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

11 VENDA VO, INC.

12 Plaintiff,

13 vs.

14 PRICE F(X) AG, PRICE F(X), INC., and DOES
15 1-10

16 Defendant.
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Case No.: 17-cv-06930-RS

**AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:**

1. MISAPPROPRIATION UNDER
DEFENSE OF TRADE SECRETS ACT;
2. PATENT INFRINGEMENT;
3. COPYRIGHT INFRINGEMENT; AND
4. UNFAIR COMPETITION.

JURY TRIAL DEMANDED

Trial Date: None Set

1 Plaintiff Vendavo, Inc. (“Plaintiff” or “Vendavo”), by and through its undersigned attorneys,
 2 alleges against Defendants Price f(x) AG and Price f(x), Inc. (collectively “PFX”), and DOES 1
 3 through 10 (collectively “Defendants,” and each a “Defendant”) as follows:

4 **I. PARTIES**

5 1. Plaintiff Vendavo, Inc. is a Delaware corporation with its principal place of business
 6 at 1401 17th Street, Suite 800, Denver, Colorado 80202. Previously, and during the majority of the
 7 events alleged herein, Vendavo had its principal place of business at 401 East Middlefield Road,
 8 Mountain View, CA 94043. Vendavo currently maintains an office at 2590 N. First Street, Suite
 9 300, San Jose, California 95131.

10 2. Price f(x), Inc. is an Illinois corporation with a principal place of business at 2 North
 11 1st Street, 5th Floor, San Jose, California 95113. Price f(x) has offices in San Jose, CA and Chicago,
 12 IL, as well as in the Czech Republic, Switzerland, and Hong Kong. Price f(x) AG is a German
 13 corporation based in Munich, Germany.

14 3. Vendavo is ignorant of the true names and capacities of the remaining defendants,
 15 sued as Does 1 through 10, and therefore sues defendants by such fictitious names. Vendavo will
 16 amend this Complaint to allege true names and capacities when ascertained. Vendavo is informed
 17 and believes, and on that basis alleges, that each of the fictitiously named defendants are in some
 18 manner responsible for the harm Vendavo has incurred and will incur if injunctive relief is not
 19 allowed or damages are not awarded.

20 **II. JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction over Vendavo’s federal trade secret claim
 22 pursuant to 18 U.S.C. §§ 1836-39 *et seq.* and 28 U.S.C. § 1331. This Court has subject matter
 23 jurisdiction over Vendavo’s claims for patent infringement pursuant to the Federal Patent Act, 35
 24 U.S.C. § 101 *et seq.*, and 28 U.S.C. §§ 1331 and 1338(a). This Court has subject matter jurisdiction
 25 over Vendavo’s federal claim of copyright infringement pursuant to the Federal Copyright Act, 17
 26 U.S.C. § 101 *et seq.*, and 28 U.S.C. §§ 1331 1338(a).

27 5. This Court has supplemental subject matter jurisdiction over Vendavo’s related state
 28 claims under 28 U.S.C. § 1367, as the state claims herein arise from the same case or controversy

1 which give rise to Vendavo's claims of trade secret misappropriation and patent and copyright
2 infringement.

3 6. This Court has personal jurisdiction over each Defendant because: each Defendant
4 has minimum contacts within the State of California and this judicial district; each Defendant has
5 purposefully availed itself of the privileges of conducting business in the State of California and in
6 this judicial district; each Defendant regularly conducts business within the State of California and
7 within this judicial district; and Vendavo's causes of action arise directly from each Defendant's
8 business contacts and other activities in the State of California and in this judicial district.

9 7. Defendants Price f(x) AG and Price f(x), Inc. carry on a unified business of
10 developing and selling price management software. For example, in marketing to and
11 communicating with current and potential customers, in exhibiting at trade shows within the United
12 States, and in supporting customers, Defendants do not distinguish among their various corporate
13 entities. Thus, the existence of Price f(x), Inc. is simply a formality that allows Price f(x) AG to
14 conduct business in the United States. The two entities have no material difference for purposes of
15 the claims herein. Because of Defendants' failure to separate their corporate operations, Vendavo
16 makes its allegations herein against Price f(x) AG and Price f(x), Inc. collectively (hereinafter
17 "PFX"), except where otherwise specified.

18 8. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391 because a
19 substantial part of the events giving rise to this dispute and the damages sustained in this dispute
20 have occurred, and are occurring, within this District.

21 **GENERAL ALLEGATIONS**

22 **III. VENDAVO PROTECTS ITS INTELLECTUAL PROPERTY THROUGH PATENT** 23 **AND COPYRIGHT PROTECTION AS WELL AS POLICIES TO PROTECT TRADE** 24 **SECRETS.**

25 **A. Vendavo Is a Market Leader in the Profit Optimization Solutions Field**

26 9. Vendavo's industry-leading margin and profit optimization solutions give businesses
27 the confidence to control prices and discounts without sacrificing sales.
28

1 10. Combining pricing science, pricing best practices, and best-in-class enterprise
2 software, Vendavo helps deliver 10-30% increases to the bottom line of its Global 2000 companies
3 in the chemicals, industrial manufacturing, high-tech, and distribution industries.

4 11. Vendavo's Profit Analyzer and Business Risk Alerts software allows customers to
5 identify margins, price, and profit opportunities, and track key account or product risks.

6 12. Vendavo's Price Manager, Segmentation Manager, and Price Optimization Manager
7 software allows customers to manage price lists, and set policies to maximize margins and potential
8 revenue on every deal.

9 13. Vendavo's Deal Guide and Deal Manager software allow customers to create,
10 evaluate, and approve deals that support commercial excellence strategies.

11 14. Together, Vendavo's software offerings comprise a suite of enterprise profitability
12 solutions, which are sold to customers in the United States and worldwide.

13 **B. Through its Research and Development Efforts, Vendavo Has Accumulated**
14 **Valuable Confidential Proprietary Information and Trade Secrets**

15 15. While patenting some of the novel aspects of its price optimization technology,
16 Vendavo also accumulated additional confidential and proprietary intellectual property that it uses in
17 the implementation and manufacture of its comprehensive business to business ("B2B") margin and
18 profit optimization solutions. Vendavo maintains confidentiality with respect to a range of
19 competitive, proprietary information. Examples of such information include, *inter alia*: source
20 code, customer lists and customer-related information, pricing information, vendor lists and related
21 information, marketing plans and strategic business development initiatives, "negative know-how"
22 learned through the course of research and development, and other information related to the
23 development of its price-optimization software, including design concepts and ideas for product
24 enhancements. Vendavo also created confidential and proprietary intellectual property via its
25 exploration of solutions that ultimately proved too complex or too expensive for the mass market;
26 and its experience with "dead-ends" encountered in developing its products and services continues to
27 inform the ongoing development of Vendavo's solutions today.
28

1 16. The details actually used in Vendavo's source code for its solutions, as well as
2 customer lists, pricing data, vendor lists, marketing plans, strategic business initiatives, design
3 concepts, product improvement plans and ideas, and the lessons learned from research and
4 development, constitute trade secrets that are highly valuable to Vendavo and would be highly
5 valuable to any competitor in the price optimization space.

6 17. For example, the identities of the majority of Vendavo's customers are closely
7 guarded even within the company. Their identities would be valuable to a competitor who could
8 target those customers knowing they are receptive to purchasing price optimization software
9 solutions. In addition to their identities, Vendavo has also developed valuable, proprietary, and
10 confidential information that would enable a competitor to more effectively target those customers
11 by understanding their needs. Such information includes the features and specifications of the
12 software that each customer has purchased, the terms of agreements between Vendavo and its
13 customers (including pricing of the software), the identities and preferences of key personnel at each
14 customer, bug reports and support requests from the customer, and the specific customization needs
15 that each Vendavo customer has requested.

16 18. The full list of Vendavo's customers is maintained in a database to which very few
17 people at the company have access. Similarly, only limited individuals targeting prospective
18 customers have access to the complete list of companies Vendavo has identified as potential
19 customers. Engineers may learn the identity of specific Vendavo customers in the course of their
20 work (e.g., to respond to support requests or to provide custom features). As further explained
21 below, all employees are contractually bound to keep this information confidential.

22 19. In addition to source code, Vendavo maintains valuable, proprietary, and confidential
23 software development information. Such information includes engineering tickets, project
24 information (similar to a blueprint for future functionality in a customer's software), and testing and
25 validation data. This information reflects proprietary and confidential details about Vendavo's
26 software, including programming techniques, solutions to technical challenges, performance
27 characteristics, potential vulnerabilities, and future development plans. A competitor could use this
28 information in many ways, including to copy Vendavo's features and implementation, front-run

1 features under development, and save valuable time and effort in its own software development
2 process.

3 20. Vendavo also maintains valuable, proprietary, and confidential information about its
4 sales strategy and pricing methodology. Such information includes competitive research and
5 strategies for market differentiation, product implementation and deployment strategy, and price lists
6 (including products and hourly rates for assigned personnel). Such information would enable a
7 competitor to more effectively target Vendavo's customers and potential customers by positioning
8 itself favorably in a direct comparison to Vendavo.

9 21. Vendavo's substantial and sustained investment in price optimization technology over
10 several years – and the intellectual property that resulted – have made Vendavo's B2B margin and
11 profit optimization services the most comprehensive solution in the industry today. For these
12 reasons and others, Vendavo's price optimization technology and the intellectual property associated
13 with it are some of Vendavo's most valuable assets.

14 **C. Vendavo Protects Its Confidential, Proprietary, and Trade Secret Information**

15 22. Vendavo takes the protection of its proprietary information seriously. Vendavo takes
16 diligent and reasonable steps to protect its proprietary information from disclosure or use by third
17 parties, unless such third parties are subject to protective provisions restricting disclosure or further
18 use of the proprietary information unless in furtherance of Vendavo's interests. These measures
19 include, by way of example, strict limitations on the dissemination of information on a need-to-know
20 basis, the use of employee confidentiality agreements, the use of non-disclosure agreements with
21 third parties, and the deployment of multiple layers of password-only access to its databases.

22 23. Internally, Vendavo protects its proprietary information by requiring its employees to
23 execute a confidentiality agreement ("Confidentiality Agreement"). Vendavo's Confidentiality
24 Agreement exists to protect Vendavo's highly sensitive confidential trade secrets from public
25 disclosure, and provides that it extends perpetually beyond the termination of employment.

26 24. Vendavo's information is a corporate asset and it has policies and practices in place to
27 protect against all forms of unauthorized access, use, disclosure, modification, or destruction of its
28 information. Accordingly, Vendavo requires that all of its employees and contractors take steps to

1 safeguard proprietary information. Vendavo mandates that employees or contractors follow
 2 specified procedures with respect to: information access, classification of confidential information,
 3 and handling of information and devices containing Vendavo information. For example, Vendavo
 4 requires complex passwords with limited duration for user authentication. Vendavo implements
 5 extensive technical safeguards to protect the integrity of its information, including network firewalls
 6 and protections associated with remote working access. In addition, Vendavo implements data
 7 security measures, such as encryption, on all Vendavo electronic devices. When an employee
 8 departs, Vendavo conducts an exit interview during which Vendavo reviews the employee's ongoing
 9 legal obligations relating to confidential information and data security. Vendavo requires that all
 10 devices containing company information, as well as any physical embodiments of Vendavo
 11 information, be returned upon the employee's departure. Vendavo also employs layers of physical
 12 protections at its work sites, including facility access controls and locks on cabinets containing
 13 confidential materials. Moreover, employees and visitors are prohibited from using imaging and
 14 recording devices absent specific approval.

15 **D. Vendavo Has Copyright Protection for Its Source Code**

16 25. The computer programs embodied in Vendavo's Profit Analyzer, Business Risk
 17 Alerts, Price Manager, Segmentation Manager, Price Optimization Manager, Deal Guide and Deal
 18 Manager software are original literary works within the meaning of 17 U.S.C. § 101, and were
 19 developed by it after a significant expenditure of time and money.

20 26. The copyright that subsists in Vendavo's Profit Analyzer, Business Risk Alerts, Price
 21 Manager, Segmentation Manager, Price Optimization Manager, Deal Guide and Deal Manager
 22 software belongs exclusively to Vendavo.

23 27. Vendavo filed for and received United States copyright registrations in these works.

24 **E. Vendavo Has Received Patent Protection for Its Pioneering Inventions**

25 28. Vendavo has also been awarded numerous patents in the field of price optimization
 26 technology, including:

- 27 a. U.S. Patent No. 8,396,814, titled "Systems and methods for index-based pricing in a
 28 price management system," which provides a flexible pricing method for providing pricing

1 adjustments for a product in a deal in response to price variations in selected indices, a copy
2 of which is attached hereto as **Exhibit A**.

3 b. U.S. Patent No. 7,640,198, titled "System and method for generating and displaying
4 indexed price modeling data," which provides a system suitable for displaying price
5 modeling data having an indexing module that calculates indices based on price modeling
6 data and a display module configured to display a calculated index, a copy of which is
7 attached hereto as **Exhibit B**.

8 c. U.S. Patent No. 7,308,421, titled "System and method for grouping products in a
9 catalog," which discloses an apparatus and method for preparing a price quote for a product,
10 a copy of which is attached hereto as **Exhibit C**.

11 d. U.S. Patent No. 8,412,598, titled "Systems and methods for a causality analyzer,"
12 which teaches a causality analyzer that provides attribution of causality effects for changes in
13 revenue, margin and margin percentage, a copy of which is attached hereto as **Exhibit D**.

14 e. U.S. Patent No. 7,912,792, titled "Systems and methods for making margin-sensitive
15 price adjustments in an integrated price management system," which provides systems and
16 methods for generating margin sensitive pricing quotations in an integrated price adjustment
17 system, including: a) selecting products in selected product sets; b) providing pricing data
18 corresponding to the products in selected product sets; c) providing guidance elements for
19 products in selected product sets wherein guidance elements are margin sensitive; d)
20 calculating guidance prices for products based upon guidance elements; e) selecting one of
21 either pricing data or guidance prices; and f) generating a quotation based upon selections
22 made such that margin sensitive pricing adjustments are incorporated into quotations, a copy
23 of which is attached hereto as **Exhibit E**.

1 **IV. SINCE ITS INCEPTION, PFX HAS UNLAWFULLY RELIED ON VENDAVO'S**
2 **PROPRIETARY INFORMATION AND EXPERTISE.**

3 **A. PFX Was Founded by Disgruntled Ex-Employees who Built the Company on**
4 **Stolen Vendavo IP.**

5 29. PFX was founded in 2011¹ by a handful of disgruntled Vendavo employees with
6 detailed access to Vendavo's source code and other confidential information. PFX co-founder and
7 current CEO, Marcin Cichon, was terminated from Vendavo in late 2010 when Cichon wanted
8 greater responsibility, despite failing to perform in his existing role. In a few short months—and in
9 violation of his termination agreement—he and his co-founders Christian Tratz and Martin Wricke
10 (both also ex-Vendavo) founded PFX. In under a year, PFX launched its first product, which, along
11 with all subsequent PFX products, bore a *striking* resemblance to existing Vendavo software. *See*
12 *Price f(x)*, Release '1.4' Release Notes, Dec. 28, 2011, *available at* [https://www.pricefx.eu/site/wp-](https://www.pricefx.eu/site/wp-content/uploads/2016/02/PriceFx_ReleaseNotes_1.4_2011-12-28_EN.pdf)
13 [content/uploads/2016/02/ PriceFx_ReleaseNotes_1.4_2011-12-28_EN.pdf](https://www.pricefx.eu/site/wp-content/uploads/2016/02/PriceFx_ReleaseNotes_1.4_2011-12-28_EN.pdf). Specifically, and as
14 further described below, within one year from inception PFX was able to release the same three core
15 software modules that had taken Vendavo years to develop.

16 30. In Cichon's role as Vendavo's European General Manager and Vice President from
17 2006 to 2010, Cichon had primary responsibility for Vendavo's operations in Europe. He was privy
18 to Vendavo's confidential marketing and business strategy and customer-related information,
19 including product roadmaps, pricing details and customer identities. These are literally crown jewels
20 of Vendavo's business. In the same period, Christian Tratz was engaged by Vendavo to develop the
21 first version of Vendavo's software, to oversee the development of the Vendavo pricing and margin
22 solution, and to develop the architecture for Vendavo's products. In this role, Tratz had access to
23 Vendavo's proprietary source code and confidential software development details, and the negative
24 know-how associated with the development process. Martin Wricke was engaged by Vendavo from
25 2006 until late 2009, focusing on business strategy and marketing relating to Vendavo's product
26 development. Wricke was privy to Vendavo's confidential marketing and business strategy
27 information. During this time, Vendavo was awarded the '421 patent on December 11, 2007, and
28 the '198 patent on December 29, 2009.

1 ¹ While PFX holds itself out as having been founded in 2011, PFX CEO and co-founder reports on
2 his LinkedIn profile that he has worked at PFX since 2010.

31. As a result of their duties at Vendavo, Cichon and Tratz had substantial access to all of Vendavo's proprietary, confidential, and trade secret information. Such information included, *inter alia*, business management information, customer lists, business strategies, design concepts, and proprietary algorithms embodied in Vendavo's source code.

32. Each co-founder was party to a confidentiality agreement and agreed not to take Vendavo's confidential information, including its source code. Cichon, Tratz, and Wricke each signed confidentiality agreements with respect to such information, in which they agreed "at all times during the term of [their] relationship with the Company *and thereafter*, to hold in strictest confidence, and not to use, except for the benefit of the Company...and Confidential Information of the Company" which they obtained or created. Those confidentiality provisions survived the termination of Cichon's employment and Tratz's consulting work. Moreover, Cichon, Tratz, and Wricke assigned to Vendavo all intellectual property rights in the software, solutions, and architecture developed in the course of their respective work for Vendavo.

33. The Vendavo connection is not limited to self-proclaimed PFX co-founders Cichon, Tratz, and Wricke. PFX also engaged Vendavo contractor Jiri Fabian through his company, TopMonks. Fabian worked for Vendavo from 2003 to 2014. In 2011, he founded TopMonks, whose website boasts that: "TopMonks is proud partner and *co-author* of [the PFX] so[f]tware solution which is now bringing significant value to dozens of multinational customers Pricef(x) is now vigorously expanding west." TopMonks, References, <https://www.topmonks.com/references/#price-fx> (last visited April 4, 2018) (emphasis added). TopMonks later also recruited former Vendavo account executive Gabe Smith, who now simultaneously holds positions at both TopMonks and PFX in San Jose, California.

B. PFX Unfairly Competes with Vendavo in the United States by Benefitting from Vendavo's Misappropriated Trade Secrets, Systematically Poaching Vendavo's Expertise, and Targeting Vendavo's Customers.

34. Consistent with its untoward beginnings, PFX has pursued a growth strategy centered on mimicking Vendavo's products, stealing Vendavo's talent and trade secrets, and luring Vendavo's customers and prospects, including on information and belief telling prospects that they are "the same as Vendavo only less expensive and easier to deal with".

i. PFX's Products Mimic Vendavo's Products in Name, Function, and Marketing.

35. Just like Vendavo, PFX offers for sale and sells a full suite price management and CPQ software solution for price management. PFX's website, accessible to customers in the United States and California, touts PFX's software offerings:

- The PFX PriceBuilder allows customers to define price policies by setting up “price guidelines, calculations and simulations of gross, special and net prices including algorithmic optimization as well as the rule based and/or manual approval of price calculation results.”
- The PFX PriceAnalyzer allows customers to “identify margin and/or price opportunities,” and supports “all types of price related optimizations.”
- The PFX QuoteConfigurator and QuoteConfigurator for iPad supports “sales and back office teams with the quote configuration [], calculation and simulation capability.”

36. Each of PFX's PriceAnalyzer, PriceBuilder, and QuoteConfigurator products incorporates the same functionalities and addresses the same needs as Vendavo's Profit Analyzer, Price Manager, and Deal Manager software, respectively.

37. PFX's PriceAnalyzer, PriceBuilder, and QuoteConfigurator products were launched, and therefore accelerated to market, in a far shorter time period than Vendavo's corresponding products. Specifically, Vendavo spent three years developing the initial release of its Profit Analyzer, Price Manager, and Deal Manager software. But, as noted above, within one year of its founding by ex-Vendavo employees, PFX developed and released the three same core modules—analytics, price management, and quote/deal management—calling them PriceAnalyzer, PriceBuilder, and PriceShop (later renamed QuoteConfigurator), respectively.

38. Similarly, within two years of Vendavo releasing a rebate feature for Deal Manager in 2011, PFX had released its own RebateManager software.

39. Then, following Vendavo's release of its Price Optimization Manager in 2014 and Segmentation Manager in 2015, and after a significant exodus of Vendavo technical personnel to PFX as described below, PFX introduced a module known as PriceOptimizer in 2017. The PriceOptimizer module is described as a module that “will help segment your business and calculate optimized prices or price guidance” and bears striking resemblance in name and purpose to Vendavo's Price Optimization Manager and Segmentation Manager.

1 40. In addition, after Vendavo launched a software-as-a-service (“SaaS”) version of its
2 software, PFX announced in January 2017 it would launch a SaaS turn-key solution called “Pricing-
3 as-a-Service.” PFX advertised this product as a “game-changing and completely unique concept.”

4 **ii. PFX Has Systematically Raided Vendavo’s Employees**

5 41. The joint European and U.S. operation of PFX have systematically raided Vendavo
6 employees and targeted Vendavo as its chief competitor in the marketplace. In addition to Cichon,
7 Tratz, and Wricke, at least 22 other Vendavo employees have left Vendavo and gone to work at PFX
8 since 2013. In total, *PFX has hired away almost 40 Vendavo employees* over the years. Of the
9 ninety-nine employees currently associated with PFX on the company’s LinkedIn site, thirty-two
10 employees have worked at Vendavo.² Former Vendavo employees make up almost one-third of
11 PFX’s current employees—far more than would occur by coincidence or the mere fact that the two
12 companies are in the same industry. As detailed below, PFX has knowingly benefitted from its new
13 employees’ use, knowledge, and disclosure of Vendavo’s proprietary information and trade secrets.

14 42. Moreover, armed with Vendavo’s highly confidential information obtained from ex-
15 Vendavo employees, PFX has strategically targeted several of Vendavo’s customers and prospects.

16 **C. PFX Targeted Vendavo Engineering Personnel to Gain Access to Vendavo’s
17 Latest Source Code and Technological Know-How.**

18 43. PFX has systematically targeted Vendavo’s engineers and knowingly benefitted from
19 such employees’ access to and—in some instances—misappropriation of Vendavo’s source code and
20 other trade secrets.

21 44. Rather than invest the time, capital, and training necessary to cultivate its own
22 engineering team and develop its own innovative products, PFX sought to poach that expertise from
23 Vendavo. To illustrate the scope of the employee poaching, the following is a non-exhaustive list of
24 Vendavo engineers and other employees with technical know-how who were recruited by PFX from
25 Vendavo: (i) Jiri Vyoralak, Vendavo Solution Engineer from January 2015 to January 2018; (ii)
26 Michal Imrisek, Vendavo Solution Engineer from February 2015 to January 2017; (iii) Jiri Machat,
27 Vendavo Lead Solution Engineer from January 2012 to January 2017; (iv) Michal Rychtar, Vendavo

28 ² This number does not even include Fabian (whose LinkedIn now associates him only with TopMonks) and Tratz (who now does not list a LinkedIn profile).

1 Solution Engineer from September 2013 to January 2017; (v) Jaroslav Dub, Vendavo Lead Solution
 2 Engineer from August 2014 to December 2016; (vi) Pavel Zbranek, Vendavo Engineering Manager
 3 from August 2010 to May 2016; (vii) Tomas Lamr, Vendavo Software Engineer from January 2013
 4 to April 2016; (viii) Ondrej Polansky, Vendavo Support Engineer from October 2012 to April 2016;
 5 (ix) Michal Pesat, Vendavo Solution Architect from March 2012 to March 2016; (x) Veronika
 6 Gavenciakova, Vendavo Lead Solution Engineer from July 2010 to February 2016; (xi) Barbara
 7 Dobrasz, Vendavo Lead Solution Engineer from June 2012 to January 2016; (xii) Pavel Matyasko,
 8 Vendavo Senior Technical Trainer from January 2011 to January 2016; (xiii) David Sedlik, Vendavo
 9 Lead Solution Engineer from April 2012 to January 2016; (xiv) Radim Vrkoslav, Vendavo Quality
 10 Assurance Engineer from July 2013 to January 2016; (xv) Milan Boruvka, Vendavo Senior Director,
 11 Engineering from April 2007 to October 2015; (xvi) Marek Duciuc, Vendavo Solution Engineer
 12 from January 2012 to May 2015; (xvii) Ondrej Pisa, Vendavo Quality Assurance Engineer from
 13 June 2011 to January 2015.

14 45. Since the filing of this lawsuit, PFX has continued to hire away Vendavo technical
 15 personnel, including Ravi Kiran Bhagavathula, Vendavo Solution Architect from May 2014 to
 16 March 2018. Bhagavathula is based in Chicago and, before his departure, refused to disclose to
 17 Vendavo that he was leaving to work for a competitor.

18 46. As part of their professional duties at Vendavo, these engineers had access to some of
 19 Vendavo's most valuable trade secrets, including source code, customer identities (for accounts each
 20 supported), project information, engineering tickets, and testing data (including negative know-how)
 21 and strategies regarding development of new products. But it is not their lawful access and then
 22 transition to a competitor that is illicit. Rather, there is a pattern of duplicity and cover-up among
 23 PFX recruits that gives Vendavo a reasonable basis to believe that several of the engineers left
 24 Vendavo with its trade secrets for the benefit of PFX.

25 47. For example, this pattern of duplicity is particularly evident in the pre-departure
 26 activities of solutions engineers Michal Imrisek and Michal Rychtar. Former Vendavo employees
 27 Michal Imrisek and Michal Rychtar left Vendavo in February of 2017 to join PFX. Prior to their
 28 departure, Imrisek and Rychtar each communicated with PFX, while both maintained employment at

1 Vendavo and had access to Vendavo's confidential information. Moreover, both began working for
2 PFX – including attending training and sales meetings – *while still employed* by Vendavo and while
3 PFX *knew they were still employed by Vendavo*. In addition, based on Vendavo's review of its
4 information technology, Imrisek accessed Vendavo files on his company laptop and saved data to
5 portable USB devices. This activity is notable because of the timing and the fact that Vendavo's
6 records show that Imrisek did not regularly use USB drives in the course of his employment—he
7 began only in the weeks leading up to his PFX move. It is Vendavo's information and belief that
8 discovery will reveal Vendavo's trade secrets were saved on Imrisek's USB drives prior to his
9 joining PFX, that Imrisek took that data to PFX and that PFX benefitted from that confidential
10 information.

11 48. By late 2016, Michal Imrisek apparently intended to leave Vendavo for PFX. On
12 November 25, 2016, Imrisek searched for PFX on Facebook. On December 1, 2016, he viewed a
13 PFX onboarding document. Around the same time, on November 25, 2016, Imrisek used a USB
14 drive to transfer files from his computer. In January 2017, Imrisek continued to communicate with
15 PFX and performed work for PFX despite representing to Vendavo that he would be available to
16 Vendavo all of January. In particular, on January 16, 2017, Imrisek purported to be taking paid time
17 off for vacation, but he was in fact attending a training at PFX in Prague. On January 18, 2017,
18 Imrisek viewed a PFX training document. On January 19 and 28, 2017, Imrisek used a USB drive to
19 again transfer files from his computer. On January 31, 2017, his last day at Vendavo, Imrisek wiped
20 his company-issued cell phone before returning it to Vendavo.

21 49. For Michal Rychtar, the timing is similar. On November 28, 2016, Michal Rychtar
22 received an offer letter from PFX. He accepted the same day, copying PFX co-founder (and former
23 Vendavo employee) Marcin Cichon on the email and saying he was excited to start. In early January
24 2018, Rychtar chatted with multiple ex-Vendavo PFX employees about joining PFX and starting
25 work for PFX while still at Vendavo. Rychtar was invited to attend a PFX training to be held on
26 January 9, 10 and 11. To attend the training, Rychtar requested paid time off for the days of January
27 9 and 10 and coordinated with another Vendavo employee then slated to leave for PFX, Jiri Machat,
28 who promised to "cover" for him ("If anyone asks I'm finishing..." some work and fixing a bug).

1 Rychtar also apparently declined a Vendavo meeting on January 12 to attend another PFX meeting.
2 Mr. Machat, who continued to help conceal Rychtar's unavailability due to PFX work told Rychtar
3 via Skype on January 11: "Decline tomorrow's meeting because you're at the doctor or something
4 like that so I don't have to think of a reason on the spot." Rychtar replied "smile. I'll reach out
5 tomorrow." While attending the January 12 PFX all hands meeting, Mr. Machat messaged Rychtar
6 on Skype about the ruse: "Be careful of photos." Rychtar replied: "Yeah, right. I think [someone]
7 was photographing me. I hope he's not posting anywhere."

8 50. In the days following the trainings and all hands meeting, while still plainly working
9 at Vendavo, Rychtar kept in communication with PFX management, began filling out his
10 employment paperwork, and began receiving assignments. On January 26, 2017, while still
11 employed by Vendavo, he accessed his startup paperwork for PFX. On the same day, he apparently
12 began receiving work assignments from PFX. He complained to an ex-Vendavo PFX employee
13 about an upcoming travel assignment PFX had already scheduled Rychtar for in early February
14 ("you ass, I thought that the traveling here wouldn't be so bad here.").

15 51. Then, on January 31, 2017, his last day at Vendavo, Rychtar searched for and
16 downloaded disk wiping software from the internet, and used it to wipe his company-issued
17 computer before returning it to Vendavo.

18 52. Indeed, Vendavo's forensic analyses have uncovered systematic efforts by departing
19 employees to cover their digital tracks before joining PFX. Similar to the steps taken by Rychtar and
20 Imrisek to obfuscate their pre-departure digital activities—other employees wiped their computer
21 hard drives, performed factory resets on their phones, and performed full disk encryptions on certain
22 devices.

23 53. Vendavo has also learned that Pavel Zbranek, who left Vendavo in May 2016, took
24 screenshots of Vendavo's all hands meeting with customer information and financial information on
25 May 27, 2016—days before his departure. Vendavo takes great efforts to protect such information,
26 including not sending out slide decks and notifying all employees on the call that the information is
27 highly confidential. Like Imrisek's unusual use of USB drives, Zbranek's activity suggests efforts to
28 collect information for potential transfer to or use at PFX.

1 54. In sum, the employees' duplicity (e.g., working for PFX while still employed by
2 Vendavo), their access to highly confidential information, the evidence of transferring files to USB
3 drives outside of the ordinary course, the patterns of digital obfuscation pre-departure, PFX's
4 systematic raiding of Vendavo's engineering workforce, together with PFX's suspiciously similar
5 (and suspiciously quick-to-market) products all reinforce Vendavo's belief that PFX has and
6 continues to use Vendavo's trade secrets. Specifically, Vendavo is informed and believes that PFX
7 has used Vendavo's misappropriated trade secrets including at least Vendavo's source code; its 2017
8 product development roadmap documents for Price Manager, Optimization Manager, Segmentation
9 Manager, Business Risk Alerts, Profit Analyzer, Deal Manager, Deal Guide, and shared
10 technologies; its project documentation for product development implemented in 2016, including
11 major enhancements to Deal Manager; details regarding 2016 and 2017 customer relationships,
12 including documents that summarize customer project information; 2016 and 2017 engineering
13 tickets; and new product testing data (including negative know-how) and strategies regarding
14 development of new products and services in 2017. It is Vendavo's information and belief that
15 discovery will reveal Vendavo's trade secrets were misappropriated by departing Vendavo
16 engineers, including Rychtar, Imrisek, and others, prior to joining PFX, that certain employees took
17 that data to PFX and that PFX has used and continues to use Vendavo's proprietary information.

18 **D. PFX Targeted Vendavo Sales Personnel to Gain Access to Vendavo's**
19 **Proprietary Customer Data.**

20 55. In addition to poaching Vendavo's engineering expertise, PFX has benefitted from
21 hiring certain key Vendavo employees with access to Vendavo's highly confidential sales and
22 marketing materials.

23 56. For example, in January 2017, PFX hired Vicki Roberts, a veteran Vendavo Sales
24 Director with over a decade at the company. PFX touted 2017 as "the most successful year in our
25 history," during which it added more new customers than in all past years combined and more than
26 doubled its employees with addition of "industry veterans" like Vicki Roberts, a former Vendavo
27 employee, whom PFX describes as "one of the most accomplished sales professionals in the
28 industry." Within days of joining PFX, Ms. Roberts began soliciting business from Vendavo

1 customers. Two years prior, PFX hired Gabe Smith, an account executive. These employees had
2 deep knowledge of Vendavo's customer base, including past, current, and prospective customers.
3 They also had access to and familiarity with confidential targeted marketing and sales efforts, as well
4 as sales and pricing information.

5 57. Again, it is not the lawful access by Vendavo employees to Vendavo's trade secrets
6 that necessitates judicial intervention here. Rather, it is the systematic raiding of Vendavo's talent,
7 the similarities between Vendavo's products and PFX's products, the targeting of Vendavo's
8 customers, *coupled with* evidence of employee mishandling of confidential information that leads
9 Vendavo to reasonably believe it has been a victim of misappropriation.

10 58. For example, within days of joining PFX from Vendavo, Vicki Roberts was in
11 contact with existing Vendavo customers, competing to take their business from Vendavo by
12 leveraging her knowledge from Vendavo about the customer relationship, Vendavo's pricing for the
13 customer, and customer-specific requirements. Roberts also began soliciting U.S.-based Vendavo
14 employees to join her at PFX.

15 59. Similarly, former Vendavo account executive Gabe Smith left Vendavo in February
16 2015 to join PFX. Just before leaving Vendavo, Smith also joined TopMonks in January 2015. As
17 Vendavo's forensic analysis uncovered, Smith was a serial violator of Vendavo's confidentiality
18 policies. While employed by Vendavo, Smith frequently sent confidential information to his
19 personal Gmail account. Such information included Vendavo's customer data, such as the 2014 and
20 2015 customer lists, extensive customer contact information, customer-specific pricing information,
21 executed customer contracts, and 2014 and 2015 marketing materials, among other highly
22 confidential Vendavo information that would give PFX valuable behind-the-scenes access to
23 competitive information and trade secrets.

24 60. Gabe Smith is currently based in San Jose as PFX's VP of Product Strategy and
25 Alliances; he is also the Executive Vice President of TopMonks and holds himself out as "Founder
26 of TopMonks, LLC". Upon leaving Vendavo, Smith never disclosed his improper acquisition and
27 retention of Vendavo's confidential information. Instead, Vendavo has a basis to believe that Smith
28 continues to have access to Vendavo's trade secrets even after he left the company and after he

1 started working for PFX and TopMonks, that he disclosed some or all of the trade secrets to PFX,
 2 and that PFX benefitted from Smith's ill-gotten information. Specifically, Vendavo is informed and
 3 believes Smith misappropriated at least Vendavo's 2015 customer lists and contacts, its 2015 list of
 4 prospective customers, its 2015 pricing details for the Vendavo software suite, and 2015 Vendavo
 5 marketing materials.

6 **FIRST CLAIM FOR RELIEF**
 7 **Misappropriation of Trade Secrets Under 18 U.S.C. § 1836, *et seq.***
 8 **(Against All Defendants)**

9 61. Vendavo incorporates by reference each of paragraphs 1 – 60 as though fully set forth
 10 herein.

11 62. Vendavo owns and possesses certain confidential, proprietary, and trade secret
 12 information, as alleged above. One example of the trade secret information is reflected in the source
 13 code for Vendavo's software.

14 63. Vendavo's asserted trade secrets include information not expressly covered by its
 15 patents. Such information includes its source code, customer lists and customer-related information,
 16 pricing information, vendor lists and related information, marketing plans and strategic business
 17 development initiatives, "negative know-how" learned through the course of research and
 18 development, and other information related to the development of its price-optimization software,
 19 including ideas and plans for product enhancements.

20 64. Vendavo's confidential, proprietary, and trade secret information relates to products
 21 and services used, sold, shipped and/or ordered in, or intended to be used, sold, shipped and/or
 22 ordered in, interstate or foreign commerce.

23 65. Vendavo has taken reasonable measures to keep such information secret and
 24 confidential by, for example, establishing and enforcing information security policies and practices
 25 for all its employees and contractors, limiting access to confidential information through use of
 26 password protection and physical security measures such as badge access and locked cabinets,
 27 requiring employees to sign a confidentiality agreement with ongoing confidentiality obligations that
 28 survive the employee's tenure at Vendavo, implementing data security measures and encryption on

1 all Vendavo electronic devices, and requiring the return of all Vendavo information upon an
2 employee's exit from the company.

3 66. As a result of these security measures, Vendavo's confidential and proprietary trade
4 secret information is not available for others in the price optimization software industry – or any
5 other industry – to use through any legitimate means.

6 67. Vendavo's confidential, proprietary, and trade secret information derives independent
7 economic value from not being generally known to, and not being readily ascertainable through
8 proper means by another person who could obtain economic value from the disclosure or use of the
9 information.

10 68. In violation of Vendavo's rights, Defendants misappropriated Vendavo's confidential,
11 proprietary and trade secret information in the improper and unlawful manner as alleged herein.
12 Defendants' misappropriation of Vendavo's confidential, proprietary, and trade secret information
13 was intentional, knowing, willful, malicious, fraudulent, and oppressive. Defendants have attempted
14 and continue to attempt to conceal their misappropriation.

15 69. Defendants' misappropriation has continued to occur after May 11, 2016 both
16 through new acts of improper acquisition and through continued use of Vendavo's trade secrets first
17 acquired earlier.

18 70. Defendants have taken actions in the United States in furtherance of their
19 misappropriation. Defendants promote their software (which incorporates Vendavo's trade secrets)
20 in the United States and provide their software to customers in the United States. Defendants have
21 also attended and hosted conferences in the United States for the purpose of promoting their
22 software and supporting customers in the use of their software, including conferences attended by
23 co-founders Marc Cichon and Martin Wricke.

24 71. Specifically, Defendants held a "User Conference" in Las Vegas in November of
25 2016 at which at least Cichon, Wricke and Gabe Smith attended; exhibited at a "Pricing Conference"
26 in Chicago in 2016, at which at least Cichon, Wricke and Gabe Smith attended; held a "Chicago
27 Office Opening" event in 2016—attended by Cichon; exhibited at a "Pricing Conference" in Miami
28 in 2017, at which Cichon and current and former Vendavo customers attended; exhibited at a

1 “Pricing Conference” in San Diego in 2017, at which Gabe Smith attended. Price f(x) AG has
2 indisputably participated in U.S.-based sales activities.

3 72. If Defendants are not enjoined, Defendants will continue to misappropriate and use
4 Vendavo’s trade secret information for their own benefit and to Vendavo’s detriment, including by
5 selling software that directly competes with Vendavo’s core software products and service.

6 73. As the direct and proximate result of Defendants’ conduct, Vendavo has suffered –
7 and if Defendants’ conduct is not stopped, will continue to suffer – severe competitive harm,
8 irreparable injury, and significant damages, in an amount to be proven at trial. Because Vendavo’s
9 remedy at law is inadequate, Vendavo seeks, in addition to damages, injunctive relief to recover and
10 protect its confidential, proprietary, and trade secret information and to protect other legitimate
11 business interests. Vendavo’s business operates in a competitive market and will continue suffering
12 irreparable harm absent injunctive relief.

13 74. Vendavo has been damaged by all of the foregoing and is entitled to an award of
14 exemplary damages and attorney’s fees.

15 **SECOND CLAIM FOR RELIEF**
16 **Infringement of U.S. Patent No. 8,396,814**
(Against All Defendants)

17 75. Vendavo incorporates by reference each of paragraphs 1 –60 as though fully set forth
18 herein.

19 76. The ’814 patent attached to this complaint as Exhibit A is entitled “Systems and
20 Methods for Pricing in a Price Management System,” and was duly and lawfully issued on March
21 12, 2013. A true and correct copy of the ’814 patent is attached to this Complaint as Exhibit A.

22 77. Vendavo is the owner of all rights, title, and interest in the ’814 patent, including the
23 right to bring this suit for injunctive relief and damages.

24 78. The ’814 patent is valid and enforceable.

25 79. The ’814 patent claims a method for providing pricing adjustments in response to
26 price variations in selected indices. Specifically, the claimed method is an improvement over prior
27 methods of using index-based formulas, which were complicated and cumbersome and not
28 conducive to efficient deal negotiation. The ’814 patent’s novel system monitors an index for

1 changes and automatically re-prices all deals in a price management system which include a product
2 tied to that index, using a formula that weights the index against other components and adds an
3 offset adjustment. Thus, a sales force is able to effectively incorporate index-based pricing terms
4 into deals.

5 80. The individual claim elements—including re-pricing when the change in index
6 exceeds a threshold and computing a new price by weighting the index and setting an index offset—
7 and the claimed combination were not well-understood, routine, or conventional activity before the
8 invention of the '814 patent.

9 81. During prosecution of the '814 patent, there was no finding by the Patent Office that
10 the claims were directed to an abstract idea or that the claim elements lacked an inventive concept
11 that transformed the abstract idea into a patent-eligible application, or that the recitation of a
12 computer had any bearing on either of those factors.

13 82. Defendants have infringed, and continue to infringe, literally and/or through the
14 doctrine of equivalents, one or more claims of the '814 patent, including but not limited to claim 1,
15 pursuant to 35 U.S.C. § 271(a), by making, using, selling, offering to sell, and/or importing within
16 the United States, without authority, certain software products, including the PFX PriceBuilder.

17 83. Upon information and belief, the PFX PriceBuilder is a flexible pricing method
18 implemented on a computerized integrated price management system, which provides for pricing
19 adjustments for a product in a deal in response to price variations in selected indexes, wherein the
20 deals include initial pricing.

21 84. Upon information and belief, the PFX PriceBuilder selects a threshold value.

22 85. Upon information and belief, the PFX PriceBuilder designates an index for a product
23 in a deal, wherein the said index has a published index value based upon an index position.

24 86. Upon information and belief, the PFX PriceBuilder monitors the index for changes in
25 the published index value.

26 87. Upon information and belief, the PFX PriceBuilder retrieves all deals including that
27 product for which there has been a change in the published index value.

28

1 88. Upon information and belief, the PFX PriceBuilder compares the changed published
2 index value to the initial pricing, and if the difference between the changed published index value
3 and the initial pricing is greater than the selected threshold value, then the PFX PriceBuilder
4 computes a price for that product in that deal based on the changed published index value, wherein
5 the computing the price includes weighting the index and setting an index offset.

6 89. Upon information and belief, the PFX PriceBuilder then reprices all deals using the
7 computed price, wherein the re-pricing all deals includes re-pricing that product or, if the difference
8 between the changed published index value and the initial pricing is equal to or less than the selected
9 threshold value, then the PFX PriceBuilder maintains the initial pricing of the deal.

10 90. Defendants' infringement of the '814 patent has been willful and deliberate because
11 Defendants knew or should have known about the '814 patent and their infringement of that patent
12 but acted despite an objectively high likelihood that such acts would infringe the patent. The
13 individuals who developed the PFX PriceBuilder product include former Vendavo employees who –
14 while Vendavo employees, and on behalf of Vendavo, which owns the '814 patent – would have had
15 knowledge of the patent since it was issued in March 2013.

16 91. As the direct and proximate result of Defendants' conduct, Vendavo has suffered and,
17 if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable
18 injury, and significant damages, in an amount to be proven at trial. Because Vendavo's remedy at
19 law is inadequate, Vendavo seeks, in addition to damages, injunctive relief. Vendavo's business
20 operates in a competitive market and will continue suffering irreparable harm absent injunctive
21 relief.

22 **THIRD CLAIM FOR RELIEF**
23 **Infringement of U.S. Patent No. 7,640,198**
24 **(Against All Defendants)**

25 92. Vendavo incorporates by reference each of paragraphs 1 – 60 as though fully set forth
26 herein.

27 93. The '198 patent attached to this complaint as Exhibit B is entitled "System and
28 Method for Generating and Displaying Indexed Price Modeling Data," and was duly and lawfully

1 issued on December 29, 2009. A true and correct copy of the '198 patent is attached to this
2 Complaint as Exhibit B.

3 94. Vendavo is the owner of all rights, title, and interest in the '198 patent, including the
4 right to bring this suit for injunctive relief and damages.

5 95. The '198 patent is valid and enforceable.

6 96. The '198 patent claims a system for displaying a transaction table including a
7 computed index. The claimed system is an improvement over prior systems in which indexing and
8 aggregating data caused loss of individual transaction information and which were not responsive to
9 real-time data changes. The '198 patent's novel system configures a data source using a calculation
10 parameter and a mapping parameter, calculates an index for the data, allows the index to be
11 displayed, and provides a zoom function.

12 97. The individual claim elements—including configuration of a data source using a
13 calculation parameter and a mapping parameter and dynamically updating an index in response to
14 changes in price modeling data—and the claimed combination were not well-understood, routine, or
15 conventional activity before the invention of the '198 patent. For example, indexes were typically
16 calculated in batch processes and not useful to compare real-time data changes.

17 98. During prosecution of the '198 patent, there was no finding by the Patent Office that
18 the claims were directed to an abstract idea or that the claim elements lacked an inventive concept
19 that transformed the abstract idea into a patent-eligible application, or that the recitation of a
20 computer had any bearing on either of those factors.

21 99. Defendants have infringed, and continue to infringe, literally and/or through the
22 doctrine of equivalents, one or more claims of the '198 patent, including but not limited to claim 1,
23 pursuant to 35 U.S.C. § 271(a), by making, using, selling, offering to sell, and/or importing within
24 the United States, without authority, certain software products, including the PFX PriceBuilder.

25 100. Upon information and belief, the PFX PriceBuilder is a system for displaying a
26 transaction table including an index, useful in association with price modeling and useful in
27 association with a data source.
28

1 101. Upon information and belief, the PFX PriceBuilder comprises a database configured
2 to store transaction data, including price modeling data, from the data source and dynamically store
3 changes to the transaction data, including price modeling data, from the data source, and further
4 configured to provide client configuration of the data source, wherein the client configuration
5 includes at least one calculation parameter and at least one mapping parameter and wherein the price
6 modeling data depends upon the client configuration.

7 102. Upon information and belief, the PFX PriceBuilder comprises a server coupled to the
8 database over a network, which is configured to request the transaction data including price
9 modeling data from the database via the network, wherein the transaction data is requested in
10 accordance with one mapping parameter; populate the transaction table with the price modeling data;
11 calculate at least one index base using the price modeling data populated in the transaction table,
12 wherein the index base is the denominator of the index, and wherein the index base is calculated
13 according to a calculation parameter; identify the index numerator from the price modeling data
14 populated in the transaction table, generate the index by dividing the index numerator by the index
15 base, wherein the index is a summary measure stating relative comparisons between groups of
16 related items; dynamically update the index in response to changes in the price modeling data; and
17 configure the transaction table to include the index column and load the index into the index column.

18 103. Upon information and belief, the PFX PriceBuilder comprises a display coupled to
19 the server and configured to display the index in the transaction table, and wherein the display is also
20 configured to display a limited subset of the transaction table, where the subset is selected by a zoom
21 function.

22 104. Defendants' infringement of the '198 patent has been willful and deliberate because
23 Defendants knew or should have known about the '198 patent and their infringement of that patent
24 but acted despite an objectively high likelihood that such acts would infringe the patent. The
25 individuals who developed the PFX PriceBuilder product include former Vendavo employees who –
26 while Vendavo employees, and on behalf of Vendavo, which owns the '198 patent – would have had
27 knowledge of the patent since it was issued in December 2009.

28

1 105. As the direct and proximate result of Defendants' conduct, Vendavo has suffered and,
2 if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable
3 injury, and significant damages, in an amount to be proven at trial. Because Vendavo's remedy at
4 law is inadequate, Vendavo seeks, in addition to damages, injunctive relief. Vendavo's business
5 operates in a competitive market and will continue suffering irreparable harm absent injunctive
6 relief.

7 **FOURTH CLAIM FOR RELIEF**
8 **Infringement of U.S. Patent No. 7,308,421**
 (Against All Defendants)

9 106. Vendavo incorporates by reference each of paragraphs 1 – 60 as though fully set forth
10 herein.

11 107. The '421 patent attached to this complaint as Exhibit C is entitled "Systems and
12 Methods for Grouping Products in a Catalog," and was duly and lawfully issued on December 11,
13 2007. A true and correct copy of the '421 patent is attached to this Complaint as Exhibit C.

14 108. Vendavo is the owner of all rights, title, and interest in the '421 patent, including the
15 right to bring this suit for injunctive relief and damages.

16 109. The '421 patent is valid and enforceable.

17 110. The '421 patent claims an improved price quotation system. Specifically, the claimed
18 system is an improvement over prior electronic pricing systems which required that product price
19 rules be manually adjusted each time the vendor wanted to alter a price rule or alter the identity of
20 the products to which the price rule applies. The '421 patent's novel system uses dynamic selection
21 rules to define a collection of products to which a price rule is applied. As market conditions
22 change, the product collections, and thus the price rule(s) applicable to a particular product,
23 automatically change according to the dynamic selection rules. The claimed price quotation system
24 is therefore more responsive to changing market conditions without the need for manually adjusting
25 price rules.

26 111. The claimed price quotation system also uses a pricing scheme to apply price rules to
27 a product. Depending on market conditions and the dynamic selection rules, multiple price rules
28 may apply to a particular product. The pricing scheme includes special rules that determine how the

1 multiple rules are applied. Such rules include inheritance rules, assertion rules, connectivity rules,
2 and arbitration rules.

3 112. The individual claim elements—including dynamic selection rules and pricing
4 scheme—and the claimed combination were not well-understood, routine, or conventional activity
5 before the invention of the '421 patent. In particular, prior electronic pricing systems used only
6 static product groupings and had no mechanism to automatically introduce price rules on a dynamic
7 basis.

8 113. During prosecution of the '421 patent, claim 1 was amended to recite that the claimed
9 method was performed “[i]n a computer system,” and the applicant stated, “hence [the claims] are
10 now in compliance with both 35 USC 101 and 35 USC 112.” The amendment and remarks were
11 made after the Patent Office found the submitted claims subject to a restriction and/or election
12 requirement. There was no finding by the Patent Office that the claims covered ineligible subject
13 matter without the recitation of a computer, nor any concession by the applicant to that effect.

14 114. Defendants have infringed, and continue to infringe, literally and/or through the
15 doctrine of equivalents, one or more claims of the '421 patent, including but not limited to claim 1,
16 pursuant to 35 U.S.C. § 271(a), by making, using, selling, offering to sell, and/or importing within
17 the United States, without authority, certain software products, including the PFX PriceAnalyzer.

18 115. On information and belief, the PFX PriceAnalyzer prepares a price quote for a
19 product by determining whether said product is a member of a particular product collection,
20 including evaluating a dynamic selection rule set associated with that particular product collection.

21 116. When a product is determined to be a member of a particular product collection then,
22 Upon information and belief, the PFX PriceAnalyzer identifies one or more price rules associated
23 with the particular product collection; and applies price rules to that product in order to determine
24 the price quote for that product, wherein the price rules are determined in accordance with a pricing
25 scheme that is associated with the product collection.

26 117. When a product is determined to be a member of a particular product collection then,
27 Upon information and belief, the PFX PriceAnalyzer further identifies the pricing scheme that
28 includes (i) at least one inheritance rule to be applied when at least two price rules of the pricing

1 scheme having a similar rule type at different rule levels of a rule hierarchy, and wherein the
 2 inheritance rule filters out at least one price rule of each of the different rule levels for the given
 3 product, (ii) at least one assertion rule which defines which of the at least two price rules to ignore
 4 when a specific price or price rule type has been applied, (iii) at least one arbitration rule for defining
 5 a value to use when several price rule are applicable to the given product, and (iv) at least one
 6 connectivity rule, and wherein the at least one connectivity rule defines interaction between other
 7 price rules of said pricing scheme, including combining and prioritizing the other price rules.

8 118. Defendants' infringement of the '421 patent has been willful and deliberate because
 9 Defendants knew or should have known about the '421 patent and their infringement of that patent
 10 but acted despite an objectively high likelihood that such acts would infringe the patent. The
 11 individuals who developed the PFX PriceAnalyzer product include former Vendavo employees who
 12 – while Vendavo employees, and on behalf of Vendavo, which owns the '421 patent – would have
 13 had knowledge of the patent since it was issued in December 2007.

14 119. As the direct and proximate result of Defendants' conduct, Vendavo has suffered and,
 15 if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable
 16 injury, and significant damages, in an amount to be proven at trial. Because Vendavo's remedy at
 17 law is inadequate, Vendavo seeks, in addition to damages, injunctive relief. Vendavo's business
 18 operates in a competitive market and will continue suffering irreparable harm absent injunctive
 19 relief.

20 **FIFTH CLAIM FOR RELIEF**
 21 **Infringement of U.S. Patent No. 8,412,598**
 22 **(Against All Defendants)**

23 120. Vendavo incorporates by reference each of paragraphs 1 – 60 as though fully set forth
 24 herein.

25 121. The '598 patent attached to this complaint as Exhibit D is entitled "System and
 26 Method for Causality Analyzer," and was duly and lawfully issued on April 2, 2013. A true and
 27 correct copy of the '598 patent is attached to this Complaint as Exhibit D.

28 122. Vendavo is the owner of all rights, title, and interest in the '598 patent, including the
 right to bring this suit for injunctive relief and damages.

1 123. The '598 patent is valid and enforceable.

2 124. The '598 patent claims a causality analyzer that disaggregates changes in total
3 margin, percent margin, and total revenue by causality effects such as price effect, cost effect, and
4 product mix effect. Specifically, the claimed system is an improvement over prior systems, which
5 were too inaccurate, unreliable, and intractable to use in price management and analysis. The '598
6 patent's novel system includes a causality modeler and a causality attributor able to disaggregate
7 changes by causality effect and unbiased the causality effects that interact.

8 125. The individual claim elements—including the causality attributor for disaggregating
9 causality effects and the unbiased causality effects using a finite difference approach— and the
10 claimed combination were not well-understood, routine, or conventional activity before the
11 invention of the '598 patent. For example, prior systems relied either on human intuition to make
12 rough estimates of causal effects or on computer systems making gross estimations in their
13 computations or only intermittently analyzing causality.

14 126. During prosecution of the '598 patent, there was no finding by the Patent Office that
15 the claims were directed to an abstract idea or that the claim elements lacked an inventive concept
16 that transformed the abstract idea into a patent-eligible application, or that the recitation of a
17 computer had any bearing on either of those factors.

18 127. Defendants have infringed, and continue to infringe, literally and/or through the
19 doctrine of equivalents, one or more claims of the '598 patent, including but not limited to claim 1,
20 pursuant to 35 U.S.C. § 271(a), by making, using, selling, offering to sell, and/or importing within
21 the United States, without authority, certain software products, including the PFX PriceAnalyzer.

22 128. Upon information and belief, the PFX PriceAnalyzer comprises a time period selector
23 that is implemented on a computer system and configurable to select a reference time period and a
24 comparison time period.

25 129. Upon information and belief, the PFX PriceAnalyzer comprises a causality modeler
26 implemented on a computer system that is configurable to receive transaction data and calculate
27 change in total margin, percent margin and total revenue between the reference time period and the
28 comparison time period using the transaction data.

1 135. Vendavo is the owner of all rights, title, and interest in the '792 patent, including the
2 right to bring this suit for injunctive relief and damages.

3 136. The '792 patent is valid and enforceable.

4 137. The '792 patent claims a system for generating margin sensitive pricing quotations.
5 Specifically, the claimed system is an improvement over prior systems hampered by the volume and
6 organization of relevant historical data and by temporal setbacks. The '792 patent's novel system
7 uses guidance elements to calculate a guidance price for a product. In addition, a margin rule is used
8 to identify certain overrides needing approval. The override price and guidance price are presented
9 to decision makers to either approve the override or select the guidance price. Thus, policies are
10 timely and efficiently deployed and businesses are able to protect their sales margins.

11 138. The individual claim elements—including guidance elements for calculating guidance
12 price and a margin rule to flag certain overrides—and the claimed combination were not well-
13 understood, routine, or conventional activity before the invention of the '792 patent. For example,
14 some prior systems relied on pricing guidance and product configuration suggestions developed by
15 an executive committee that may have long expired, leaving a company exposed to lost margins.

16 139. During prosecution of the '792 patent, there was no finding by the Patent Office that
17 the claims were directed to an abstract idea or that the claim elements lacked an inventive concept
18 that transformed the abstract idea into a patent-eligible application, or that the recitation of a
19 computer had any bearing on either of those factors.

20 140. Defendants have infringed, and continue to infringe, literally and/or through the
21 doctrine of equivalents, one or more claims of the '792 patent, including but not limited to claim 1,
22 pursuant to 35 U.S.C. § 271(a), by making, using, selling, offering to sell, and/or importing within
23 the United States, without authority, certain software products, including the PFX PriceBuilder.

24 141. Upon information and belief, the PFX PriceBuilder generates margin sensitive pricing
25 quotations for a customer in an integrated price adjustment system.

26 142. Upon information and belief, the PFX PriceBuilder selects at least one product in a
27 selected product set.

28

1 143. Upon information and belief, the PFX PriceBuilder provides pricing data
2 corresponding to the product in the selected product set.

3 144. Upon information and belief, the PFX PriceBuilder provides at least one guidance
4 element for the product in the selected product set, wherein the guidance element is margin sensitive.

5 145. Upon information and belief, the PFX PriceBuilder calculates, using a computer, a
6 guidance price for the product based upon a guidance element selected from the following: business
7 priorities, business cycle guidance, richness guidance, and deal size guidance, and wherein business
8 cycle guidance is dependent upon stage of business development with the customer, richness
9 guidance is dependent upon feature number and quality for the product, and deal size guidance is
10 dependent upon a magnitude of total value of the pricing data corresponding to the product.

11 146. Upon information and belief, the PFX PriceBuilder receives a margin rule, wherein
12 the margin rule includes one of an established value and a Boolean expression.

13 147. Upon information and belief, the PFX PriceBuilder receives a value for at least one
14 override of a group of overrides, wherein the group of overrides includes an override price, an
15 override discount and an override margin.

16 148. Upon information and belief, the PFX PriceBuilder calculates using the received
17 value of the override, values for remaining overrides of the group of overrides, wherein the
18 remaining overrides are all the overrides excluding the override for which the value was received.

19 149. Upon information and belief, the PFX PriceBuilder compares the values for each of
20 the overrides to the margin rule, wherein the values for the override price, the override discount and
21 the override margin which violate the margin rule are flagged.

22 150. Upon information and belief, the PFX PriceBuilder presents the guidance price and
23 the override price on a display.

24 151. Upon information and belief, the PFX PriceBuilder receives a selection of one of
25 either the override price or the guidance price.

26 152. Upon information and belief, the PFX PriceBuilder generates a quotation based upon
27 the selection such that margin sensitive pricing adjustments are incorporated into the quotation.
28

153. Defendants' infringement of the '792 patent has been willful and deliberate because Defendants knew or should have known about the '792 patent and their infringement of that patent but acted despite an objectively high likelihood that such acts would infringe the patent. The individuals who developed the PFX PriceBuilder product include former Vendavo employees who – while Vendavo employees, and on behalf of Vendavo, which owns the '792 patent – would have had knowledge of the patent since it issued in July 2002.

154. As the direct and proximate result of Defendants' conduct, Vendavo has suffered and, if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable injury, and significant damages, in an amount to be proven at trial. Because Vendavo's remedy at law is inadequate, Vendavo seeks, in addition to damages, injunctive relief. Vendavo's business operates in a competitive market and will continue suffering irreparable harm absent injunctive relief.

SEVENTH CLAIM FOR RELIEF
Copyright Infringement under 17 U.S.C. § 101 *et seq.*
(Against All Defendants)

155. Vendavo incorporates by reference each of paragraphs 1 – 60 as though fully set forth herein.

156. Vendavo is, and at all relevant times has been, the owner of the exclusive rights under the United States Copyright Act in the Price Manager and Profit Analyzer software.

157. Among the exclusive rights granted to Vendavo under the Copyright Act is the exclusive right to use or license the right to use the Price Manager and Profit Analyzer software to others.

158. The individuals who developed the PFX PriceBuilder and PFX PriceAnalyzer products include former Vendavo employees who – while Vendavo employees – had access to Vendavo's Price Manager and Profit Analyzer software.

159. Without Vendavo's authorization, Defendants have created, or are using others to create, the PFX PriceBuilder and PFX PriceAnalyzer products, which have source code that is substantially similar to those of Vendavo's Price Manager and Profit Analyzer software, and have offered the same for sale and sold these goods in the United States.

competitor. In addition, PFX solicited both Imrisek and Rychtar to do work for PFX while they were still employed by Vendavo.

168. Defendants' acts and practices as described in the preceding paragraphs violated both the unlawful and unfair prongs of the UCL.

169. As a direct and proximate result of the aforementioned acts, Defendants received and continue to utilize improperly obtained proprietary information belonging to Vendavo, which accelerates PFX's ability to go to market with products similar to and competing with Vendavo's Price Manager and Profit Analyzer software.

170. Defendants' unlawful conduct alleged herein is continuing and there is no indication that Defendants will refrain from continuing such activity in the future. Defendants will continue such wrongful conduct, in violation of California law, unless enjoined.

PRAYER FOR RELIEF

171. WHEREFORE, Vendavo respectfully requests that the Court enter judgment against Defendants as follows:

1. That the Court issue temporary, preliminary and permanent injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors, and assignees, and all others in active concert or participation with Defendants be enjoined and restrained from:
 - a. infringing Vendavo's patents;
 - b. infringing Vendavo's copyrights;
 - c. misappropriating Vendavo's trade secrets;
 - d. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a through c.
2. That the Court find Defendants have infringed the '814, '198, '421, '598, and '792 Patents.
3. That the Court award Vendavo all damages caused by Defendants' unlawful actions;
4. That the Court award Vendavo its actual damages;

- 1 5. That the Court award Vendavo pre-judgment interest and post-judgment interest at the
- 2 maximum rate allowed by law, including an award of prejudgment interest, pursuant to 25
- 3 U.S.C. § 284, from the date of each act of infringement of the '814, '198, '421, '598, and
- 4 '792 Patents by Defendants to the day a damages judgment is entered, and a further award
- 5 of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is
- 6 paid, at the maximum rate allowed by law;
- 7 6. That the Court order an accounting for damages through judgment and post-judgment
- 8 until Defendants are permanently enjoined from further infringing activities;
- 9 7. That that Court declare this to be an exceptional case pursuant to 35 U.S.C. § 285;
- 10 8. That the Court award Vendavo supplemental damages for any continuing post-verdict
- 11 infringement up until Defendants are permanently enjoined from further infringing
- 12 activities;
- 13 9. That the Court award Vendavo a compulsory future royalty in the event that an injunction
- 14 is not awarded;
- 15 10. That the Court award Vendavo treble damages as provided by law;
- 16 11. That the Court award Vendavo all gains, profits, and advantages derived by Defendants
- 17 from their unlawful acts;
- 18 12. That the Court award Vendavo its actual or statutory damages of up to \$150,000, for each
- 19 registered copyright Defendants infringed, as Vendavo may elect at trial;
- 20 13. That the Court enter an award of all just an appropriate restitution;
- 21 14. That the Court enter an award of punitive damages as provided by law;
- 22 15. That the Court award Vendavo its attorney's fees and all other costs associated with this
- 23 action; and
- 24 16. That the Court grand Vendavo all other relief to which it is entitled and such other
- 25 additional relief as is just and proper.

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JURY DEMAND

Vendavo demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: April 5, 2018

By: /s/ L. Scott Oliver
L. Scott Oliver
Lillian J. Mao
ORRICK, HERRINGTON & SUTCLIFFE LLP
Attorneys for Plaintiff, Vendavo, Inc.