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14 *Attorneys for Defendant*  
 15 **ROCKET LAWYER INCORPORATED**

16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA**  
 18 **WESTERN DIVISION**

19 LEGALZOOM.COM, INC., a Delaware  
 20 corporation,

21 Plaintiff,

22 v.

23 **ROCKET LAWYER**  
**INCORPORATED**, a Delaware  
 24 corporation,

25 Defendant.

Case No. 2:12-cv-09942-GAF-AGR

**DECLARATION OF MICHAEL  
 JONES IN SUPPORT OF ROCKET  
 LAWYER'S OPPOSITION TO  
 PLAINTIFF'S MOTION TO  
 SUPPLEMENT THE RECORD**

Date: October 27, 2014  
 Time: 9:30 AM  
 Judge: Judge Gary A. Feess  
 Courtroom: 740  
 255 East Temple Street  
 Los Angeles, CA 90012  
 Action Filed: November 20, 2012



1 not reviewed all the documents in its possession produced by Rocket Lawyer and  
2 that counsel newly added to the case did not review the discovery responses and  
3 correspondence in this case.

4 8. Counsel for LegalZoom did not begin discussing depositions of Rocket  
5 Lawyer's fact witnesses until July 18, 2014.

6 9. Given how late LegalZoom sought to depose Rocket Lawyer's  
7 witnesses and mutual scheduling difficulties, counsel for LegalZoom and counsel  
8 for Rocket Lawyer entered into a stipulation to allow depositions to be held after the  
9 discovery cut-off, including dates after the August 18, 2014 summary judgment  
10 hearing date. *See* ECF No. 85.

11 10. On August 5, 2014, LegalZoom and Rocket Lawyer entered into  
12 another scheduling stipulation to allow depositions to be taken after a hearing on the  
13 parties' motions for summary judgment. *See* ECF No. 104.

14 11. Counsel for LegalZoom further affirmed this agreement at the August  
15 12, 2014 status conference with the Court.

16 12. LegalZoom never moved to compel production from Rocket Lawyer.

17 13. To date, LegalZoom has produced a total of just over 2,000 documents  
18 in discovery.

19 14. LegalZoom's last sets of productions took place on July 16, 22, and 28,  
20 2014, with the July 28 production occurring on the same day that Rocket Lawyer  
21 was required to oppose LegalZoom's motion for summary judgment.

22 15. By the time the parties moved for summary judgment, Rocket Lawyer  
23 had produced over 22,000 documents in nine productions and LegalZoom had  
24 produced about 1,000 documents over four productions. The documents with which  
25 LegalZoom seeks to supplement the summary judgment record were produced on  
26 July 3 and 11, 2014.

27 16. LegalZoom served Rocket Lawyer with a copy of its Rule 11 Motion  
28 on September 2, 2014.

1           17. Attached hereto as **Exhibit 2** is a true and correct copy of a letter I sent  
2 to counsel for LegalZoom on September 23, 2014.

3           18. On September 24, 2014, I telephonically met and conferred with  
4 counsel for LegalZoom regarding its Motion for Rule 11 sanctions. In the course of  
5 that conversation, counsel threatened that LegalZoom would file its Motion unless  
6 Rocket Lawyer allowed LegalZoom to supplement the summary judgment record  
7 with the Studies.

8           19. Attached hereto as **Exhibit 3** is a true and correct copy of a letter I  
9 received from counsel for LegalZoom on September 25, 2014.

10          20. On September 25, 2014, I again telephonically met and conferred with  
11 counsel for LegalZoom, who again urged Rocket Lawyer to allow LegalZoom to  
12 supplement the summary judgment record without opposition in order to avoid  
13 LegalZoom's Rule 11 Motion. Rocket Lawyer refused to waive its right to oppose  
14 an untimely motion to supplement the record to avoid a threat of sanctions.

15          21. On September 29, 2014, LegalZoom filed its *ex parte* Motion and its  
16 Motion to Supplement the Factual Record. LegalZoom failed to serve unredacted  
17 copies of redacted and manually-filed documents related to these motions until  
18 October 1, 2014, and then only after Rocket Lawyer asked for them.

19          22. The attorneys now managing this case for LegalZoom were not  
20 involved in any of the discovery discussions, which were primarily handled by two  
21 other attorneys. During a meet and confer on June 20, 2014, one of the attorneys  
22 now managing the case asked me when the discovery cut-off was, and I informed  
23 him that it was August 12.

24          23. LegalZoom continues to refuse to produce a witness in response to  
25 several topics in Rocket Lawyer's 30(b)(6) deposition notice, despite the fact that at  
26 least two of those topics are either identical to or closely modeled after topics in  
27 LegalZoom's own 30(b)(6) deposition notice. Attached hereto as **Exhibit 4** is a true  
28

1 and correct copy of an email from counsel for Rocket Lawyer to counsel for  
2 LegalZoom, dated October 3, 2014.

3 I declare under penalty of perjury under the laws of the State of California  
4 that the foregoing is true and correct. Executed on this 6th day of October, 2014.

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/s/ Michael T. Jones  
MICHAEL T. JONES

# ***EXHIBIT 1***

***[CONFIDENTIAL - LODGED  
UNDER SEAL]***

***EXHIBIT 1***

# EXHIBIT 2

September 23, 2014

**VIA E-MAIL AND FEDERAL EXPRESS**

*aallan@glaserweil.com*

Aaron P. Allan  
Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor  
Los Angeles, CA 90067

**Re: *LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – Motion for Rule 11 Sanctions***

Dear Aaron:

We are in receipt of your September 2, 2014, letter enclosing various documents relating to your motion for Rule 11 sanctions. We have carefully reviewed these materials and your positions stated therein, and we disagree that we have misled the court with any statements in our motion for summary judgment. We maintain that the evidence on record—in particular, Rocket Lawyer’s survey evidence—demonstrates that Rocket Lawyer’s ads are not likely to mislead a substantial portion of consumers, and that LegalZoom has not adduced sufficient evidence to create a dispute of fact. We are prepared to defend our position and seek attorneys’ fees should you file the Rule 11 motion.

You allege that Rocket Lawyer misrepresented that there is no triable issue of fact preventing the court from granting summary judgment in Rocket Lawyer’s favor. Your motion is based on three informal Rocket Lawyer studies conducted in 2010 and 2011. However, none of these studies is evidence sufficient to create a dispute of fact that the ads at issue in this case are likely to mislead a substantial segment of consumers:

- The sample sizes for these informal studies were too small to undermine Rocket Lawyer’s survey of over 400 individuals. Exhibits 1 and 2 of the Vaughn declaration are summaries of studies conducted with only twelve individuals. Exhibit 3 relates to a study where only seven individuals completed the questionnaire. As the Court has made clear, “a handful of customer statements” is “not necessarily a reliable consumer survey or market research.” *See* Order re: Plaintiff’s Motion for Summary Judgment, ECF No. 44 at 10.



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September 23, 2014  
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- None of these documents tested customer understanding of the need to pay state fees in forming a business,<sup>1</sup> and thus, LegalZoom has not advanced any argument why Rocket Lawyer is not entitled to summary judgment on claims based on free incorporation or LLC ads.
- It is well established that a mere scintilla of contrary evidence cannot create a dispute of fact to defeat summary judgment. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient”).

In addition, some findings in these studies support Rocket Lawyer’s position that the Court should grant summary judgment in Rocket Lawyer’s favor. For example:

- The 2010 usability study demonstrates that while users may not have liked the free trial, they understood it as demonstrated by the fact that users knew that they would have to cancel the free trial. *See Vaughn Decl.*, Ex. 1 at RLI 0040614-15.
- The 2010 Small Business Owner study found that users do not have a strong awareness of the On Call benefits after reviewing the website, demonstrating that free consultations and free legal review are likely not material to consumers’ purchasing decisions. *See id.*, Ex. 2 at RLI0040688.
- Like Professor Wind, the study conducted by Google found that many consumers are “generally skeptical of anything online promoted as ‘free’” and as such, “free” does not have the draw power that LegalZoom alleges. *See id.*, Ex. 3 at RLI0040732.

Accordingly, you have failed to demonstrate how Rocket Lawyer’s arguments in favor of summary judgment are unsupported and why Rocket Lawyer should withdraw its motion. In addition, your reliance on these informal studies, appears to be an admission that the evidence currently on record, including your own survey, is insufficient to defeat Rocket Lawyer’s motion.

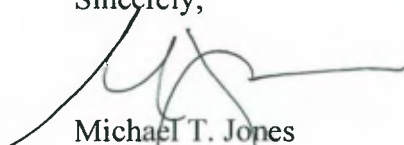
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<sup>1</sup> The Google study suggests that users were aware of the need to pay state fees upon viewing state fee disclosures similar to what Rocket Lawyer currently has on its website. *See Vaughn Decl.*, Ex. 3 at RLI0040733.

Aaron P. Allan  
September 23, 2014  
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As always, we are open to meeting and conferring with you further on these issues. However, as stated above, if you decide to proceed with filing your Rule 11 motion, we are prepared to seek attorneys' fees when we prevail.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Jones", with a long horizontal flourish extending to the right.

Michael T. Jones

cc: Fred D. Heather  
*fheather@glaserweil.com*  
Barak Vaughn  
*bvaughn@glaserweil.com*  
Forrest A. Hainline III  
Hong-An Vu  
Brian W. Cook

# EXHIBIT 3

# Glaser Weil

10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2920 FAX

Aaron P. Allan

September 25, 2014

**Direct Dial**  
310.282.6279  
**Direct Fax**  
310.785.3579  
**Email**  
aallan@glaserweil.com

## VIA EMAIL

Michael T. Jones  
(mjones@goodwinprocter.com)  
Goodwin Procter LLP  
135 Commonwealth Drive  
Menlo Park, CA 94025

Re: **LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – LegalZoom’s Rule 11 Motion**

Dear Michael,

Your letter sent yesterday afternoon purports to recount a position that we took on behalf of LegalZoom during a telephonic meeting and conference yesterday morning concerning LegalZoom’s Rule 11 motion which was originally served, but not filed, on September 2, 2014 (the “Rule 11 Motion”). Because your letter is mistaken about LegalZoom’s position, I am writing to correct the record.

Prior to our telephone call, you had expressed Rocket Lawyer’s position, in writing, that it did not view the Rule 11 Motion as having merit because the documents that Rocket Lawyer chose not to reveal to the Court would not (in your view) have created any triable issue of fact as to Rocket Lawyer’s pending motion for summary judgment. In response to that position, and in an attempt to meet and confer to *avoid* filing the Rule 11 Motion, we offered to *avoid* seeking sanctions if Rocket Lawyer would essentially agree to place the disputed documents before the Court. Our reasoning, as we explained during the call, was that if you are so confident that the disputed documents would not convince the Court that a triable issue precludes Rocket Lawyer’s motion for summary judgment, then let’s simply put those documents before the Court and let the Court decide. We offered to desist from filing the Rule 11 Motion if you would agree to allow us to put those documents before the Court without objection. You indicated that you were not inclined to do that. We then suggested that the parties further consider the issue over night, and we set up another telephone call for tomorrow at 10:00 a.m. to further discuss the issue.

We are therefore surprised at both the tone and substance of your letter, which purports to describe a conversation very different from the one which Fred and I participated in with you

Michael T. Jones  
Goodwin Procter LLP  
September 25, 2014  
Page 2

yesterday morning. We made no threats, and in fact offered to reconsider the entire topic over night. Moreover, your citation to Rule 5-100 is somewhat disingenuous given Rocket Lawyer's previously served motion for sanctions which not only was intended to seek a litigation advantage, but which in fact resulted in Rocket Lawyer obtaining the litigation advantage of LegalZoom withdrawing a single ground upon which it had relied in moving for partial summary judgment.

We are still considering the most appropriate way to proceed, given (a) Rocket Lawyer's attempt to bury these extremely relevant survey documents within a last minute production of over 15,000 documents made after Rocket Lawyer filed its summary judgment motion, (b) the subsequent passage of time spent by the parties to mediate, and (c) the additional passage of twenty-one days after we served the Rule 11 Motion. We still believe that judicial economy and the interests of the Court and the parties would be best served by simply agreeing to place these internal Rocket Lawyer survey documents before the Court without objection. But if the only solution is motion practice, then you are leaving us with no choice. We look forward to further discussions today.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'A. Allan', with a horizontal line extending to the right.

AARON P. ALLAN  
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

APA:cc

# EXHIBIT 4

## Cook, Brian W

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**From:** Cook, Brian W  
**Sent:** Friday, October 03, 2014 10:39 AM  
**To:** aallan@glaserweil.com; fheather@glaserweil.com; bvaughn@glaserweil.com  
**Cc:** Hainline, Forrest A; Jones, Michael T; Vu, Hong-An  
**Subject:** LZ v. RLI - RLI's 30(b)(6) Notice

Aaron:

We are in receipt of your revised objections and designations to our 30(b)(6) deposition notice. Although you continue to refuse to designate a witness for many topics relevant to this dispute, we will proceed with the 30(b)(6) depositions, reserving all rights to seek relief from the Court.

We also note that our Topic Numbers 10 and 11, two of those for which you have refused to produce a witness on the grounds that it is irrelevant, vague, and ambiguous, are either identical to or closely modeled on your Topic Number 1.

Sincerely,  
Brian Cook

Brian W. Cook  
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