial Tr. 911:6-25 (Shapiro); GX983* at 56-57. Economic theory predicts
18 that the merger will result in significant unilateral effects for customers that viewed Bazaarvoice
19 and PowerReviews as the most attractive suppliers of PRR platforms and for whom the third-best
20 supplier has a distinctly inferior product, compared to the weaker of the two merged parties.
21 Trial Tr. 916:12-918:1 (Shapiro); GX983* at 57-59. The win/loss data in Bazaarvoice’s
22 Salesforce database and data compiled from HTDWD emails provide direct evidence that, for
23 many customers, Bazaarvoice and PowerReviews were the leading two bidders to provide PRR
24 platforms and that other PRR platform suppliers were distinctly inferior alternatives. Trial Tr.
25 916:12-918:1, 2062:15-2064:10 (Shapiro). While the data may be incomplete, there was no
26 policy within Bazaarvoice of only recording certain competitors or taking other action which
27 would create a bias in this data. *See, e.g.*, Trial Tr. 204:5-8 (Hurt); Trial Tr. 555:14-25
28 (Defossé).

1 173. The win/loss data in Bazaarvoice's Salesforce database tracks instances in which
 2 Bazaarvoice won or lost business. GX92 (Osborne Dep. 57:13-59:21); *see also* Trial Tr. 732:18-
 3 733:19 (Osborne). Although Mr. Osborne testified that the Salesforce database was not
 4 "dependable," he admitted that the data contained in the database was accurate enough to update
 5 the management and the Board of Directors about the sales pipeline. Trial Tr. 729:19-23,
 6 733:20-734:5 (Osborne).

7 174. Professor Shapiro examined 480 PRR platform sales opportunities in North
 8 America identified in the Bazaarvoice Salesforce database as being created between August 2005
 9 and July 2012 and that contained information about competitors. GX983* at 61 and Ex. 19;
 10 Trial Tr. 984:5-20 (Shapiro); GX1044. Professor Shapiro concluded that PowerReviews was
 11 identified as a competitive alternative in 75% of the opportunities. GX983* at 61 and Ex. 19;
 12 Trial Tr. 985:3-7 (Shapiro); GX1044. The next closest alternative, internal builds, appears in
 13 18% of the opportunities. GX983* at 61 and Ex. 19; Trial Tr. 985:8-10 (Shapiro); GX1044. No
 14 other alternative appears in more than 3% of the opportunities. GX983* at 61 and Ex. 19; *see*
 15 *also* Trial Tr. 985:11-15 (Shapiro); GX1044. The results are similar when the analysis is limited
 16 to customers in the Internet Retailer 500 ("IR 500").

17 175. For the IR 500, as shown by the chart below, Professor Shapiro concludes that
 18 PowerReviews was identified as a competitive alternative solution in 83% of the opportunities.
 19 The next closest alternative, internal builds, appears in 15% of the opportunities. No other
 20 competitive alternative appears in more than 3% of the opportunities. GX983* at 61 and Ex. 20;
 21 GX1045*.

**Frequency of Competitors in Bazaarvoice
 Win/Loss Opportunities**

IR500, Core R&R Products Only

Competitor	Opps	Frequency
PowerReviews	121	83%
Internal Build	22	15%
Pluck	4	3%
Viewpoints	4	3%
Reevo	1	1%
Lithium	0	0%
Expo	0	0%
Jive	0	0%
Zuberance	0	0%
"Other"	2	1%
Total Opportunities	146	
<small>GX1045</small>		

1 176. In addition to win/loss data, the Bazaarvoice HTDWD email dataset produces
 2 similar results. *See supra* Section III.A. Although Bazaarvoice had no formal process to ensure
 3 the HTDWD emails were complete or accurate, Bazaarvoice did not instruct its employees to
 4 skew the reports to overstate engagements involving PowerReviews. Trial Tr. 728:19-729:5,
 5 734:6-16 (Osborne). There was therefore no bias and the fact that it, like most data, is
 6 incomplete does not render the analysis unreliable, especially when it is consistent with the other
 7 evidence. Trial Tr. 2059:7-2061:4 (Shapiro); *cf.* Trial Tr. 204:5-8 (Hurt); Trial Tr. 555:14-25
 8 (Defossé).

9 177. As shown in the chart below, Professor Shapiro examined 143 Bazaarvoice
 10 HTDWD emails sent between September 2008 and July 2012 in which a competitor was
 11 identified and concluded that PowerReviews accounted for 80% of the references to competitors
 12 in these emails. The next closest alternative identified was internal builds, which accounted for
 13 12% of the competitive references. No other competitive alternative appears in more than 3% of
 14 the emails. Trial Tr. 986:12-987:1; GX983* at 62, Ex. 26 and Ex. 27; GX1047; GX1048*.

15 **Competitor Counts in Bazaarvoice**
 16 **"How the Deal was Done" Documents**

17 *Ratings and Reviews Deals Only*

Competitor	Opps	Frequency
PowerReviews	114	80%
In-house	17	12%
Pluck	4	3%
Shopzilla	2	1%
Viewpoints	2	1%
Buzz Metrics	1	1%
Gigya	1	1%
Reevo	1	1%
Trip Advisor	1	1%
Total Competitor Counts	143	

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25 178. Professor Shapiro identified three types of customers “that are most likely to be
 26 vulnerable and harmed” by the merger. Trial Tr. 998:18-999:1 (Shapiro). These three groups
 27 are Bazaarvoice customers, PowerReviews legacy customers, and customers who place a high
 28 value on syndication. Trial Tr. 998:18-999:1 (Shapiro).

1 179. Professor Shapiro concludes that the unilateral price effects of the
2 Bazaarvoice/PowerReviews merger will be most pronounced for their existing customers when
3 those customers' current contracts come up for renewal. Trial Tr. 999:6-24 (Shapiro); GX983*
4 at 63. These customers have already revealed their preference for a commercial PRR platform,
5 and because of the merger they have lost the ability to play Bazaarvoice and PowerReviews off
6 one another to get a lower price. Trial Tr. 999:15-23 (Shapiro); GX983* at 63; *see also supra*
7 Section III.B. One mechanism Bazaarvoice could employ to unilaterally raise price would be to
8 eliminate the PowerReviews product from a customer's choice set and migrate legacy customers
9 from the PowerReviews enterprise platform to the higher-priced Bazaarvoice product. Trial Tr.
10 1003:14-1004:11 (Shapiro); GX983* at 64. While the customer may get additional features,
11 these would not be features that the customer would otherwise choose if PowerReviews' lower-
12 priced alternative were still an option. Trial Tr. 1003:20-1004:4 (Shapiro); GX983* at 65 and
13 fn.307; *see also* GX293 at -118.

14 180. Bazaarvoice planned to migrate the largest PowerReviews customers to the
15 higher-priced Bazaarvoice platform. In proposing an acquisition of PowerReviews in April
16 2011, Bazaarvoice's co-founder Brant Barton described this as one "Pro" in favor of the deal:
17 "[w]e could migrate their Tier 1 customers to our platform" GX514 at -810. In addition, a
18 May 2012 Bazaarvoice presentation points out that average revenue from IR 500 customers at
19 PowerReviews in terms of annualized cumulative billings is 83% below Bazaarvoice's, adding:

20 [The merger p]rovides us with the opportunity to increase revenue from
21 [PowerReviews'] existing clients via migration to the Bazaarvoice platform a [sic]
22 higher price points in return for greater features and functionality that [sic] those
of [PowerReviews]. . . .

23 GX332 at -291; Trial Tr. 775:23-776:11 (Collins).

24 181. As a result of the acquisition, Bazaarvoice gained the ability to unilaterally charge
25 higher prices for its new customers who do not consider in-house (or fringe competitor solutions)
26 to be a viable option, as compared to its pre-merger new customers. GX983* at 63; *see also*
27 Trial Tr. 2050:6-2051:19 (Shapiro). In many instances, Bazaarvoice can effectively price
28 discriminate against such customers because it collects detailed information about a customer's

1 requirements and budget constraints during the sales process. *See supra* Section II.A.(iii); Trial
2 Tr. 998:2-17 (Shapiro). The more effectively Bazaarvoice can engage in targeted “price
3 discrimination” based on customer attributes, the greater the unilateral competitive effects.
4 GX983* at 63; *see also* Trial Tr. 997:18-998:1 (Shapiro).

5 182. Customers for whom syndication is particularly important, especially brand
6 customers, are also likely to be particularly harmed by the merger. Trial Tr. 998:18-999:1,
7 1001:5-1002:13 (Shapiro). For brand customers looking for a syndication network with
8 significant retail customers, PowerReviews was the closest and only credible alternative to
9 Bazaarvoice. Trial Tr. 1001:5-1002:13, 2051:20-2052:13 (Shapiro). After the merger, these
10 customers have no alternative PRR platform with a significant syndication network and therefore
11 these customers have lost significant bargaining leverage. Trial Tr. 1001:5-1002:13, 2051:20-
12 2052:13 (Shapiro). This applies both to new customers as well as legacy customers who now
13 have access to a larger syndication network, as “Bazaarvoice will seek to capture that value in
14 the price they charge. The customers’ return will depend on what their bargaining leverage is,
15 and that’s been weakened.” Trial Tr. 1001:5-1002:13 (Shapiro); *see also* Trial Tr. 2051:20-
16 2052:13 (Shapiro).

17 **G. Customers Have Diminished Insight into Potential Competitive Harm**

18 183. Customers are the best source of information on past responses to price increases
19 and the substitutability of different products. Trial Tr. 2043:18-2045:2 (Shapiro). When it
20 comes to determining the potential effects of a merger, however, it is “much harder for
21 customers to do.” Trial Tr. 2045:3-2046:10 (Shapiro).

22 184. Products such as PRR platforms are “relatively inexpensive” and have relatively
23 long contracts; thus considering competitive alternatives for PRR is not part of customers’ day-
24 to-day activities and therefore they do not have as much current information about the
25 prospective effect of a merger. Trial Tr. 2045:3-2046:10 (Shapiro). In fact, customers have
26 access to much less information and evidence than expert witnesses and the Court in a merger
27 trial. Trial Tr. 2073:10-17 (Shapiro). Customers generally do not engage in a specific analysis
28 of the effects of a merger. Trial Tr. 2077:15-2078:3 (Shapiro); *cf.* GX103 (B&H Foto Dep.

1 42:20-25). As Dick's Sporting Goods testified in this case, "[i]f I'm not in the market to buy
2 ratings and review services at the moment, I'm not up to speed on that current service, managing
3 hundreds of different vendors. I look at them when they're needed, not continually research
4 everything that's out there all the time." GX130 (Dick's Sporting Goods Dep. 32:18-21, 32:24-
5 33:5); *see also* GX170 (Overstock.com Dep. 41:5-10) (when asked whether Overstock had been
6 harmed by the merger, testified "I don't really have enough information to accurately answer
7 that").

8 185. Many customers testified that they had never considered or given any thought to
9 the merger. *See, e.g.*, Trial Tr. 1268:15-17 (Yudin/Abe's of Maine); GX94 (Abercrombie Dep.
10 25:10-13); GX132 (Drums on Demand Dep. 25:20-26:7); GX134 (eHobbies Dep. 21:17-19,
11 38:21-39:1); GX136 (Footlocker Dep. 36:1-5, 47:7-10); GX143 (Guess? Dep. 44:11-14); GX154
12 (Johnsonville Sausage Dep. 19:20-22); GX157 (K-Swiss Dep. 17:5-8); GX160 (Lord & Taylor
13 Dep. 31:9-15, 31:18); GX164 (New Era Dep. 42:21-24); GX173 (Paypal Dep. 17:5-8); GX174
14 (Perform Better Dep. 19:16-19); GX175 (Petco Dep. 21:9-14); GX183 (Shoplet Dep. 42:23-
15 43:1); GX141 (Golfsmith Dep. 28:16-18, 28:20-23, 62:12-14, 62:16-17); GX138* (Fruit of the
16 Loom Dep. 34:12-16).

17 186. Many customers were either unaware of alternatives or had conducted a limited
18 review of their alternatives. *See, e.g.*, Trial Tr. 468:7-17 (Cunningham/BJ's Wholesale); Trial
19 Tr. 1639:11-24, 1640:5-17, 1641:3-9 (Moen/Hayneedle); GX111 (Bon-Ton Dep. 45:15-19,
20 45:22-46:9, 48:20-49:4); GX113 (The Buckle Dep. 36:10-37:1); GX115 (Cabela's Dep. 21:13-
21 17, 22:15-20); GX130 (Dick's Sporting Goods Dep. 32:18-21, 32:24-33:10); GX136 (Footlocker
22 Dep. 36:1-5); GX169 (Orchard Supply Dep. 28:10-29:1); GX183 (Shoplet Dep. 42:16-22);
23 GX79 (Toys R Us Dep. 58:4-8).

24 187. Still other customers displayed a misunderstanding of the capabilities of other
25 PRR providers. *See, e.g.*, Trial Tr. 1265:10-11 (Yudin/Abe's of Maine) (believing that Reevo
26 had a U.S. syndication network); GX173 (Paypal Dep. 20:18-19, 20:21-21:1) (believing
27 Zuberance offered PRR platform functionality).

1 188. Finally, Defendant cites to other customers who do not currently use a
 2 commercial PRR platform for their opinion on the effects of the merger. *See, e.g.*, GX94
 3 (Abercrombie Dep. 18:16-20); GX110 (Blue Nile Dep. 20:19-23); GX133 (eBags Dep. 49:7-13);
 4 GX147 (HSN Dep. 45:11-20); GX176 (Planet DJ Dep. 27:2-9); GX183 (Shoplet Dep. 22:20-22,
 5 22:24-25, 38:16-19); GX188 (Systemax Dep. 31:8-12, 31:15-23); *cf.* GX169 (Orchard Supply
 6 Dep. 27:16-18, 27:21-28:3) (dropped PRR due to a shift in focus away from eCommerce, but if
 7 they add it back in the future he would have “some concerns if these were still the only two
 8 players that had gone to one in that space.”).

9 **H. Since Acquiring PowerReviews, and Despite the Government’s Investigation**
 10 **and Lawsuit, Bazaarvoice Has Threatened to Raise, or in Fact Raised, Prices**

11 189. The Department of Justice informed Bazaarvoice that it had opened an
 12 investigation just two days after Bazaarvoice acquired PowerReviews. Bazaarvoice was
 13 cognizant of the investigation as it made business decisions. In discussing external
 14 communications regarding the transaction several months after it occurred, Bazaarvoice’s
 15 Director of Communications wrote that “[w]hatever we come up with will need to be vetted by
 16 legal so we avoid any anti-trust gotchas.” GX495 at -301; *see also* GX527; GX1225 at -047;
 17 GX352* and Trial Tr. 781:8-782:3 (Collins). Notwithstanding the investigation and this lawsuit,
 18 Bazaarvoice raised prices for many customers.

19 190. Bazaarvoice’s economic expert agrees that prices have gone up for a large number
 20 of customers since the merger but argues that the post-merger price increases occurred due to the
 21 addition of additional features or improved functionality. Customers disagree. For example:

22 191. [REDACTED], a PowerReviews customer, complained to Bazaarvoice that
 23 after the transaction “[s]o we’re paying more (at threat of cutting us off during our discussion,
 24 which was a total turn-off after years of a great partnership) and getting less. We need to get
 25 back to the great service that Power Reviews provided.” GX338* at -342. When Bazaarvoice
 26 attempted to explain the price increase as not related to the merger, [REDACTED] said that:

27 we were paying [REDACTED] for four sites and were then told one more site would
 28 be another [REDACTED] was really treated like dirt and the launch of our
 [REDACTED] was held hostage by a long-term partner, or should I say by the
 company that bought our long-term partner None of this sort of thing

1 happened when I was with Power Reviews, and this all reinforced my belief that I
2 made the right decision X years ago when I selected PR over BV.

3 GX338* at -340.

4 192. [REDACTED] a PowerReviews customer, complained that after the merger:

5 [o]ur first experience as a BV customer was to receive a [REDACTED] increase for our
6 renewal in July – not a very good start considering we weren't receiving any
7 meaningful upgrades to our service. My team felt that we had been put over a
8 barrel since we believed that the two premier players in this space had been
reduced to one and to make matters worse BV was taking advantage of this
situation with heavy handed pricing.”

9 GX337* at -523-524.

10 193. [REDACTED] eventually complained to PowerReviews CEO, Pehr Luedtke, and got
11 the increase reduced to [REDACTED], which is still significant given that there were, according to the
12 customer, no meaningful improvements to service. [REDACTED] sent an email to Bazaarvoice
13 referencing the DOJ investigation saying that “your company’s actions relative to pricing . . .
14 raised a huge red flag to the DOJ that competition was being diminished.” GX337* at -524
15 (emphasis in original). Zach Bolian, a financial analyst at Bazaarvoice acknowledged to Gary
16 Skinner, another Bazaarvoice financial analyst, that “there was a price increase with no
17 incremental value . . .” GX337* at -523. Skinner followed up with a directive to “stop this
18 immediately.” GX337* at -523.

19 194. [REDACTED] reached out to Bazaarvoice expressing its concerns with the transaction
20 after hearing that in [REDACTED] renewal negotiations Bazaarvoice attempted to impose a “2x
21 increase in the core cost of PR service to [REDACTED] with zero added value provided to us.”
22 GX257; GX692*.

23 195. Dillard’s received a price increase of approximately [REDACTED] without any
24 corresponding increase in service or functionality. GX131 (Dillard’s Dep. 44:5-45:6, 45:9-25,
25 46:4-6, 46:13-47:15, 52:15-53:1, 72:23-73:18).

26 196. Just prior to the merger, [REDACTED] was paying Bazaarvoice [REDACTED] for
27 its PRR platform, limited to 10,000 SKU’s, and was in the process of renegotiating its contract.
28 PowerReviews offered [REDACTED] its PRR platform for 100,000 SKU’s at a price of [REDACTED].

1 After the merger, Bazaarvoice learned of PowerReviews' offer, and noted, "it could be tricky for
2 us to sell an uptick in fees." GX1149* at -586; *see also* GX120. A salesperson at Bazaarvoice
3 then asked, "Can someone communicate back to the PR team that 'we've got this one?'"
4 GX1149* at -586. [REDACTED] ultimately renewed with Bazaarvoice, agreeing to a significant
5 price increase. GX821* at -887.

6 197. While Defendant has identified instances of post-merger price reductions, such
7 price reductions were often accompanied by service reductions. For example, Vitamin Shoppe's
8 PowerReviews price decreased in its most recent contract. The lower price came with significant
9 service reductions, including a downgrade from a standard to basic service package, removal of
10 Facebook Discovery and Community Services, and reductions in moderation and technical
11 response service levels. *Compare* DX1796 with GX1221. Similarly, while GameStop was
12 initially cited as an example of a post-merger price reduction because of competition, the
13 evidence showed that the price decrease was actually associated with a reduction in service.
14 Trial Tr. 1140:1-8, 1141:9-1142:21 (Godfrey); GX1231 at 1.

15 **IV. THE TRANSACTION WILL ALSO REDUCE INNOVATION AND PRODUCT** 16 **VARIETY**

17 198. Prior to the merger, Bazaarvoice and PowerReviews spurred one another to
18 enhance and improve their PRR platforms. GX680 at -096; GX81 (Collins Dep. 355:12-16) and
19 Trial Tr. 760:18-761:6 (Collins); GX897 at -118-19. In explaining the acquisition of
20 PowerReviews to Bazaarvoice employees, Bazaarvoice executives wrote that "[I]ike
21 Bazaarvoice, PowerReviews has been an early pioneer in the ratings & reviews space. We know
22 them well, through competing in the marketplace, and over the years, we've pushed each other to
23 innovate in ways that help consumers and retailers." GX838 at -391.

24 199. Feature-driven competition between Bazaarvoice and PowerReviews hastened the
25 pace of innovation and made their PRR platforms an increasingly attractive proposition for
26 manufacturers and retailers. As PowerReviews and Bazaarvoice grappled to differentiate their
27 product offerings, they developed new features and improved the functionality offered by their
28 respective platforms. PowerReviews' former CEO, Pehr Luedtke, described the pattern of

1 innovation competition between Bazaarvoice and PowerReviews in a 2010 email to a large
2 consumer products retailer: “[T]here are a lot of similarities between BazaarVoice and
3 PowerReviews when it comes to features . . . we have constantly traded places in terms of who
4 leads and who fast follows.” GX240; *see also* Trial Tr. 112:15-17, 114:22-25, 115:25-116:14
5 (Hurt); GX82 (Barton Dep. 96:24-98:5); GX88 (Hossain Dep. 109:3-7, 109:10-110:1, 110:4-
6 111:5, 111:7-11, 111:13-23).

7 200. PowerReviews made financial investments in its sales, marketing, and product
8 development resources in order to improve its PowerReviews Enterprise product which
9 competed directly with Bazaarvoice. GX90 (Luedtke Dep. 201:14-16, 201:18-22, 202:20-
10 203:13, 203:16-204:7, 204:10-206:6). PowerReviews believed it was important to be “at parity
11 or better” and “have competing products in every category [Bazaarvoice is] looking at.” GX88
12 (Hossain Dep. 178:5-179:3).

13 201. Similarly, Bazaarvoice noted that part of its “strategy for protecting our flanks”
14 was “[c]ontinued investment in R&R – it is the foundation for other elements of our strategy”
15 GX411 at -869. Both Bazaarvoice and PowerReviews touted their respective product innovation
16 initiatives to potential customers in efforts to win new customers. *See, e.g.*, GX567* at 7;
17 GX568* at 9; GX77 (Heverley/BFG Dep. 78:8-25); GX485 at -122-23.

18 202. Bazaarvoice plans to eliminate customers’ PRR platform options by sunseting the
19 PowerReviews Enterprise platform in 2014 while focusing solely on the new Bazaarvoice
20 platform. GX87 (Godfrey CID Dep. 69:9-15); GX784 at -620; GX7. By acquiring
21 PowerReviews, Bazaarvoice recognized that it would be “eliminating feature driven one-
22 upmanship and tactical competition on retail” GX324 at -921. In fact, Bazaarvoice believed
23 that prior to the acquisition, PowerReviews was planning on making a significant increase in its
24 R&D personnel. GX82 (Barton Dep. 238:20-239:9). PowerReviews similarly recognized that
25 the transaction “[e]liminates need for feature wars in core ratings and reviews products.” GX254
26 at 1 and Trial Tr. 339:3-17 (Luedtke).

1 **A. SEO Innovation**

2 203. One example of how Bazaarvoice and PowerReviews competed in product
3 innovation began in 2009 when PowerReviews began offering an “In-Line SEO” solution to its
4 PRR platform customers. GX458 at -737. This was the first PRR platform feature to allow PRR
5 to be indexed by search engines directly from the product webpage, rather than from a separate
6 webpage designed for search engine optimization. GX894; Trial Tr. 367:10-12 (Luedtke). This
7 innovation enabled PowerReviews’ PRR platform to drive search traffic directly to the product
8 pages. GX894.

9 204. PowerReviews used its In-Line SEO feature to differentiate its product from
10 Bazaarvoice’s, which relied on the older method of indexing PRR content on separate SEO
11 webpages, instead of on the product pages where a customer can actually purchase a product.
12 GX226; GX90 (Luedtke Dep. 135:11-16, 136:20-23, 136:25-137:3, 141:9-13, 142:2-7, 142:10-
13 14, 154:7-9, 154:12-13, 171:8-17) and Trial Tr. 368:12-15 (Luedtke); GX85 (Defossé Dep.
14 149:15-19, 149:22-24).

15 205. In January 2011, Bazaarvoice announced the launch of its “Smart SEO” solution,
16 which, like PowerReviews’ In-Line SEO, allowed PRR content to be indexed from the product
17 pages. GX940 at -882; GX941 at -408; GX93 (Svatek Dep. 220:3-21). In fact, Bazaarvoice’s
18 Smart SEO “took [PowerReviews’] idea” for at least part of its offering. Trial Tr. 498:4-23
19 (Defossé). Additionally, PowerReviews’s former CEO testified that he viewed the launch of
20 Smart SEO as a response to its launch of In-Line SEO in 2009. GX90 (Luedtke Dep. 154:1-9,
21 154:12-13) and Trial Tr. 368:24-369:14 (Luedtke). Bazaarvoice claimed that this launch made
22 the SEO value between the two solutions equal. GX941 at -408; GX238 at -332. By March
23 2011, Bazaarvoice decided to “throw Smart SEO in for free” for some customers in an effort to
24 increase adoption of the Smart SEO feature. GX1028 at -924.

25 **B. Syndication Innovation**

26 206. While PowerReviews was the innovator in SEO technology, Bazaarvoice was the
27 first company to create a review syndication network that connected manufacturers and retailers.
28 GX757 at -902-908; GX959. The Bazaarvoice syndication network was limited to

1 manufacturers and retailers who used the Bazaarvoice PRR platform and Bazaarvoice typically
2 charged manufacturers to syndicate reviews to other Bazaarvoice customers. GX85 (Defossé
3 Dep. 153:8-154:5) and Trial Tr. 478:4-7 (Defossé); GX89 (Hurt Dep. 283:8-19) and Trial Tr.
4 149:14-150:13 (Hurt); Trial Tr. 788:5-10 (Collins). PowerReviews responded by creating a
5 similar PRR syndication feature for its customers. GX88 (Hossain Dep. 145:10-147:14); Trial
6 Tr. 362:20-363:11 (Luedtke).

7 207. Bazaarvoice’s manufacturing customers began to ask Bazaarvoice to syndicate
8 their reviews to retail partners that were on the PowerReviews platform. For example, [REDACTED]
9 [REDACTED] a Bazaarvoice customer, wanted to syndicate reviews to [REDACTED], a
10 PowerReviews customer. Bazaarvoice’s General Counsel Bryan Barksdale signed a contract to
11 allow it to. GX415* at -433. Bazaarvoice CEO, Brett Hurt, learned of the contract and it was
12 “intercepted before it went out,” and he scheduled a late night meeting to discuss the issue.
13 GX415* at -433. As Hurt later noted in a conference call with analysts announcing the
14 acquisition, “[Bazaarvoice’s] brands have been clamoring to syndicate content through the
15 Bazaarvoice network to [PowerReviews] so that they’ll drive more channel sales” GX840
16 at -940.

17 208. PowerReviews sought to capitalize on the desire of Bazaarvoice customers to
18 syndicate content by aggressively marketing an “open” content syndication feature that
19 facilitated syndication between manufacturers that were not PowerReviews customers and
20 retailers that were. GX1103 at -467; GX916; GX533; GX412 at -494-96; Trial Tr. 360:16-22
21 (Luedtke). PowerReviews intended its open syndication network to be an important “point of
22 differentiation” against Bazaarvoice. GX88 (Hossain Dep. 148:6-150:2, 150:5-17).

23 209. PowerReviews officially announced its open syndication network in July 2011.
24 GX29; GX31 at -735. At this time, PowerReviews invited all Bazaarvoice manufacturing
25 customers to try its syndication service for free for twelve months. GX318 (Defendant’s Answer
26 ¶ 52); GX90 (Luedtke Dep. 213:14-214:1, 214:4-17, 216:16-218:14, 218:16-18, 219:3-8) and
27 Trial Tr. 361:17-362:10 (Luedtke). Hurt testified that the PowerReviews press release about its
28 open syndication network was a “call to action.” GX89 (Hurt Dep. 285:2-4, 285:6-10, 281:18-

1 283:11); *see also* Trial Tr. 487:4-8 (Defossé). Although Bazaarvoice had planned to deploy its
2 own open syndication feature in September 2011, the PowerReviews press release alerted
3 Bazaarvoice to the “need to immediately start conversations with all BV Manu [manufacturer]
4 clients who we believe are strategic to our syndication interests” and “to elevate the urgency”
5 with those customers. GX31 at -735; *see also* Trial Tr. 487:9-25 (Defossé). Several Bazaarvoice
6 manufacturer clients signed up for PowerReviews’ open syndication platform. Trial Tr. 485:4-
7 14 (Defossé).

8 210. Bazaarvoice developed a competitive response to fend off PowerReviews’ open
9 syndication platform. GX24; GX319; Trial Tr. 481:18-482:15 (Defossé). One tactic
10 Bazaarvoice attempted was to resist syndicating its customers’ reviews to PowerReviews
11 customers in an attempt to maintain its “closed” syndication platform. GX912; GX26; GX311 at
12 -014; GX243 at -926-27; GX1215* at -793; Trial Tr. 519:22-520:8 (Defossé) (using legal
13 redlining as a “delay tactic” to resist syndicating to PowerReviews). Internally, Bazaarvoice
14 acknowledged that it was “making a strategic choice not to create a custom (and safe) version of
15 [the content] feed for retailers outside of [the Bazaarvoice] network.” GX499* at -763; *see also*
16 GX85 (Defossé Dep. 202:25-203:15). In communicating this approach to Bazaarvoice’s sales
17 leadership team, Michael Osborne, Bazaarvoice’s Chief Revenue Officer wrote, “[t]ell all of
18 your teams . . . that we do not support syndication outside of our network – and if we get
19 requests for it, escalate to the top immediately. There’s a new competitive battle coming.”
20 GX714 at -660; Trial Tr. 713:1-19 (Osborne); *see also* GX210 at -144. Bazaarvoice also
21 considered changing its syndication model to “restrict [PowerReviews’] ability to syndicate
22 without at least paying a toll.” GX311 at -014; *see also* GX1204* at -316; GX125 (Clorox Dep.
23 136:12-15, 136:17-137:7) and Trial Tr. 306:19-307:11 (Levin/Clorox); Trial Tr. 1642:1-5
24 (Moen/Hayneedle).

25 211. Senior PowerReviews executives believed that Bazaarvoice was responding to the
26 PowerReviews open syndication network with “monopolistic behavior,” falsely telling potential
27 manufacturer customers that only Bazaarvoice would be able to syndicate to large retailers who
28

1 were existing Bazaarvoice customers. GX244 at -979; *see also* GX90 (Luedtke Dep. 230: 21-
2 231:6, 231:8-232:3).

3 212. While resisting pressure to syndicate reviews to PowerReviews' retailers,
4 Bazaarvoice was willing to consider doing so for specific retailers like [REDACTED]
5 in order to potentially switch [REDACTED] to Bazaarvoice at a later date. GX773* at -094;
6 GX525 at -625.

7 213. Finally, Bazaarvoice relented to the customer pressure and began developing a
8 new offering to syndicate content to PowerReviews' retailers. GX433 at -599; *see also* GX28 at
9 -088-089; GX30; GX31; Trial Tr. 481:18-482:15 (Defossé). In an internal announcement,
10 Bazaarvoice's Head of Product Strategy, Erin Defossé, acknowledged that this move to allow
11 open syndication was in response to PowerReviews' open syndication network. GX433 at -598-
12 99; Trial Tr. 496:18-25 (Defossé). The pressure from PowerReviews did not sit well with
13 Bazaarvoice executives. Bazaarvoice's CEO, Brett Hurt, pushed for Bazaarvoice to execute on
14 its plan to "destroy" PowerReviews, urging "[PowerReviews] is not waiting for us" and "I want
15 to aim a big bazooka in their direction." GX913* at -766. Collins offered another suggestion:
16 "lets just buy them . . ." GX412 at -495.

17 **C. Other Innovation**

18 214. PowerReviews and Bazaarvoice also competed in developing analytics software
19 for their PRR platform customers. Bazaarvoice recognized that PowerReviews had some
20 functionality that Bazaarvoice lacked in terms of data structuring and self-service technologies.
21 GX518 at -475. In a training presentation, PowerReviews similarly claimed that it had analytics
22 features to which "[Bazaarvoice] has nothing comparable." GX359 at -764.

23 215. In addition to forcing each other to introduce sophisticated features like
24 syndication and analytics, PowerReviews and Bazaarvoice also monitored and reacted to each
25 other's announcements regarding product and platform updates, and integration with Facebook
26 and Twitter. GX640; GX82 (Barton Dep. 257:6-259:25); GX523; GX881 at -607; GX353 at
27 -796; GX761.

1 216. The presence of PowerReviews as a competitor also prevented Bazaarvoice from
2 taking advantage of its customers. For example, in February 2012, Bazaarvoice proposed
3 changing its licensing agreements to shift ownership of PRR data from the customer to
4 Bazaarvoice. This change was apparently abandoned in part because “in any account where PR
5 is in the picture – they would have a field day with it.” GX506 at -777.

6 **V. BAZAARVOICE’S MARKET SHARE AND RESULTING HIGH LEVEL OF**
7 **CONCENTRATION IN THE PRR PLATFORM MARKET CREATE A**
8 **PRESUMPTION THAT THE TRANSACTION IS ANTICOMPETITIVE**

9 217. A firm’s market share is usually the single best measure of that firm’s competitive
10 significance. GX983* at 51. The commanding position occupied by Bazaarvoice and
11 PowerReviews is readily apparent from their combined market share in the IR 500. *See, e.g.,*
12 GX925 at -946. Professor Shapiro analyzed the market shares using several metrics and all
13 measures consistently reveal that the number one and two firms are merging, with in-house an
14 option for some customers, and no other significant commercial providers. Trial Tr. 943:25-
15 944:5 (Shapiro).

16 218. Professor Shapiro used the IR 500 to calculate market shares. Trial Tr. 944:6-11
17 (Shapiro). The IR 500 is a list of retailers that self-report their PRR platform providers and
18 captures approximately 98% of all online sales captured by the IR1000; the IR 500 generally
19 captures all online retailers with at least \$15 million in revenues. Trial Tr. 944:12-16; 968:23-
20 969:17 (Shapiro); *see also* GX90 (Luedtke Dep. 32:2-15); GX92 (Osborne Dep. 45:13-22).

21 219. The IR 500 is the best available data for a list of the largest Internet retailers.
22 Although Bazaarvoice now questions the reliability of IR 500 data, before the merger
23 Bazaarvoice and PowerReviews, in the regular course of business, closely tracked their IR 500
24 market share. Bazaarvoice frequently cited its number of IR 500 customers when promoting
25 itself to potential customers and investors. GX1168 at -443; GX484 at -022. For example, in
26 connection with its IPO, Bazaarvoice touted its share of IR 500 customers in prepared responses
27 to questions that it would likely face from potential investors:

28 [Question:] What type of market share do you currently have and what do you
believe is a realistic share that you can get from a long-term perspective?

[Answer:] There are a couple of different ways that we look at market share and
market penetration. First, we currently represent 145 of the top 500 Internet

1 Retailers, which is close to 30% market share in US retail online but remember
2 that a lot of our retail clients are multichannel and not all are listed in the IR500.

3 GX425 at -919. Bazaarvoice's former CEO Brett Hurt testified that the list was one that "we
4 would use in terms of measuring ourselves." Trial Tr. 183:9-12 (Hurt). Bazaarvoice also used
5 the list to classify PowerReviews customers that it was targeting. GX39 at -934, -939; Trial Tr.
6 511:16-513:9 (Defossé). *See also* Trial Tr. 1429:11-15 (Meredith) (referring to the IR 500 in
7 response to a question from the Court).

8 220. In its due diligence analysis of the PowerReviews acquisition, Bazaarvoice
9 stressed that "[t]he enhanced consumer reach may be illustrated by the fact that a combined
10 entity would provide solutions to 243, or 49%, of the 500 largest North American retailers by
11 online sales listed on the 2012 Internet Retailer 500 ("IR 500") and immediately increase the IR
12 500 penetration of Bazaarvoice by 49%." GX925 at -946. Bazaarvoice's CEO, Stephen Collins,
13 relied on the IR 500 as an indication of Bazaarvoice's market share:

14 According to the Internet Retailer, PR has 78 IR 500 clients with combined retail
15 sales of \$17BB. We have 136 and \$54BB in retail sales. The combination would
16 produce a truly massive audience for us and would definitively tip the scales in
 our permanent favor on the network front Our share of the IR500 would
 move close to 50% in absolute terms and higher in retail sales coverage.

17 GX522 at -035.

18 221. Similarly, in the regular course of business prior to the merger, PowerReviews
19 regularly tracked the IR 500 to see what percentage had implemented the PowerReviews PRR
20 platform. GX90 (Luedtke Dep. 33:5-9); GX632.

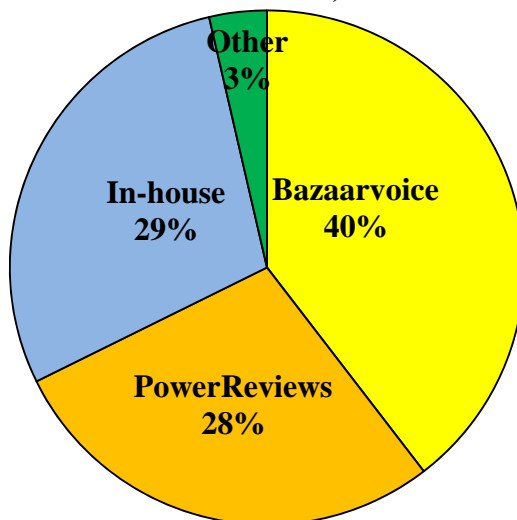
21 222. Further, Bazaarvoice executives testified the company considered the impact that
22 the acquisition of PowerReviews would have on Bazaarvoice's IR 500 market share. GX770 at
23 -218; Trial Tr. 145:11-15 (Hurt); GX82 (Barton Dep. 103:7-17) and Trial Tr. 635:13-636:3
24 (Barton); GX92 (Osborne Dep. 282:21-283:6); GX88 (Hossain Dep. 36:5-37:9); GX492 (Pacitti
25 Dep. 149:7-23, 150:1).

26 223. Customers and industry analysts also look to the information maintained by the IR
27 500 to determine who are the PRR platform vendors in the marketplace and as a useful metric of
28 market share and market leadership. GX130 (Dick's Sporting Goods Dep. 30:17-32:7, 47:1-13,

1 47:22-48:1); GX108* (Black & Decker Dep. 81:1-20, 82:22-83:14); GX78 (Cunningham/BJ's
2 Wholesale Dep. 19:24-20:16); GX1017 at -414, -584-85.

3 224. Based on IR 500 customer count, Bazaarvoice has a market share of 40%.
4 PowerReviews has a market share of 28%, in-house solutions have a market share of 28%, and
5 all other commercial vendors have a combined market share of 3%. Trial Tr. 947:3-22
6 (Shapiro). The combined Bazaarvoice-PowerReviews share is 68%. GX985* at Ex.14A;
7 GX1062. Only about 15 customers in the IR 500 use the fringe suppliers. Trial Tr. 947:14-16
8 (Shapiro). These market shares are presented in a pie chart below:

9
10 **PRR Market Shares by Customer Count**
11 *For IR500 Customers, 2012*

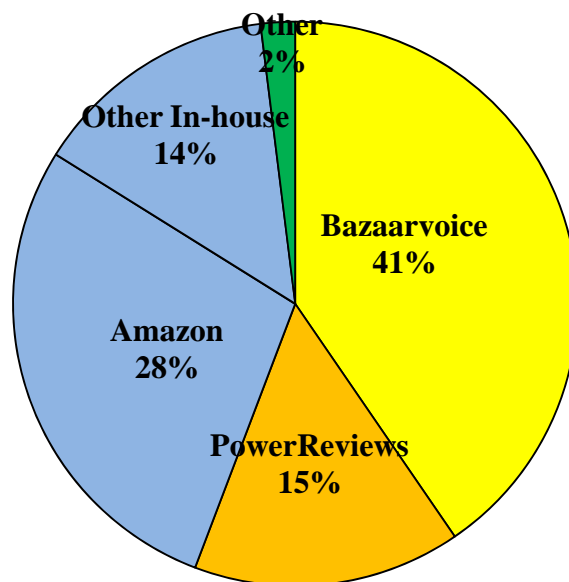


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20 GX1135

21 225. The customer count market shares indicate that there are a number of low-quality
22 alternatives. Their small market share indicates that these firms are “unlikely to be as
23 competitively significant as firms with much bigger market share.” Trial Tr. 948:8-18 (Shapiro).
24 The standard methodology is to measure market shares to give weight to commercial success.
25 Trial Tr. 950:3-7 (Shapiro). By this measure, “[t]hese [fringe] firms are not very attractive to
26 most customers [because] [t]hey’re not winning very much business.” Trial Tr. 949:15-24
27 (Shapiro).
28

226. Professor Shapiro also used the IR 500 data to measure market shares based on “customer revenues” which reflects the relative volume of online commerce that is handled by the various PRR platforms. Trial Tr. 963:8-20 (Shapiro). As discussed above, customer revenue is a useful metric to measure the significance of PRR platform competitors to both retailers and brands. See Trial Tr. 964:4-15 (Shapiro). Based on customer revenues, Bazaarvoice has a market share of almost 41%. PowerReviews has a market share of 15%, and all other commercial vendors have a combined market share of 2%. In-house solutions have a combined market share of 42%, but one customer – Amazon – accounts for approximately 67% of the in-house revenues, leading to a 28% overall share for Amazon’s in-house and 14% share for all other in-house systems combined. The combined Bazaarvoice-PowerReviews share is 56%. See Trial Tr. 963:8-964:1 (Shapiro); GX985* at Ex. 15A; GX1063. These market shares are presented in a pie chart below:

PRR Market Shares by Revenue
For IR500 Customers, 2012



GX1136

227. Professor Shapiro made certain corrections to his initial market share calculations based on customer revenues. These adjustments resulted in about a 1% adjustment to PowerReviews’ market share and about a 2% adjustment to Bazaarvoice’s market share. Trial Tr. 965:6-23 (Shapiro); compare GX1077 with GX1063.

1 228. Customer revenue is an appropriate way to measure market shares for the
2 customers in the relevant market – retailers and manufacturers. Trial Tr. 967:25-968:14
3 (Shapiro). These are Bazaarvoice and PowerReviews’ most important customers. Retailers and
4 brands account for approximately 90% of Bazaarvoice’s and PowerReviews’ revenues. Trial Tr.
5 968:15-22 (Shapiro); Trial Tr. 273:20-274:10 (Hurt); Trial Tr. 442:6-12 (Luedtke). Although
6 the IR 500 only tracks retailers, the data is useful to indicate the competitive significance of PRR
7 vendors for brands because, when syndicating, brands care about how much commerce is taking
8 place on the retailer’s site. Brands will be more likely to select the PRR provider whose
9 syndication network provides them access to the largest number of retail consumers. Trial Tr.
10 964:7-15, 966:23-967:12 (Shapiro). Because of this, retailers are very important to
11 Bazaarvoice’s brand business. Bazaarvoice’s strategy was to build a large base of retailers in
12 order to attract brand customers. Trial Tr. 967:13-24 (Shapiro).

13 229. Although the IR 500 is the best available data to calculate market shares,
14 Professor Shapiro recognized the data does not provide a “perfect measure” of the PRR market.
15 Trial Tr. 974:12-20 (Shapiro). Therefore, Professor Shapiro performed additional analyses to
16 check the robustness of these results. All checks revealed the same basic market structure. The
17 number one and number two firms are merging, a significant number of customers choose in-
18 house, and there are some small fringe competitors. Trial Tr. 982:11-19 (Shapiro).

19 230. First, Professor Shapiro measured shares in the broader group of the IR 1000.
20 The additional 500 firms are small retailers with sales ranging between about \$15 million and
21 several hundred thousand dollars. Trial Tr. 969:1-7 (Shapiro). Professor Shapiro found that no
22 firms, other than the ones identified in the IR 500, served more than ten of these extra 500
23 retailers. Trial Tr. 976:16-977:1 (Shapiro).






























24 231. Second, Professor Shapiro measured shares using the list of firms in the Fortune
25 500. The Fortune 500 is informative because it is a standard set of large companies that includes
26 both retailers and brands. Trial Tr. 975:6-18 (Shapiro). Based on the Fortune 500, Bazaarvoice
27 has a market share of 67%, PowerReviews has a market share of 16%, in-house has a market
28

1 share of 14%, and all other commercial vendors have a combined market share of about 3%.
2 Trial Tr. 976:1-15 (Shapiro); GX1078.

3 232. Third, Professor Shapiro analyzed Dr. Shehadeh's sample of 1,000 actual and
4 workable accounts that was drawn from the Bazaarvoice Salesforce.com database. Trial Tr.
5 979:19-980:5 (Shapiro). Professor Shapiro concluded this was a useful data set because the
6 1,000 accounts were selected randomly from a pool of 30,000 accounts and included brands as
7 well as large and small retailers. Trial Tr. 980:2-16 (Shapiro). After limiting the data set to U.S.
8 retailers and brands that have a PRR platform, Professor Shapiro found that in-house had a
9 market share of 40%, Bazaarvoice had a market share of 38%, PowerReviews had a market share
10 of 21%, and all others had a share of less than 2%. Trial Tr. 980:9-981:11 (Shapiro); GX1057.

11 233. Finally, Professor Shapiro compiled data on the total number of customers for
12 each of the commercial PRR vendors identified in Dr. Shehadeh's report. Trial Tr. 978:4-9
13 (Shapiro). The customer count information generally comes from company depositions as well
14 as Bazaarvoice's due diligence memorandum regarding the merger. GX1064*; Trial Tr. 978:4-
15 17 (Shapiro). The results of Professor Shapiro's analysis are presented in the chart below:

16 **PRR Customers of Suppliers Listed in Shehadeh Section IV.A**

Company	Founded	PRR Customers	IR500 (2012)	
			Customers	Customer Sales (\$B)
Merging Companies				
Bazaarvoice	2005		167.3	69.17
Companies Providing PRR				
Enterprise Express	2005		119	26.24
Gigya	2006			
Lithium	2001			
Pluck	2003			
Rating System	2008			
Reevo	2005			
Viewpoints	2006			
Other Companies (Non-PRR)				
Jive	2001			
Turnto	2007			
Webcollage	1999			

16 GX1064
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26 234. The two columns on the right reflect the vendor's customer count and sales in the
27 IR 500. The middle column, titled "PRR Customers" reflects the vendor's total customer count,
28 including customers in and outside the IR 500. Trial Tr. 978:4-17 (Shapiro). The results are

1 similar to what was found in the other checks. The fringe companies have very few customers
2 compared to Bazaarvoice and PowerReviews. [REDACTED] the largest of the fringe in this
3 chart, has [REDACTED] paying customers. See GX1064* n.8. This count, however, greatly overstates
4 [REDACTED] position in the market, and therefore [REDACTED] ability to constrain
5 Bazaarvoice's pricing of PRR, as most, if not all, of these customers are not enterprise
6 customers. They are credit card swipe customers like the PowerReviews Express customers.
7 Trial Tr. 979:2-12 (Shapiro).

8 235. These market shares are meaningful because PRR platform vendors with little or
9 no market share are unlikely to provide as strong a competitive check on Bazaarvoice as
10 PowerReviews did before the merger. GX984* at 7.

11 236. Bazaarvoice's acquisition of PowerReviews significantly increased concentration
12 in the already highly concentrated PRR platform market. The *Merger Guidelines* place
13 significant weight on market concentration in assessing the likely competitive effects of mergers.
14 The *Merger Guidelines* use the Herfindahl-Hirschman Index (HHI) to measure market
15 concentration. The HHI is calculated by summing the squares of the individual firms' market
16 shares, and thus gives proportionately greater weight to larger market shares. Trial Tr. 950:14-
17 24 (Shapiro). The *Merger Guidelines* classify markets as highly concentrated if the HHI exceeds
18 2500. Trial Tr. 950:25-951:14 (Shapiro); GX981 §5.3. The *Merger Guidelines* also look at the
19 increase in the HHI caused by the merger. According to Section 5.3 of the *Merger Guidelines*:
20 "Mergers resulting in highly concentrated markets that involve an increase in the HHI of more
21 than 200 points will be presumed to be likely to enhance market power." GX981 §5.3; Trial Tr.
22 951:3-10 (Shapiro).

23 237. Based on IR 500 customer revenues, the pre-merger HHI was 2674, and it would
24 rise by 1240 points to 3915 after the merger. GX985* at Ex. 15A; GX1063; Trial Tr. 955:22-
25 956:7 (Shapiro). Based on IR 500 customer count, the pre-merger HHI was 2365, and it would
26 rise by 2226 points to 4590 after the merger. GX985* at Ex. 14A; GX1062; Trial Tr. 950:25-
27 951:11 (Shapiro). By either measure, these figures are significantly above the *Merger*
28

1 *Guidelines*' thresholds and create the presumption that that the transaction would substantially
2 reduce competition. *See* Trial Tr. 956:5-7 (Shapiro); GX981 §5.3

3 238. In examining market concentration, Professor Shapiro also considered supply
4 substitution. Supply substitution considers whether there are companies that are not selling PRR
5 platforms who could "very easily and quickly do so." Trial Tr. 970:2-9 (Shapiro); GX981 §5.2.
6 If any such firms exist, such firms are called "rapid entrants." Trial Tr. 970:5-13 (Shapiro). The
7 excess capacity a rapid entrant can divert to the new market must be "measurable." Trial Tr.
8 972:11-13 (Shapiro); GX981 §5.2. In such an event, the rapid entrant would receive market
9 share in accordance with its divertible capacity. Trial Tr. 2068:1-11 (Shapiro).

10 239. There are no rapid entrants in this case. First, the concept of divertible capacity
11 does not apply in a software market like the PRR platform market and, as a result, there is no
12 capacity-based market share to assign to a rapid entrant. Trial Tr. 971:18-24, 2068:5-11
13 (Shapiro). Second, firms outside the PRR platform market cannot easily and quickly enter the
14 market. To enter the PRR platform market and achieve some commercial success requires
15 significant investment and risk. Trial Tr. 972:7-10, 2068:12-22 (Shapiro).

16 **VI. ENTRY OR REPOSITIONING FROM OTHER FIRMS HAS NOT, AND WILL**
17 **NOT COUNTERACT BAZAARVOICE'S INCREASED MARKET POWER**

18 **A. There Are Significant Barriers to Entering the Market for PRR Platforms**

19 240. Even before the acquisition of PowerReviews, Bazaarvoice's competitive position
20 was protected by substantial barriers to entry. GX835 at -825. As a part of its "Key Messages
21 for Initial Public Offering," prepared in February 2012, Bazaarvoice stated that there were
22 "[s]ignificant barriers to entry, [it] would be very difficult for a new company to enter our market
23 organically or through M&A," and that it "[w]ould take a competitor years to build a comparable
24 solution, but then we already have the customers and the network." GX835 at -825.

25 241. Bazaarvoice recognizes that the acquisition of PowerReviews increases these
26 barriers to entry, as it noted in the title to a PowerPoint slide, "Scale and Network Effects Create
27 Sustainable Competitive Advantage." GX770 at -232; Trial Tr. 145:16-25 (Hurt); *see also*
28 GX925 at -941-46; GX409 at -568. In the due diligence memo prepared by company executives

1 recommending the acquisition to the Bazaarvoice Board, Bazaarvoice executives wrote that by
 2 virtue of the merger, “Bazaarvoice blocks market entry by competitors and therefore we ‘cover
 3 our flank’ to ensure our retail business is protected from direct competition and premature price
 4 erosion.” GX925 at -941; *see also* GX254 at -340. A PowerReviews Board member noted that
 5 “post this combination, there is a network effect between the brands and the retailers that will be
 6 nearly impossible for someone to break.” GX746 at -897. A Bazaarvoice Board member
 7 similarly noted that the acquisition “was a good one given the increased network power it would
 8 give [Bazaarvoice] on the retail side.” GX949.

9 **(i) The Network Effect that Results from Having an Established**
 10 **Syndication Network is a Significant Barrier to Timely and Sufficient**
 11 **Entry or Expansion**

12 242. Bazaarvoice’s syndication network is a formidable barrier to entry in the market
 13 for PRR platforms. GX74* (TurnTo Dep. 50:23-51:2, 51:5-25). Bazaarvoice touted the size and
 14 scope of its syndication network in its efforts to market the company. GX413 at -924; GX750 at
 15 15; Trial Tr. 125:10-126:1; 146:19-147:4 (Hurt). Bazaarvoice’s syndication volumes have been
 16 increasing “30-50% year over year.” Trial Tr. 889:25-890:15 (Collins). Economic analysis
 17 confirms syndication is becoming “significantly more important,” Trial Tr. 1014:15-18
 18 (Shapiro), and it would be “very hard” for a new entrant to overcome the syndication barrier to
 19 entry, Trial Tr. 1017:18-1020:20 (Shapiro). *See also* Trial Tr. 1014:19-1015:6 (Shapiro) and
 20 GX1052 (growing adoption of syndication); Trial Tr. 1015:7-20 (Shapiro) and GX1053 (same);
 21 Trial Tr. 1016:1-1017:16 (Shapiro) and GX1059 (same).⁷

22 243. As more manufacturers purchase Bazaarvoice’s PRR platform, the Bazaarvoice
 23 network becomes more valuable to retailers because it will allow them to gain access to a greater
 24 volume of PRR. Similarly, as more retailers purchase Bazaarvoice’s PRR platform, the
 25 Bazaarvoice network becomes more valuable for manufacturers because it will allow them to
 26 syndicate content to a greater number of retail outlets. The feedback between manufacturers and

27 ⁷ Even Defendant’s economic expert anticipated that there are “trends up” in terms of the
 28 percentage of customers choosing syndication and that he expects the number of syndication
 customers will continue to grow. Trial Tr. 1992:13-1993:10 (Shehadeh).

1 retailers creates a network effect that is a significant and durable competitive advantage for
2 Bazaarvoice. GX770 at -219 and Trial Tr. 145:16-25 (Hurt); GX406 at -202 and Trial Tr.
3 124:15-125:2 (Hurt); GX983* at 73-76; *see also* GX215 at -652; GX1119 (Godfrey Dep.
4 115:15-116:20); *see also* GX44 at -438; Trial Tr. 296:22-297:6 (Levin/Clorox). In its
5 registration statement and accompanying prospectus for its IPO, Bazaarvoice stated that “[o]ur
6 ability to syndicate content across a wide array of websites attracts brands to our network
7 As a result, we believe we benefit from powerful network effects that differentiate us from our
8 competitors.” GX964 at 4, 79.

9 244. Bazaarvoice acknowledges the importance of its syndication network as a
10 substantial barrier to entry that protects its dominant position. Bazaarvoice’s then-CFO Stephen
11 Collins explained that its “[d]ata and network effect should be a buffer against price
12 deflation/commoditization as long as we maintain significant market share and lock competitors
13 out of a meaningful data set.” GX1228 at -319. Before its IPO in February 2012, Bazaarvoice
14 prepared a document for an investor roadshow in which it explained the “powerful network
15 economies at play by linking retailers and brands/manufacturers.” GX425 at -919. Bazaarvoice
16 identified its “ability to leverage the data” from its customer base as “a key barrier [to] entry.”
17 GX425 at -926. During investor roadshows, the company claimed that “any company entering
18 the market would have to start from the beginning by securing all of the retail clients,” which
19 would be difficult because most of the largest retailers are already using the Bazaarvoice
20 platform. GX425 at -926 and Trial Tr. 131:9-20 (Hurt). Bazaarvoice boasted to potential
21 investors that “the power of [Bazaarvoice’s] network effect and significant advantage on a global
22 scale is starting to crowd out competition” GX425 at -928. Since its IPO, Bazaarvoice’s
23 SEC filings have continued to identify “powerful network effects” from syndication as a
24 “competitive strength[] [that] differentiate[s] [Bazaarvoice] from . . . competitors” and “serve[s]
25 as [a] barrier to entry.” GX501 at 7; GX964 at 4, 79; *see also* GX87 (Godfrey CID Dep. 110:3-
26 10); Trial Tr. 258:22-259:11 (Hurt).

27 245. In explaining Bazaarvoice’s network effect, Matt Curtin, Bazaarvoice’s Vice
28 President of Brands, stated that having a majority of the companies on the IR 500 list as

1 customers makes the Bazaarvoice network more attractive to brands and that the “most important
2 thing to a brand is the ability to take that [PRR] content and syndicate [it]” GX1009 (Curtin
3 Dep. 52:15-54:22, 96:21-98:15); *see also* GX93 (Svatek Dep. 93:4-9). Bazaarvoice’s ordinary
4 course business documents also recognized that syndication created a barrier to entry. For
5 example, in an email to Mr. Hurt, Mr. Osborne wrote that “[w]e’ve seen the network effect
6 already in our renewals - customers that are using syndication generally can’t leave us, and that’s
7 a great thing.” GX1220 at -614 and Trial Tr. 711:1-712:6 (Osborne).

8 246. PowerReviews also recognized the significant network effect of Bazaarvoice’s
9 large syndication network, and acknowledged losing competitive opportunities because of the
10 strength of that network effect. GX90 (Luedtke Dep. 211:9-12, 211:22, 211:25-212:11, 235:7,
11 235:9-12, 237:18-24, 238:16-239:3, 242:3-12) and Trial Tr. 423:6-25 (Luedtke); *see also* GX245
12 at -433-34; GX410 at -482-83; GX89 (Hurt Dep. 232:7-24); GX669 at -630; GX280 at -600.
13 PowerReviews noted after a call with ██████, a Bazaarvoice customer, that “[i]f we could break
14 the syndication barriers we could make significant inroads into existing [Bazaarvoice] US retail
15 accounts.” GX607* at -086.

16 247. The acquisition of PowerReviews will extend the reach of Bazaarvoice’s network
17 and deprive its remaining competitors of the scale that is necessary to truly compete. *See* GX87
18 (Godfrey CID Dep. 82:15-83:11); GX425 at -919, -923, -926, -933, -935; GX313 at -633;
19 GX899 at -816-17; *see also* Trial Tr. 128:15-129:18 (Hurt). Bazaarvoice executive Stephen
20 Collins predicted that Bazaarvoice’s acquisition of PowerReviews “would definitely tip the
21 scales in [Bazaarvoice’s] permanent favor on the network front.” GX522 at -035. Similarly,
22 Bazaarvoice executive Brett Hurt wrote, in preparing for a Board meeting prior to the
23 acquisition, that “[o]ur syndication network is a competitive advantage today, but it can become
24 a true competitive moat in the future.” GX411 at -871; *see also* Trial Tr. 262:4-11 (Hurt).
25 Bazaarvoice anticipated that the assimilation of major PowerReviews retailers into the
26 Bazaarvoice network “further increases the switching costs, and therefore deepens
27 [Bazaarvoice’s] protective moat, for brands and retailers alike.” GX925 at -943.

1 248. Other PRR platform providers acknowledge that syndication is very important
2 and that Bazaarvoice's syndication network gives it a competitive advantage. [REDACTED]
3 [REDACTED] GX72* (Lithium Dep. 39:12-40:4, 40:10-11, 45:7-
4 46:16, 46:19-47:9, 47:13-17, 47:20-49:3, 49:11, 49:15-16, 49:18-50:4); GX73* (Reevo Dep.
5 15:2-7, 15:12-14) (reviewed *in camera*). Further, Bazaarvoice executive Mike Svatek testified
6 that "the network . . . would be very difficult for any individual company to replicate, any
7 individual customer, a retailer or brand to replicate." GX93 (Svatek Dep. 143:18-144:2).

8 249. Syndication within the same PRR platform requires significant technical work to
9 ensure that the syndicated reviews match the retail customer's format and preferences. GX87
10 (Godfrey CID Dep. 77:12-78:7); GX85 (Defossé Dep. 160:16-161:14).

11 250. Syndication between a manufacturer and a retailer using different PRR platforms
12 is possible, but requires customized integration work to connect the platforms. GX87 (Godfrey
13 CID Dep. 95:20-96:12, 100:10-21); GX92 (Osborne Dep. 237:23-238:12).

14 (ii) **There are Significant Costs to Switching PRR Platforms, Giving a**
15 **Competitive Advantage to Incumbent Providers of PRR Platforms**

16 251. Retailers are reluctant to invest the time and money required to switch PRR
17 platforms in the absence of a demonstrable, significant benefit. Trial Tr. 1191:21-1195:1
18 (Friedland/Build.com); Trial Tr. 1218:1-6 (Maki/Golfsmith); GX168 (Onlineshoes.com Dep.
19 33:20-34:3); *see also* GX193 (Walgreens Dep. 61:6-62:21); GX62* (Pluck Dep. 190:3-21
20 (reviewed *in camera*), 226:2-227:5, 227:16-20, 227:22-23); GX76 (Waltzinger/BBBeyond Dep.
21 35:6-8, 35:11, 35:16-36:8, 81:20-22, 82:4-21) and Trial Tr. 567:10-24, 570:12-571:1
22 (Waltzinger/BBBeyond); *see also* Trial Tr. 1012:1-15 (Shapiro). For instance, Dillard's noted
23 that "there would be significant time" associated with removing one solution to implement
24 another. GX131 (Dillard's Dep. 65:14-24).

25 252. Bazaarvoice executive Michael Svatek acknowledges that there are costs, such as
26 training, labor, and implementation, associated with switching PRR platforms. GX93 (Svatek
27 Dep. 188:23-189:21, 189:24-191:9). Even for Bazaarvoice it was "really hard" to get customers
28 to switch from PowerReviews to Bazaarvoice's PRR platform due to the technical costs of

1 switching and inertia. GX92 (Osborne Dep. 316:25-317:10, 317:13-20, 317:23-318:11) and
 2 Trial Tr. 710:10-17 (Osborne); GX223 at -634; Trial Tr. 210:12-211:13 (Hurt); Trial Tr. 504:14-
 3 505:6 (Defossé).

4 **(iii) Developing a Good Reputation through Multiple Successful**
 5 **Implementations of PRR Platforms Can Take Years to Develop and is**
 6 **a Significant Barrier to Entry**

6 253. Bazaarvoice's reputation and customer list also creates a barrier to entry.
 7 Reputation can be the basis for evaluating whether a PRR platform provider is credible. GX146
 8 (Home Depot Dep. 67:3-68:4, 69:4-15); GX72* (Lithium Dep. 40:20-42:2). For example, when
 9 searching for a PRR platform provider, many customers look to the information maintained by
 10 the IR 500 to determine which PRR platform providers are being used by companies on the IR
 11 500 list. GX130 (Dick's Sporting Goods Dep. 30:17-32:7, 47:1-13, 47:22-48:1); [REDACTED]
 12 [REDACTED]; GX78 (Cunningham/BJ's Wholesale Dep. 19:24-20:16).

13 254. Bazaarvoice executives have testified that "the more clients you have, the more
 14 seriously you're taken as a business." GX82 (Barton Dep. 51:18-52:11); *see also* GX88
 15 (Hossain Dep. 49:23-50:16, 51:1-2, 51:5-12, 51:14-16, 51:19-23). For example, despite
 16 Reevo's presence in Europe, Home Depot felt that Reevo's lack of a "proven . . . track record
 17 with . . . major enterprise customers" was one of the reasons that Home Depot was not interested
 18 in Reevo's PRR platform. GX146 (Home Depot Dep. 67:3-68:4); *see also* [REDACTED]
 19 [REDACTED]

20 Customers generally want a PRR provider with a proven track record in providing PRR and
 21 "when the price of the product is small compared to the risk it if [] things go badly" customers
 22 are reluctant to try a new provider. Trial Tr. 1012:16-1013:14 (Shapiro).

23 255. PowerReviews recognized that the combined reputation of Bazaarvoice and
 24 PowerReviews serves as a barrier to entry by creating "[u]nique trust, credibility and scope."
 25 GX254 at -340.

1 (iv) **Gaining the Intellectual Property/Know How to Develop and Operate**
2 **PRR Platforms and Features Can Be Difficult and Resource-Intensive**

3 256. Bazaarvoice recognizes that it “[w]ould take a competitor years to build a
4 comparable solution, but then we already have the customers and the network.” GX410 at -483.
5 Beyond the difficulty of creating a syndication network, Bazaarvoice represented to potential
6 investors that its “moderation and analytics capabilities are difficult to duplicate” GX928 at
7 -928; Trial Tr. 888:9-889:4 (Collins). One Bazaarvoice Board member said when asked about
8 Bazaarvoice’s moderation capabilities, “. . . that’s important. That is a barrier.” GX491
9 (Meredith Dep. 197:23-198:21); *see also* Trial Tr. 1423:11-1424:12 (Meredith).

10 257. Bazaarvoice’s analytics are a “competitive strength” as Bazaarvoice had
11 “developed a – a user experience around [its] analytics capability [that] was extremely modern,
12 very easy to use” and “would allow a business user to quickly get at the heart of whatever their
13 analytics task was.” GX93 (Svatek Dep. 105:3-19, 105:24-106:8).

14 258. Bazaarvoice’s moderation capabilities were “unique.” GX93 (Svatek Dep.
15 107:22-24). Bazaarvoice attributed its sophisticated moderation capabilities to investments
16 Bazaarvoice had made in “tools, meaning IP that [Bazaarvoice] created, as well as processes and,
17 frankly, human training that were very sophisticated, very customizable and configurable”
18 GX93 (Svatek Dep. 107:22-108:13). This allowed Bazaarvoice to meet “very demanding
19 standards for large retailers and very large brands who all had very sophisticated needs.” GX93
20 (Svatek Dep. 107:22-108:13). It would be costly for a competitor to replicate these moderation
21 capabilities. *Cf.* GX89 (Hurt Dep. 204:8-20) and Trial Tr. 106:18-107:24 (Hurt).

22 **B. Viewpoints Tried and Failed to Enter the Market for PRR Platforms**

23 259. In 2008-2009, Viewpoints (now Wavetable Labs) built a PRR platform for Sears,
24 which replaced Bazaarvoice’s PRR platform on some of Sears’ websites. GX75 (Moog Dep.
25 25:7-19, 31:2-17). After licensing its PRR platform to Sears, Viewpoints decided to offer it to
26 other customers. GX75 (Moog Dep. 31:2-17). Viewpoints made 100 sales calls but signed only
27 three additional customers. GX75 (Moog Dep. 35:20-37:12, 47:5-14). None of those customers
28

1 uses Viewpoints' PRR platform today. GX75 (Moog Dep. 48:3-24, 49:3, 49:5-7, 49:11-13,
2 49:19-22, 50:2-5).

3 260. Viewpoints subsequently exited the PRR platform business due to its lack of
4 success, while continuing to serve Sears. GX731 at 1; GX75 (Moog Dep. 47:5-14). Sears
5 abandoned Viewpoints' PRR platform in 2012 due to its cost, limited functionality, and poor
6 performance, leaving Viewpoints' PRR platform with no customers. GX181 (Sears Dep. 49:16-
7 18, 49:20-50:3, 50:10-51:10) and Trial Tr. 1690:16-25; 1691:9-25 (Massuda/Sears); GX75
8 (Moog Dep. 50:2-5). Viewpoints does not offer a PRR platform today. GX75 (Moog Dep.
9 67:23-24, 68:3-17, 68:20).⁸

10 261. Viewpoints believed that competing against Bazaarvoice for PRR customers
11 would have been a "bloodbath" because Bazaarvoice was a "very well funded and aggressive
12 company" with "lots of momentum and success" that "had proven to be very aggressive about
13 defending any opportunity." GX75 (Moog Dep. 47:15-48:2, 69:16-20, 69:24-25, 70:3, 70:7-13).

14 **C. Fringe Providers of PRR Platforms are Unlikely to Expand Sufficiently to**
15 **Mitigate the Transaction's Anticompetitive Effects**

16 262. There are a number of fringe providers of PRR platforms and they are in the
17 relevant market for purposes of calculating market shares. Trial Tr. 1008:3-18 (Shapiro).
18 However, none of these fringe providers has achieved any meaningful level of commercial
19 success in providing PRR platforms to U.S. customers. Trial Tr. 1008:3-18 (Shapiro).
20 Moreover, the mere existence of fringe providers is insufficient to mitigate the transaction's
21 anticompetitive effects; "it's really not the number of bidders; it's their quality and attractiveness
22 to customers that matters," Trial Tr. 916:12-917:2 (Shapiro), and "if these products offered by
23 these fringe suppliers were almost as good as what PowerReviews is offering, [one] would
24 expect their commercial success to be also close to that of PowerReviews," Trial Tr. 2063:19-
25 2064:1) (Shapiro). There is no evidence that after the merger these fringe players have changed
26 their conduct or plans to replace the competition previously provided by PowerReviews. Trial

27 _____
28 ⁸ Even Defendant's proffered shopper marketing expert acknowledged that Viewpoints has
exited the PRR market. Trial Tr. 1567:5-8 (Goldberg).

1 Tr. 2064:17-2065:13 (Shapiro). Further, there is no evidence that any player that has entered the
2 market since the merger, such as Reevo, has achieved any commercial success or gained any
3 meaningful market share. Trial Tr. 2066:18-2067:10 (Shapiro).

4 (i) **Reevo**

5 263. Reevo is a London-based PRR platform provider. GX73* (Reevo Dep. 8:4-6,
6 20-22) (reviewed *in camera*). Reevo also sells a Q&A solution. GX73* (Reevo Dep. 8:23-
7 25) (reviewed *in camera*). Reevo entered the U.S. PRR platform market in September 2012.
8 GX73* (Reevo Dep. 8:10-19) (reviewed *in camera*); GX87 (Godfrey CID Dep. 210:18-23).
9 Just a few months ago, Bazaarvoice’s CEO, Stephen Collins, admitted that he was “not sure to
10 what extent, if any, they have entered the U.S. market.” GX81 (Collins Dep. 218:7-17).

11 264. In fact, Reevo has struggled in the U.S. market. [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 265. Reevo’s U.S. sales force consists of one employee, who is assisted by one
16 subcontractor. GX73* (Reevo Dep. 13:20-14:4) (reviewed *in camera*); *see also* GX947* at -
17 403. Both work out of their homes. GX73* (Reevo Dep. 7:23-25, 13:20-14:7) (reviewed *in*
18 *camera*). Currently, Reevo has no plans to hire any additional employees in the U.S. GX73*
19 (Reevo Dep. 14:8-11). Customers have cited Reevo’s relative lack of U.S. resources,
20 customers, and robustness of service as a reason for not selecting its PRR platform. GX73*
21 (Reevo Dep. 21:25-22:5, 22:8-18, 39:16-40:4) (reviewed *in camera*); GX125 (Clorox Dep.
22 122:9-18) and Trial Tr. 294:1-16 (Levin/Clorox).

23 266. [REDACTED]

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 267. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 268. Reevoov is also hindered by its lack of reputation in the U.S. market. [REDACTED]

8 [REDACTED]

9 [REDACTED] Home Depot

10 noted that Reevoov’s recent entry into the U.S. market “raised a flag” as Reevoov did not have a

11 “proven . . . track record with what [Home Depot] would classify major enterprise customers.”

12 GX146 (Home Depot Dep. 67:13-68:4). At least one U.S. manufacturer believes that Reevoov’s

13 PRR platform is inferior to the platforms offered by Bazaarvoice and PowerReviews. GX108*

14 (Black & Decker Dep. 49:19-25).

15 (ii) **Pluck**

16 269. Pluck, a division of Demand Media, sells an array of social applications,

17 including a PRR platform. GX62* (Pluck Dep. 149:22-25) (reviewed *in camera*). Bazaarvoice’s

18 Stephen Collins testified that Pluck is Bazaarvoice’s closest remaining competitor. GX81

19 (Collins Dep. 221:7-17) and Trial Tr. 758:21-759:4 (Collins); *see also* GX492 (Pacitti Dep.

20 141:8-12). [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 270. [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED] Some of Pluck’s customers

1 acknowledge that Bazaarvoice’s PRR platform is more robust and offers better moderation and
2 customization capabilities than Pluck’s PRR platform. GX100 (Autozone Dep. 33:14-34:12,
3 57:11-18, 57:21-58:12, 58:15-59:1) and Trial Tr. 1333:6-11 (Rutherford/Autozone); [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 271. [REDACTED]

12 [REDACTED] PowerReviews observed that Pluck is “terrible” and Target “made a very bad
13 choice.” GX813 at -737. [REDACTED]
14 [REDACTED]

15 [REDACTED] Target recently discontinued its relationship with Pluck and
16 switched to Bazaarvoice. Trial Tr. 759:5-11 (Collins); Trial Tr. 436:21-24 (Luedtke).

17 **(iii) Gigya**

18 272. Gigya provides a suite of eCommerce applications, including PRR, for online
19 businesses. GX64 (Gigya Dep. 81:18-82:9). PRR can be bought separately, or as part of the full
20 suite. While Gigya has roughly 600 customers, no more than thirty-nine of them use its PRR
21 application. GX461; GX64 (Gigya Dep. 72:12-15, 83:24-84:14) and Trial Tr. 600:5-14
22 (Tarkowski/Gigya). Clorox used Gigya’s PRR solution on one of its websites until May or June
23 2013, when it switched to Bazaarvoice. Trial Tr. 308:10-23 (Levin/Clorox). Clorox is no longer
24 a Gigya customer. Trial Tr. 278:10-17 (Levin/Clorox). The inadequacy of Gigya’s PRR
25 application is evidenced by the fact that many of Gigya’s eCommerce customers, including those
26 that bought Gigya’s full suite and therefore have access to Gigya’s PRR application, use
27 Bazaarvoice’s PRR platform instead. GX64 (Gigya Dep. 105:7-21, 23); GX465 at -632. For
28 example, World Kitchen uses Gigya’s social infrastructure tools. Trial Tr. 1301:3-8

1 (Bausch/World Kitchen). World Kitchen’s contract with Gigya allows World Kitchen to use
2 Gigya’s PRR application. Trial Tr. 1299:23-25 (Bausch/World Kitchen). However, World
3 Kitchen uses Bazaarvoice’s PRR, at a cost of nearly \$200,000 per year, because of Bazaarvoice’s
4 more robust functionality and syndication. Trial Tr. 1300:5-1301:2 (Bausch/World Kitchen).
5 Because Gigya and Bazaarvoice share customers, Gigya’s CEO sees Bazaarvoice “more as a
6 partner” than a competitor. GX465 at -632; Trial Tr. 601:1-603:3 (Tarkowski/Gigya).
7 Bazaarvoice shares that view. GX364 at -612; *see also* GX762 at -070.

8 273. Gigya’s PRR application lacks a network, does not offer syndication, and lacks
9 other functionality, such as moderation, which some customers require. GX131 (Dillard’s Dep.
10 58:11-59:18); GX810 at -442; GX64 (Gigya Dep. 92:24-93:12, 93:14-94:5, 101:4-16) and Trial
11 Tr. 603:4-15 (Tarkowski/Gigya); GX196 (World Kitchen Dep. 62:6-64:3); Trial Tr. 294:22-
12 295:11 (Levin/Clorox). Gigya’s PRR application is a more simplistic application that does not
13 even allow consumers to provide ratings on specific product attributes nor does it allow
14 extensive customization. Trial Tr. 1208:15-1209:7 (Katz/Pacific Sunwear). Gigya also does not
15 allow retailers to “white label” its PRR application, *i.e.*, use the application on an ecommerce
16 website without displaying the Gigya name. GX131 (Dillard’s Dep. 58:11-59:18).

17 274. Indeed, Bazaarvoice believes that Gigya targets different customers than
18 Bazaarvoice. GX87 (Godfrey CID Dep. 210:24-211:9). For example, Pacific Sunwear thought
19 Gigya’s PRR application was a good fit because the company was seeking a “simplistic” solution
20 with an emphasis on the “social experience” instead of a full-featured PRR solution. GX171
21 (Pacific Sunwear Dep. 15:3-5, 15:7-20, 33:20-34:15, 42:13-43:4, 45:17-46:3, 46:5-15) and Trial
22 Tr. 1208:15-19 (Katz/Pacific Sunwear).⁹

23 **(iv) Lithium**

24 275. Lithium sells a software platform that promotes online interaction between brands
25 and consumers. GX72* (Lithium Dep. 16:12-19, 17:21-25). The company’s “strength” is in
26 fostering brand/consumer interactions “after [the] point of purchase.” GX72* (Lithium Dep.

27 _____
28 ⁹ Even Defendant’s economic expert could not describe any change in Gigya’s PRR offering that
would make it more competitive post-merger. Trial Tr. 1946:24-1947:13 (Shehadeh).

1 18:1-19:17). Lithium’s platform includes a variety of applications, including forums, blogs, and
2 Q&A. GX72* (Lithium Dep. 19:22-20:7). PRR functionality is not included, but is available for
3 purchase by customers who buy Lithium’s platform. GX72* (Lithium Dep. 24:21-25:11).
4 Lithium does not sell its PRR application on a standalone basis, *i.e.*, separately from its platform.
5 GX72* (Lithium Dep. 24:24-25:18).

6 276. Lithium has approximately 300 customers. GX72* (Lithium Dep. 19:18-21).
7 Only one of those customers has deployed Lithium’s PRR application. GX72* (Lithium Dep.
8 42:3-6).

9 277. There are “critical product gaps” in Lithium’s PRR application that the company
10 would have to address before it could compete for customers seeking standalone PRR. GX72*
11 (Lithium Dep. 136:3-16). Lithium has no plans to close those gaps or to further develop its PRR
12 functionality. GX72* (Lithium Dep. 136:23-137:12, 67:22-25, 68:2-10).

13 278. Bazaarvoice “almost never compete[s]” with Lithium. GX289 at -162; *see also*
14 GX763; GX668; GX259 at -652; GX87 (Godfrey CID Dep. 211:15-212:4). Bazaarvoice’s
15 Chairman testified earlier this month that Lithium is “probably” not a current competitor to
16 Bazaarvoice. GX491 (Meredith Dep. 200:6-201:5). Lithium has “shied away” from competing
17 with Bazaarvoice for PRR customers because of Bazaarvoice’s “dominance” in that area.
18 GX72* (Lithium Dep. 46:5-16, 46:19-47:9, 47:13-17).

19 279. In fact, Lithium and Bazaarvoice are complementary solutions. GX364 at -609.
20 Many of Lithium’s customers use Bazaarvoice’s PRR platform. GX72* (Lithium Dep. 47:20-
21 48:5); *see also* GX668.

22 (v) **Other Fringe Providers of PRR Platforms are Not Likely to Expand**
23 **Sufficiently to Mitigate the Anticompetitive Effects of the Acquisition**

24 280. **Practical Data:** Practical Data has sold add-on functionality, including PRR, to
25 users of the Yahoo! Store eCommerce platform since 2002. GX65 (Practical Data Dep. 6:2-22).
26 While Practical Data has approximately 110 customers, Practical Data earned revenues of
27 “probably a good bit less” than \$162,000 from its PRR product in 2012. GX65 (Practical Data
28 Dep. 43:4-7, 67:20-68:4, 68:7-16, 68:18). Only [REDACTED] of these customers appear to be in the IR

1 500. GX985* at Ex. 14A; GX1062. Practical Data does not offer moderation or syndication
2 services in connection with PRR. GX65 (Practical Data Dep. 53:8-54:11). Practical Data does
3 not have a research and development program or a roadmap for its PRR product. GX65
4 (Practical Data Dep. 54:12-17).

5 281. **Rating-System.com:** Rating-System has no employees. GX66 (Rating-System
6 Dep. 89:7-11) and Trial Tr. 1325:2-6 (Bruksha/Rating-System). The company's founder, who
7 works full-time at Men's Wearhouse, and several others provide services part-time as needed.
8 GX66 (Rating-System Dep. 13:19-14:3, 89:12-90:1) and Trial Tr. 1316:17-20, 1325:7-21
9 (Bruksha/Rating-System). Rating-System offers several levels of PRR services, including an
10 "enterprise" plan for larger customers with "bigger traffic sites." GX66 (Rating-system Dep.
11 45:12-22) and Trial Tr. 1318:23-1319:4 (Bruksha/Rating-System). The company's founder does
12 not know how many PRR customers Rating-System has (Trial Tr. 1318:10-22, 1319:25-1321:7
13 (Bruksha/Rating-System), but he testified that no one has bought Rating-System's enterprise
14 service plan. GX66 (Rating-System Dep. 45:23-46:2) and Trial Tr. 1319:5-9 (Bruksha/Rating-
15 System). One Rating-System customer, Astral Brands, receives only two or three reviews a day
16 for all of its brands. Trial Tr. 1355:6-11 (Hughes/Astral Brands). Astral Brands employees
17 moderate these reviews and post the reviews to the company's website themselves. Trial Tr.
18 1348:3-19 (Hughes/Astral Brands). Astral Brands testified that Rating-System's PRR product
19 has "bugs" that "pop up." Trial Tr. 1354:12-24 (Hughes/Astral Brands). Rating-System does
20 not offer syndication, and only one customer uses its moderation services. GX66 (Rating-
21 System Dep. 120:14-121:15) and Trial Tr. 1326:8-10 (Bruksha/Rating-System). Bazaarvoice
22 executive Alan Godfrey described Rating-System as a "very, very small entrant into the market."
23 Trial Tr. 1129:22-1130:1 (Godfrey).¹⁰

24
25
26
27
28 ¹⁰ Even Defendant's proffered shopper marketing expert acknowledged that he would not
recommend that a large client use Rating-System.com. Trial Tr. 1565:12-1566:7 (Goldberg).

1 **D. In-House Solutions and eCommerce PRR Modules are Not Economically**
2 **Viable Alternatives for Many Customers and Potential Customers of PRR**
3 **Platforms and Will Not Constrain Bazaarvoice’s Ability to Raise Prices**

3 **(i) In-House PRR Platforms**

4 282. For many retailers and manufacturers, in-house PRR platforms are not sufficiently
5 close substitutes to Bazaarvoice’s or PowerReviews’ platforms to impede a post-merger price
6 increase by Bazaarvoice. GX365* at -478; GX939 at -551; GX678; Trial Tr. 1188:12-1189:12
7 (Friedland/Build.com).

8 283. It would be prohibitively expensive for many customers to develop an in-house
9 PRR platform with functionality comparable to the features offered by Bazaarvoice, and it would
10 be difficult to maintain the same pace of innovation. GX272 at -217; GX625 at -356; GX885 at
11 -572; GX781 at -634; GX778 at -211-212; GX365* at -475-476, -478; GX928 at -929; GX939 at
12 -551; GX160 (Lord & Taylor Dep. 38:9-21) *cf.* Trial Tr. 1690:4-15, 1692:5-13 (Massuda/Sears).

13 284. One PowerReviews customer, evaluating its options to build its own platform,
14 estimated that it would cost \$120,000 up front and \$12,000 per year in maintenance to replace
15 the PRR platform that it received from PowerReviews. GX168 (Onlineshoes.com Dep. 21:7-
16 22:6). A Bazaarvoice customer estimated it would cost \$30,000-\$40,000 for it to build its own
17 platform and then \$35,000-\$45,000/year in maintenance and moderation costs. GX114
18 (Build.com Dep. 17:17-19:7, 60:25-61:13); *see also* Trial Tr. 1190:20-1191:20
19 (Friedland/Build.com). Sears spent eleven months and approximately \$2 million developing an
20 in-house PRR platform that does not have “a lot of the functionality” that Sears would like to
21 have. Trial Tr. 1689:20-1690:15, 1692:5-13 (Massuda/Sears). For many customers, it may be
22 significantly cheaper to use Bazaarvoice than to build their own PRR platform. *See generally*
23 GX565 at -208.

24 285. The cost of performing moderation also discourages customers from choosing to
25 build an in-house platform and is in fact an “extremely high barrier [to] entry.” GX87 (Godfrey
26 CID Dep. 213:8-13) and Trial Tr. 1143:21-1145:16 (Godfrey); *see also* GX90 (Luedtke Dep.
27 81:21-82:21); GX193 (Walgreens Dep. 46:8-11, 46:14-16, 46:18-49:8); GX364 at -603.

1 286. It would be very complex and expensive for a customer to perform the same level
2 of moderation as is performed by third party providers. GX272 at -216; GX885 at -572; GX939
3 at -551; GX89 (Hurt Dep. 204:8-20) and Trial Tr. 106:18-107:24 (Hurt); GX125 (Clorox Dep.
4 146:22-147:20). In its disclosures to the SEC, Bazaarvoice acknowledged that it benefits from
5 “economies of scale” in supplying moderation of PRR. GX964 at 79.

6 287. For customers who want syndication, building an in-house solution is generally
7 not a viable option. GX96* (Acer Dep. 71:2-12, 71:15-22); *see also* GX181 (Sears Dep. 51:17-
8 18, 51:20-53:2, 53:4-23) and Trial Tr. 1692:14-1694:4 (Massuda/Sears); GX125 (Clorox Dep.
9 146:22-147:20). Even if a customer built syndication technology, it would not have access to a
10 syndication network on which it could rely to receive and send PRR content. GX142 (Green
11 Mountain Coffee Dep. 55:11-17, 55:23-56:25).

12 288. There are companies such as Webcollage that syndicate content from brands to
13 retail websites where the brand’s products are sold. Trial Tr. 1229:8-12 (Matthews/Webcollage).
14 However, such syndication companies do not offer PRR functionality. *See, e.g.*, Trial Tr.
15 1239:11-17 (Matthews/Webcollage). Webcollage, in fact, syndicates ratings and reviews for
16 only “three or four” customers and each of those customers have syndicated fewer than 50
17 reviews each. Trial Tr. 1239:23-25, 1240:1-5 (Matthews/Webcollage).

18 289. Many retailers have limited in-house developer resources, and building PRR
19 functionality, even if technically possible, just doesn’t “make a lot of sense” and is not a “good
20 use of development time.” GX138* (Fruit of the Loom Dep. 24:24-26:8) and Trial Tr. 1227:9-
21 15 (Krebs/Fruit of the Loom); *see also* GX144 (Hayneedle Dep. 46:6-47:4) and Trial Tr. 1638:5-
22 15 (Moen/Hayneedle); GX141 (Golfsmith Dep. 32:12-14, 32:16-33:7) and Trial Tr. 1218:7-13
23 (Maki/Golfsmith); GX193 (Walgreens Dep. 46:8-11, 46:14-16, 46:18-49:8); GX159 (LL Bean
24 Dep. 37:6-38:16). Designing and maintaining an in-house solution would have been “too much
25 work” for Astral Brands. Trial Tr. 1352:24-1353:18 (Hughes/Astral Brands). Such an effort
26 would involve “UI (user interface) design, graphic design, database design, building, testing and
27 then maintaining the system.” Trial Tr. 1353:1-18 (Hughes/Astral Brands). Even
28 PowerReviews executives acknowledge that developing an in-house PRR platform was generally

1 not a good use of a potential customer's limited internal technical resources. GX90 (Luedtke
2 Dep. 76:21-24, 77:3-10).

3 290. In-house PRR platforms are only a viable option for customers that are not
4 interested in the full feature set offered by Bazaarvoice (including moderation and syndication
5 services), customers that are willing to invest heavily in ongoing platform development to
6 maintain the software and create new features, or customers with specific needs that no vendor
7 meets. GX87 (Godfrey CID Dep. 213:8-23); GX661; GX195 (Wine.com Dep. 40:20-41:12);
8 GX170 (Overstock.com Dep. 30:18-31:10, 32:23-33:10, 34:11-15, 68:3-12, 68:23-69:18, 72:7-9,
9 72:12-73:25). Customers who elect to build internal PRR platforms are "typically not" larger
10 enterprise customers looking for the type of sophisticated platforms provided by Bazaarvoice and
11 PowerReviews. GX87 (Godfrey CID Dep. 212:23-213:1).

12 291. For the reasons above, some customers that have invested in building their own
13 PRR platform "ultimately decided to scrap it and use Bazaarvoice." GX885 at -572; *see also*
14 GX88 (Hossain Dep. 138:4-140:15). Generally, the adoption of commercial PRR platforms,
15 such as those offered by Bazaarvoice and PowerReviews, has been increasing over time, while
16 the adoption of in-house PRR platforms has been relatively steady. GX983* at 28-29; GX1038;
17 Trial Tr. 927:18-928:22 (Shapiro); GX1038.

18 **(ii) eCommerce PRR Modules**

19 292. eCommerce platforms are technology that enables a retailer to create an
20 eCommerce site. For example, eCommerce platforms provide the shopping cart functionality on
21 a retailer's website. GX90 (Luedtke Dep. 45:21-46:5, 46:8-16).

22 293. While some commercial eCommerce platforms may offer some native PRR
23 functionality, they generally lack the features necessary to serve as a substitute for the PRR
24 platforms offered by Bazaarvoice or PowerReviews. GX196 (World Kitchen Dep. 19:8-14,
25 64:17-65:17); GX90 (Luedtke Dep. 116:2-12, 116:15-20) and Trial Tr. 419:6-13 (Luedtke);
26 GX655 at -917, -920. According to Bazaarvoice, "[m]ost e-commerce platforms have R&R
27 widget[s] only" which do not have the features available on the Bazaarvoice or PowerReviews
28 PRR platforms, such as "reporting, robust analytics, content moderation, best practices for

1 gathering and using content, integrations with other systems, etc.” GX885 at -573; *see also*
2 GX364; GX68 (ShopVisible Dep. 45:23-46:2, 46:5-12, 46:15, 46:19-21, 46:23, 48:20-23, 49:1-2,
3 52:4-8, 52:10-16, 52:18). Bazaarvoice’s “technology is more feature rich and has a lot more
4 bells and whistles” than other eCommerce platforms. GX81 (Collins Dep. 240:8-13) and Trial
5 Tr. 883:7-15 (Collins). Some customers may start by using native PRR functionality in an
6 eCommerce platform, but as they grow they reach the limits of the platform’s PRR capabilities.
7 GX189 (Tempur-Pedic Dep. 21:14-22:6); GX141 (Golfsmith Dep. 60:25-61:10, 61:12-17).

8 294. To the extent that some PRR “plug-in” modules exist, such modules require
9 significant customization and development time by the retailer and as such are not particularly
10 good substitutes for a robust PRR platform. GX99 (Astral Brands Dep. 127:6-12, 127:15-129:5)
11 and Trial Tr. 1351:20-1352:19 (Hughes).

12 295. Regardless of whether an eCommerce platform offers its own PRR functionality,
13 many also offer “app stores” that allow customers to purchase add-on PRR functionality from
14 other vendors, such as PowerReviews’ Express PRR product. These add-ons improve upon the
15 limited functionality available natively in the eCommerce platform. GX90 (Luedtke Dep. 45:2-
16 20, 46:11-16, 116:2-12, 116:15-20).

17 296. eCommerce platforms do not often compete head-to-head with Bazaarvoice or
18 PowerReviews to offer PRR platforms. GX68 (ShopVisible Dep. 43:22-24, 44:2-5, 44:7); *see,*
19 *e.g.*, Trial Tr. 884:13-15 (Collins). Some eCommerce platforms even purchase PRR platforms
20 from Bazaarvoice for their own websites. *See, e.g.*, Trial Tr. 883:16-884:3 (Collins). Switching
21 eCommerce platforms is a very expensive and complicated process and customers generally
22 won’t switch eCommerce platforms in order to obtain PRR functionality. *See, e.g.*, DX1418 and
23 Trial Tr. 1226:18-1227:1 (Krebs/Fruit of the Loom); Trial Tr. 1667:3-1668:3, 1669:13-1670:16
24 (Yukel/Big Dot of Happiness).¹¹

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27
28 ¹¹ Even Defendant’s economic expert admitted that customers won’t switch eCommerce
platforms in order to obtain PRR functionality. Trial Tr. 1954:13-19 (Shehadeh).

1 **E. Other Social Commerce Companies and Large Software Companies are**
2 **Unlikely to Enter the Market for PRR Platforms**

3 **(i) TurnTo**

4 297. TurnTo provides a social question and answer software system to online retailers.
5 GX74* (TurnTo Dep. 13:6-9). TurnTo is considering whether to develop a PRR solution.
6 GX74* (TurnTo Dep. 39:16-18). TurnTo’s CEO believes it would take many years to develop
7 PRR functionality comparable to the Bazaarvoice and PowerReviews platforms. GX74*
8 (TurnTo Dep. 41:25-42:13, 173:16-20, 173:23-174:13). He believes that Bazaarvoice’s “strong”
9 network makes it “much harder” for a new entrant to sell PRR. GX74* (TurnTo Dep. 50:19-
10 51:2, 51:5-25).

11 298. If TurnTo were to try to enter the PRR platform market, the CEO’s “fear” is that
12 TurnTo would enter with a less mature and less expensive PRR platform than Bazaarvoice
13 offers. GX74* (TurnTo Dep. 42:25-43:4, 43:7-44:17).

14 **(ii) Amazon**

15 299. Amazon “do[es] not compete with [Bazaarvoice] as their platform does not allow
16 third-parties to access review data for any reason.” GX672 at -846. Further, Alan Godfrey,
17 Bazaarvoice’s General Manager of Retail, testified that he cannot recall lowering the price floor
18 for PRR platforms in response to competition from Amazon. GX1119 (Godfrey Dep. 148:7-10);
19 *see also* Trial Tr. 1844:22-1845:5 (Comée) (not aware of an instance of PowerReviews
20 competing directly against an Amazon standalone PRR platform).

21 300. While Amazon.com has had an in-house PRR platform for its own website for
22 over 18 years, Amazon.com does not currently provide its PRR platform to any website that is
23 not an Amazon subsidiary and has no plans to license its PRR platform to other eCommerce
24 vendors. GX70 (Amazon.com (Ahmed) Dep. 37:11-15, 114:11-24) and Trial Tr. 1625:18-
25 1626:6 (Ahmed/Amazon.com).

26 301. Amazon is unlikely to enter the market for PRR platforms with a commercial
27 PRR product because “it would actually be disadvantageous for them to allow brands or retailers
28 to display the content; Amazon’s first goal for the content is to attract consumers to their site and

1 keep them there for shopping, which relies on their exclusive access to the data.” GX672 at
2 -846.

3 302. Where retailers or manufacturers sell products on both their own website and on
4 Amazon.com, Amazon.com does not permit syndication of its PRR between the two sites. GX70
5 (Amazon.com (Ahmed) Dep. 113:20-114:8) and Trial Tr. 1624:7-19 (Ahmed/Amazon.com).

6 303. Amazon also sells an eCommerce platform called Amazon Webstore. Although
7 the Amazon Webstore eCommerce platform includes some PRR functionality, Bazaarvoice’s
8 Vice President of Product Strategy Erin Defossé dismissed Amazon as a competitor saying, “I
9 have yet to run into a deal where Amazon is a direct competitor to our overall services in a deal
10 where they are not already embedded. So, net net, I would not be concerned with them as a
11 direct competitor” GX19; *see also* Trial Tr. 1150:16-1151:8 (Godfrey). In fact, they
12 cooperate rather than compete: Amazon allows Bazaarvoice to sell the Express product to its
13 Amazon Webstore eCommerce platform customers. GX20 at -649; Trial Tr. 550:22-551:11
14 (Defossé). *See generally supra* Section VI.D.(ii).

15 304. The PRR functionality available on Amazon Webstore is not the same as those on
16 Amazon.com, as Amazon.com generally does not make available its features to the Amazon
17 Webstore business unit. GX71 (Amazon Webstore (Sell) Dep. 21:17-20, 29:19-30:1) and Trial
18 Tr. 1706:12-15, 1707:9-16 (Sell/Amazon Webstore). The PRR functionality available through
19 the Amazon Webstore is only a subset of that on Amazon.com. GX71 (Amazon Webstore (Sell)
20 Dep. 21:21-25) and Trial Tr. 1706:16-25 (Sell/Amazon Webstore). Similarly, the analytics
21 features available on Amazon Webstore also do not leverage any of the analytics on
22 Amazon.com and reviews submitted to retailers using the Amazon Webstore eCommerce
23 platform cannot go through Amazon.com’s moderation process. GX71 (Amazon Webstore
24 (Sell) Dep. 29:11-18, 39:24-40:2) and Trial Tr. 1707:1-8, 1707:17-19 (Sell/Amazon Webstore).
25 Amazon has no plans to improve the PRR functionality available via the Amazon Webstore
26 eCommerce platform. GX71 (Amazon Webstore (Sell) Dep. 42:03-42:07) and Trial Tr.
27 1708:12-16 (Sell/Amazon Webstore).

1 305. Amazon does not syndicate reviews between Amazon.com and retailers using the
2 Amazon Webstore eCommerce platform. GX71 (Amazon Webstore (Sell) Dep. 40:21-41:12)
3 and Trial Tr. 1707:20-1708:11 (Sell/Amazon Webstore). Furthermore, Bazaarvoice does not
4 believe that Amazon will start to syndicate PRR to its Amazon Webstore eCommerce platform
5 customers. GX672 at -846. It is also difficult to import or export ratings and reviews to or from
6 a website using Amazon Webstore. A very limited amount of ratings and reviews content can be
7 exported via an API, while importing ratings and reviews would require the manual resubmission
8 of the reviews on the Amazon Webstore-run website. GX71 (Amazon Webstore (Sell) Dep.
9 41:13-42:1, 45:12-18, 45:21-46:12, 46:14-47:7).

10 **(iii) Facebook**

11 306. Bazaarvoice does not view Facebook as a competitor but rather “more a partner
12 than a potential competitor.” GX928 at -928; Trial Tr. 889:5-21 (Collins); *see also* GX655 at
13 -916; GX492 (Pacitti Dep. 44:8-13). According to the Q&As drafted in preparation for
14 Bazaarvoice’s IPO roadshow, Bazaarvoice “view[s] Facebook as another channel for us to reach
15 consumers; they are not competitive to our business model, we are actually very different and
16 complementary.” GX425 at -927, -928. Facebook told Bazaarvoice executives that it has “no
17 plans to build out Reviews capabilities.” GX509 at -869. Bazaarvoice represented to the SEC
18 and potential investors that Facebook “do[es] not currently focus on our market.” GX964 at 85;
19 *see also* Trial Tr. 641:6-9 (Barton).

20 307. No Bazaarvoice brand customers have indicated an interest in abandoning
21 Bazaarvoice to rely on Facebook services. GX116 (Curtin 30(b)(6) Dep. 12:11-16).
22 Bazaarvoice’s Vice President of Brands, Matt Curtin, also testified that he has not received any
23 requests from Bazaarvoice sales people for authority to provide a discount to Bazaarvoice
24 customers due to competition from Facebook. GX116 (Curtin 30(b)(6) Dep. 13:11-15).

25 308. In its interrogatory response, Bazaarvoice listed Facebook as a partner, *i.e.*, an
26 “organization[] with which Bazaarvoice is, at this time, strategically aligned and/or share
27 Bazaarvoice’s commitment to pursuing innovative solutions that help businesses better engage
28 with customers.” GX987 (Def.’s Resp. to Pl. Interrogs. 20 & 21 7:22-24, 8:4). More

1 specifically, “Bazaarvoice offers a social commerce application for Facebook users that permits
2 shoppers visiting the product page of a client retailer to automatically send all of their product
3 reviews and other content to their personal page on Facebook.com.” GX987 (Def.’s Resp. to Pl.
4 Interrogs. 20 & 21 11:12-15).

5 **(iv) Google**

6 309. Google is not a competitive constraint on Bazaarvoice and Bazaarvoice views
7 Google as “more a partner than a potential competitor.” GX928 at -928; Trial Tr. 889:5-21
8 (Collins); *see also* GX1133 at -569; GX511 at -570. Bazaarvoice Director Chris Pacitti testified
9 that Google does “[n]ot today” “compete[] in any market which Bazaarvoice competes.” GX492
10 (Pacitti Dep. 48:17-49:12); *see also* Trial Tr. 641:6-11 (Barton); Trial Tr. 695:18-696:11
11 (Osborne). According to the Q&As drafted in preparation for Bazaarvoice’s IPO roadshow,
12 Google is “not competitive to our business model, we are actually very different and
13 complementary.” GX425 at -927. Google does not offer PRR platforms to retailers. GX81
14 (Collins Dep. 253:22-25). Bazaarvoice represented to the SEC and potential investors that
15 Google “do[es] not currently focus on our market.” GX964 at 85. Bazaarvoice has developed a
16 standardized integration with Google Analytics. GX987 (Def.’s Resp. to Pl. Interrogs. 20 & 21
17 8:24-26).

18 **(v) IBM, Oracle, and Salesforce.com**

19 310. IBM is a partner of Bazaarvoice and Bazaarvoice does not believe that IBM is
20 “motivated to come to our marketplace.” GX87 (Godfrey CID Dep. 167:9-22). In fact,
21 Bazaarvoice has an out-of-the-box integration/connector for its PRR platform with the IBM
22 WebSphere Commerce eCommerce platform. GX987 (Def.’s Resp. to Pl. Interrogs. 20 & 21
23 9:2-3, 9:5). Bazaarvoice has also developed a standardized integration with IBM Coremetrics.
24 GX987 (Def.’s Resp. to Pl. Interrogs. 20 & 21 8:24-25, 8:27).

25 311. Similarly, Oracle and Salesforce.com are partners of Bazaarvoice, not
26 competitors. Bazaarvoice has an out-of-the-box integration/connector for its PRR platform with
27 the Oracle Commerce (ATG) eCommerce platform. GX987 (Def.’s Resp. to Pl. Interrogs. 20 &
28

1 21 9:2-4). Bazaarvoice also has a solution that integrates with Oracle and Salesforce.com's
2 CRM solutions. GX987 (Def.'s Resp. to Pl. Interrogs. 20 & 21 13:8-11, 13:13-14).

3 **VII. BAZAARVOICE HAS NOT DEMONSTRATED THAT MERGER-SPECIFIC**
4 **EFFICIENCIES WILL OVERCOME THE ANTICOMPETITIVE EFFECTS OF**
5 **THE MERGER**

6 312. Bazaarvoice has not produced any verifiable evidence that the merger will result
7 in cognizable, merger-specific efficiencies that will be passed through to customers and will be
8 sufficient to offset the anticompetitive effects of the transaction. Trial Tr. 923:17-24 (Shapiro).

9 313. At trial, Bazaarvoice attempted to justify the merger in part as an attempt to better
10 compete in the online advertising space. Trial Tr. 271:9-12 (Hurt). Bazaarvoice has a
11 preexisting media product. Trial Tr. 683:9-11 (Barton). Bazaarvoice also made a separate
12 acquisition to expand in the advertising space. Trial Tr. 271:13-17 (Hurt). Bazaarvoice
13 executives testified that there was nothing preventing Bazaarvoice from selling advertising
14 products to PowerReviews clients absent the merger. Trial Tr. 271:18-272:1 (Hurt); Trial Tr.
15 882:16-19 (Collins); *cf.* Trial Tr. 684:5-19 (Barton).

16 **A. There is No Verifiable Evidence that the Merger will Lead to Lower Costs**
17 **for Consumers of PRR Platforms**

18 314. Bazaarvoice makes no claim that the merger reduces the marginal costs of
19 providing its services. *See* GX871 (Def.'s Am. Resp. to Pl. Interrogs. 3,5,6, & 13 7:25-10:26);
20 GX494 (Godfrey 30(b)(6) Dep. 19:9-22, 47:13-17); GX1004. Bazaarvoice acknowledges that it
21 expects only limited cost savings from the acquisition. GX494 (Godfrey 30(b)(6) Dep. 41:8-19).

22 315. Given its value-based pricing strategy (GX87 (Godfrey CID Dep. 103:10-16); *see*
23 *also supra* Section II.A.(iii)), rather than passing the benefits through to customers, Bazaarvoice
24 can be expected to charge them higher prices for any improvements in product quality. Trial Tr.
25 1002:4-13, 1021:20-24 (Shapiro); GX984* at 27.

26 **B. There is No Verifiable Evidence That the Acquisition Will Lead to**
27 **Cognizable Improvements in Bazaarvoice's Product Technology That Could**
28 **Not Have Been Made Absent the Merger**

316. There is insufficient evidence to support Bazaarvoice's claim that the merger has
enabled it to launch "architectural improvements" in its technology. As an initial matter,

1 Bazaarvoice has ceased development of the PowerReviews platform other than ongoing
2 maintenance following the acquisition. GX81 (Collins Dep. 408:14-20). Furthermore, any
3 improvements to the Bazaarvoice platform or service could have been completed independently
4 without the transaction. Bazaarvoice was working on these improvements independently prior to
5 the merger and expected to implement them successfully. GX87 (Godfrey CID Dep. 51:14-
6 53:9); *see also* GX81 (Collins Dep. 397:11-21); GX82 (Barton Dep. 243:15-24, 244:5-246:17);
7 GX519; Trial Tr. 1153:3-1154:9 (Godfrey).

8 317. Bazaarvoice has failed to quantify how much the merger reduced the cost or time
9 of developing architectural improvements to its technology or the value of such improvements to
10 consumers. GX87 (Godfrey CID Dep. 51:14-53:9); GX494 (Godfrey 30(b)(6) Dep. 32:16-33:3,
11 33:13-34:5, 52:12-53:2).

12 **C. There is no Verifiable Evidence that the Acquisition Has Led to Cognizable**
13 **Improvements in Bazaarvoice’s Ability to Provide Analytics to Customers**

14 318. Bazaarvoice claims that the larger volume of data it will control post-merger will
15 enable unspecified improvements in the company’s “analytics” tools. Bazaarvoice
16 acknowledges that it could have shared data with PowerReviews absent the merger and, in the
17 future, Bazaarvoice “fully expect[s]” to share data sets with other online software providers to
18 expand analytic power. GX83 (Collins 30(b)(6) Dep. 46:15-47:8).

19 319. There is no verifiable evidence that the combination of the Bazaarvoice and
20 PowerReviews analytics research and development efforts constitute a merger-specific benefit.
21 Both companies could have increased their efforts even without the merger (*see* GX83 (Collins
22 30(b)(6) Dep. 40:9-21)); therefore, any benefits from such combined efforts would be
23 speculative.

24 320. Even if the acquisition did lead to a merger-specific improvement in
25 Bazaarvoice’s analytics capabilities, Bazaarvoice reasonably can be expected to charge a price
26 commensurate with that greater capability, eliminating any net benefits to consumers. *See*
27 GX984* at 27; GX83 (Collins 30(b)(6) Dep. 50:9-14, 50:17-51:7); GX117 (Parsons 30(b)(6)
28 Dep. 25:7-17).

1 **D. Bazaarvoice’s Claim that it has “More Rigorous” Authentication and**
2 **Moderation Standards for Legacy PowerReviews Customers is Not a**
3 **Cognizable, Merger-Specific Efficiency**

3 321. Prior to the merger, Bazaarvoice and PowerReviews each employed different
4 standards and procedures for moderating reviews and ensuring that review content was authentic.
5 GX117 (Parsons 30(b)(6) Dep. 39:3-42:23). These different moderation practices were a point
6 of competition between the two companies. Trial Tr. 112:4-17 (Hurt). After the merger,
7 Bazaarvoice began using its own standards and procedures for most of the former PowerReviews
8 customers. GX494 (Godfrey 30(b)(6) Dep. 42:16-19); GX117 (Parsons 30(b)(6) Dep. 51:15-
9 52:18); GX1000.

10 322. Although Bazaarvoice characterizes its authentication and moderation standards
11 and procedures as superior to those employed by PowerReviews, some former PowerReviews
12 customers appear to have preferred the legacy PowerReviews system. GX117 (Parsons 30(b)(6)
13 Dep. 51:15-52:18); *see also, e.g.*, GX1000; GX999; GX998. Bazaarvoice has not identified any
14 former PowerReviews customers who complained about PowerReviews’ moderation or
15 authentication policies prior to the merger. GX117 (Parsons 30(b)(6) Dep. 43:19-44:9).

16 323. Even if Bazaarvoice’s authentication and moderation practices were superior to
17 PowerReviews’ practices, only PowerReviews’ own resource allocation decisions prevented it
18 from implementing similar policies on its own prior to the transaction. GX117 (Parsons 30(b)(6)
19 Dep. 44:24-46:8, 52:19-53:12). Moreover, pre-merger any customer that preferred the
20 Bazaarvoice moderation and authentication system had a choice and could have selected
21 Bazaarvoice as its PRR platform provider.

22 324. Prior to the merger, Bazaarvoice’s per-review moderation costs were much higher
23 than PowerReviews’. GX494 (Godfrey 30(b)(6) Dep. 42:16-45:3, 46:13-16); GX1003. As a
24 result, over time customers are likely to be charged a higher price for Bazaarvoice’s moderation
25 services, reducing any net benefit to customers.

1 **E. There is No Verifiable Evidence That the Ability of Customers to Syndicate**
2 **Content to a Larger Network is a Cognizable, Merger-Specific Efficiency**

3 325. The ability to syndicate PRR content between PowerReviews and Bazaarvoice
4 customers or “cross network syndication” is not a merger specific efficiency. Such syndication
5 was feasible and was occurring for some customers prior to the merger. *See, e.g.*, GX493
6 (Parsons Dep. 82:20-83:13); GX117 (Parsons 30(b)(6) 34:9-35:4); GX4 at -460; GX699* at
7 -311; GX276 at -765; *cf.* GX1009 (Curtin Dep. 49:8-19, 50:8-16); GX1119 (Godfrey Dep. 52:1-
8 53:7). Bazaarvoice estimated that it would take a minimal amount of time to create a way to
9 syndicate Bazaarvoice reviews to PowerReviews customers and vice-versa. GX6 at -577; GX27
10 at -376. To the extent it was not happening more it was because prior to the merger, Bazaarvoice
11 deliberately worked to frustrate efforts to enable cross-network syndication with PowerReviews
12 customers to prevent PowerReviews from offering free and open syndication of PRR to compete
13 with Bazaarvoice. *See, e.g.*, GX711; *see also supra* Section IV.B.

14 326. As part of its “value-based” pricing strategy, Bazaarvoice considers, among other
15 things, the volume of content and number of “nodes” a customer wishes to syndicate content to
16 when setting each customer’s individualized price. GX87 (Godfrey CID Dep. 102:8-103:20); *cf.*
17 GX1009 (Curtin Dep. 39:19-22, 105:20-106:21). Accordingly, any increase in syndication post-
18 merger is not a cognizable, merger-specific efficiency because there is insufficient evidence to
19 show that Bazaarvoice will pass through that benefit to customers instead of simply raising
20 prices to customers by a commensurate amount. *See* Trial Tr. 1002:4-13, 1021:20-24 (Shapiro);
21 GX984* at 27.

22 **VIII. POWERREVIEWS’ FINANCIAL CONDITION DOES NOT CREATE A**
23 **DEFENSE**

24 327. There is no evidence that PowerReviews was in dire financial straits or would
25 have imminently exited the market. To the contrary, immediately prior to being acquired by
26 Bazaarvoice, PowerReviews had achieved its highest quarterly sales in its history. GX643;
27 GX87 (Godfrey CID Dep. 181:21-182:5); GX88 (Hossain Dep. 196:4-6, 196:9-18).

1 328. Prior to the acquisition, PowerReviews was becoming increasingly competitive
2 and continued to compete aggressively with Bazaarvoice up until the time of the acquisition.
3 GX89 (Hurt Dep. 360:19-361:14); *see also* GX1264 at -759 (PowerReviews' CEO received
4 suggestions to a press release in April 2012 so that "the C-level at BV will now read this as PR
5 very squarely coming after them"); GX419 at -484; GX89 (Hurt Dep. 377:14-378:16); GX1105
6 at -047. For example, less than two months prior to the merger, PowerReviews announced that it
7 had "added more than 30 major brands to its roster." GX619 at -390.¹²

8 329. While Bazaarvoice paid PowerReviews' shareholders a premium for their shares,
9 PowerReviews' former CEO, Ken Comée, testified that he is "confident in myself as a CEO, that
10 I could have built even more value" for PowerReviews shareholders had the company remained
11 independent. GX84 (Comée Dep. 201:17-20, 202:3-4) and Trial Tr. 1839:5-24 (Comée).

12 330. Bazaarvoice itself estimated that PowerReviews could continue operating up to 18
13 months before seeking any type of additional cash investment. GX87 (Godfrey CID Dep. 182:8-
14 183:3). Bazaarvoice Director Chris Pacitti fully expected that PowerReviews "intended to
15 continue competing with Bazaarvoice if the company were not to be acquired by Bazaarvoice."
16 GX492 (Pacitti Dep. 145:7-11).

17 331. If PowerReviews needed additional capital, there were a number of sources the
18 company could have turned to for additional funding other than Bazaarvoice. GX83 (Collins
19 30(b)(6) Dep. 60:5-61:4). Additional funding alternatives for PowerReviews included the
20 potential acquisition of PowerReviews by companies other than Bazaarvoice. GX83 (Collins
21 30(b)(6) Dep. 78:15-79:3). As Bazaarvoice co-founder Brett Hurt testified, "there's reasons why
22 you might opt for growth rather than profitability." Trial Tr. 265:11-13 (Hurt).

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27 ¹² Even Defendant's economic expert admits that Bazaarvoice and PowerReviews "clearly would
28 have continued to compete" absent the merger. Trial Tr. 1973:19-25, 2033:24-2034:3
(Shehadeh).

1 Dated: October 25, 2013

Respectfully submitted by:

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