

1 PATRICIA L. GLASER - State Bar No. 55668
 pglaser@glaserweil.com
 2 FRED D. HEATHER - State Bar No. 110650
 fheather@glaserweil.com
 3 AARON P. ALLAN - State Bar No. 144406
 aallan@glaserweil.com
 4 GLASER WEIL FINK HOWARD
 AVCHEN & SHAPIRO LLP
 5 10250 Constellation Boulevard, 19th Floor
 Los Angeles, California 90067
 6 Telephone: (310) 553-3000
 Facsimile: (310) 556-2920

7 Attorneys for Plaintiff
 8 LegalZoom.com, Inc.

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

Glaser Weil Fink Jacobs
 Howard Avchen & Shapiro LLP

12 LEGALZOOM.COM, INC., a Delaware
 corporation,
 13
 Plaintiff,
 14
 v.
 15 ROCKET LAWYER INCORPORATED,
 16 a Delaware corporation,
 17 Defendant.

CASE NO.: CV 12-9942-GAF (AGR_x)
 Hon. Gary A. Feess
 Courtroom: 740

LEGALZOOM.COM, INC.'S *EX PARTE* APPLICATION FOR (1) ORDER SHORTENING TIME ON MOTION TO SUPPLEMENT THE RECORD SUPPORTING LEGALZOOM'S OPPOSITION TO ROCKET LAWYER'S MOTION FOR SUMMARY JUDGMENT, OR (2) IN THE ALTERNATIVE, TO CONTINUE THE HEARING ON THE PENDING CROSS MOTIONS FOR SUMMARY JUDGMENT

Concurrently filed herewith:

- (1) **Notice of Motion and Motion for Leave to Supplement the Record In Support Of LegalZoom's Opposition to Rocket Lawyer's Motion for Summary Judgment**
- (2) **Declaration of Barak Vaughn**
- (3) **Declaration of Aaron P. Allan**
- (4) **[Proposed] Order**

Date: TBD
 Time: TBD
 Courtroom: 740

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Local Rule 7-19, Plaintiff,
3 LegalZoom.com, Inc. (“LegalZoom”) hereby applies to the Court *ex parte*, for
4 expedited consideration of LegalZoom’s concurrently filed motion to supplement the
5 record (“Motion”) in support of LegalZoom’s Opposition to Defendant Rocket
6 Lawyer Incorporated’s Motion for Summary Judgment (the “MSJ”), or in the
7 alternative, to continue the hearing on the pending cross motions for summary
8 judgment to a date when the Motion may be heard.

9 Good cause exists for granting this application because the material that
10 LegalZoom wishes to place into the record before the Court is directly relevant to any
11 decision on Rocket Lawyer’s pending MSJ (set for hearing on October 6, 2014) and
12 should be considered by the Court in connection with any hearing and before making
13 any ruling on that MSJ. In addition, the subject material was produced by Rocket
14 Lawyer after the filing of the MSJ, together with roughly 15,000 other documents,
15 and was therefore not discovered by LegalZoom (despite reasonable diligence) at the
16 time that LegalZoom’s opposition to the MSJ was filed. Further, the subject material
17 was addressed in a deposition on September 23, 2014, and will be further addressed in
18 depositions scheduled for October 3 and 9, 2014. Finally, hearing the Motion on a
19 regular briefing schedule would cause LegalZoom substantial harm because the
20 Motion would be heard after the current October 6, 2014 MSJ hearing date, and the
21 evidence being presented by the Motion is directly relevant to whether Rocket
22 Lawyer’s advertisements deceived consumers, or had a tendency to deceive.

23 **APPLICATION**

24 1. Rocket Lawyer Post-MSJ Production of Relevant Documents.

25 In moving for summary judgment against LegalZoom’s false advertising and
26 unfair competition claims, Rocket Lawyer represented to the Court that:

27 “[R]ocket Lawyer has since conducted searches of documents in its
28 possession, produced over 22,000 documents in response to

1 LegalZoom’s discovery requests (including at least 10 spreadsheets of
2 generated ad and conversion data), and conducted a comprehensive
3 consumer survey. SSUF at 5-9, 92-93. **These efforts have resulted in a
4 record of undisputed facts demonstrating that Rocket Lawyer’s
5 advertisements are truthful and have no tendency to deceive.”**

6 MSJ at 14, fn. 8. (emphasis added).

7 The MSJ was filed on June 30, 2014. After filing the MSJ, Rocket Lawyer
8 produced (on July 3, July 11, and July 18, 2014) approximately 15,000 documents
9 responsive to LegalZoom’s discovery requests, many of which were comprised of a
10 significant number of pages. These documents were produced in response to requests
11 originally made, more than a year earlier, on March 12, 2013. Because LegalZoom’s
12 opposition to the Motion had to be filed by July 21, 2014, LegalZoom did not have
13 adequate time to review all 15,000 documents by the time its opposition was filed.

14 2. After Filing Opposition to the MSJ, LegalZoom Discovered that Rocket
15 Lawyer Had Produced Internal Surveys and Communications Relevant
16 to the MSJ, But Had Failed to Disclose Those to the Court.

17 Based on the documents produced after the MSJ was filed, Rocket Lawyer’s
18 sweeping representations that there is an unblemished record supporting Rocket
19 Lawyer’s Motion are demonstrably false. Internal emails and market research
20 developed by Rocket Lawyer unequivocally demonstrate that Rocket Lawyer **knew**
21 **but failed to disclose to the Court that there were documents in the record**
22 **showing its advertisements had a tendency to mislead and/or deceive consumers.**
23 It therefore appears that Rocket Lawyer and its counsel knew when they filed the MSJ
24 that the assertions in the MSJ and supporting declarations, that there is a record of
25 undisputed facts confirming that its advertisements have no tendency to deceive, were
26 untrue and Rocket Lawyer should never have brought forth its Motion with such
27 knowledge and without full and candid disclosure. This evidence not only shows
28 internal surveys which compete with the survey evidence produced by Rocket

1 Lawyer's paid expert, but it also shows that Rocket Lawyer continued to run
2 advertisements in spite of these internal surveys, which shows an ongoing intent to
3 deceive consumers, including not altering its advertisements after five separate
4 market research sessions. Because an intent to deceive consumers would create a
5 presumption of consumer deception for the jury, such evidence has the potential to, at
6 a minimum, shift the burden of proof to Rocket Lawyer to demonstrate an absence of
7 deception through surveys and market research.

8 3. LegalZoom Acted Diligently in Bringing This Motion After First
9 Completing Mediation and Providing Rocket Lawyer with Numerous
10 Opportunities to Correct the Record.

11 LegalZoom's first attempt to address Rocket Lawyer's failure to present a
12 complete record on its MSJ was on September 2, 2014, which was the day prior to a
13 mediation that the parties attended on September 3, 2014. Aaron P. Allan, counsel for
14 LegalZoom, placed a telephone call to Michael T. Jones, counsel for Rocket Lawyer,
15 and conferred about the subject material and whether Rocket Lawyer's conduct in
16 failing to disclose the internal surveys to the Court with its MSJ amounted to a
17 violation of Rule 11. Mr. Jones disagreed with LegalZoom's views on the issues, and
18 LegalZoom's Rule 11 motion was served on Rocket Lawyer's counsel that afternoon.
19 Due to the "safe harbor" provision of Rule 11, the motion could not be filed any
20 earlier than September 23, 2014. That same day, September 23, 2014, a deposition of
21 Alisa Weiner proceeded in San Francisco, and the subject material was a subject of
22 questioning during the deposition. Additional depositions of Rocket Lawyer
23 witnesses will proceed on October 1, 3, and 9, at which time further questioning about
24 the subject material will take place.

25 Further attempts to meet and confer about correcting the record on Rocket
26 Lawyer's MSJ took place on September 24 and 25. During those conversations,
27 counsel for LegalZoom offered to avoid filing the previously served Rule 11 motion
28 if Rocket Lawyer would simply agree to not oppose a motion to place the subject

1 material before the Court. Rocket Lawyer's counsel refused.

2 4. Granting This Application Will Cause No Prejudice.

3 The pending cross-motions for summary judgment are scheduled to be heard on
4 October 6, 2014. The subject material is not extensive and can be quickly reviewed
5 by the Court and discussed by the parties during oral argument. While counsel for
6 Rocket Lawyer has sought to suppress this evidence from ever seeing the light of a
7 courtroom, the parties have had ample time to confer about their respective positions
8 and should be well prepared to argue how and whether the subject material has a
9 bearing on the pending MSJ. If Rocket Lawyer requires additional time to oppose the
10 Motion, then LegalZoom proposes, in the alternative, that the hearing on the pending
11 cross motions for summary judgment be slightly delayed to allow for that written
12 opposition to be filed on regular notice.

13 LegalZoom gave notice of this application to Michael T. Jones, counsel for
14 Rocket Lawyer, during a telephone conference and follow up email on September 29,
15 2014. The name, address, and telephone number of counsel for defendant is as
16 follows:

17
18 Michael T. Jones, Esq.
19 GOODWIN PROCTER LLP
20 135 Commonwealth Drive
21 Menlo Park, CA 94025
22 (650)752-3279

23 DATED: September 29, 2014

Respectfully submitted,

24 GLASER WEIL FINK
25 HOWARD AVCHEN & SHAPIRO LLP

26 By: /s/ Fred Heather
27 PATRICIA L. GLASER
28 FRED D. HEATHER
Attorneys for Plaintiff
LegalZoom.com, Inc.