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 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
 13 corporation,

14 Plaintiff,

15 v.

16 ROCKET LAWYER INCORPORATED,
 a Delaware corporation,

17 Defendant.

CASE NO.: CV 12-9942-GAF (AGR_x)

Hon. Gary A. Feess
 Courtroom: 740

**DECLARATION OF FRED
 HEATHER IN SUPPORT OF
 REPLY MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF
 LEGALZOOM.COM, INC'S
 MOTION TO SUPPLEMENT
 FACTUAL RECORD**

Date: October 27, 2014
 Time: 9:30 a.m.
 Courtroom: 740

Complaint Filed: November 20, 2012

DECLARATION OF FRED HEATHER

I, FRED HEATHER, declare as follows:

1. I am an attorney admitted to practice in this Court, and a partner with the law firm Glaser Weil Fink Howard Avchen & Shapiro LLP, counsel of record for the plaintiff LegalZoom.com, Inc. If called to testify as a witness, I could and would truthfully and competently testify to the following of my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of rough transcript excerpts from the deposition of Charles Moore, taken by me on October 9, 2014, in San Francisco, California.

3. Attached hereto as Exhibit B is a true and correct copy of rough transcript excerpts from the deposition of Alisa Weiner, which I attended on September 23, 2014, in San Francisco, California.

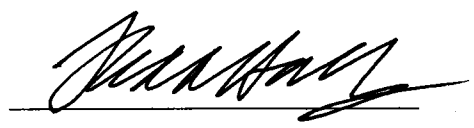
4. Attached hereto as Exhibit C is a true and correct copy of rough transcript excerpts from the deposition of Pete Franco, which I attended on October 3, 2014, in Los Angeles, California.

5. Attached hereto as Exhibit D is a true and correct copy of a letter from Rocket Lawyer's counsel, Michael Jones, which was emailed and received by my office on October 10, 2014.

6. Attached hereto as Exhibit E is a true and correct copy of a letter which my partner Aaron Allan sent in response to M. Jones on October 13, 2014.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.

Executed this 13th day of October, 2014, at Los Angeles, California.



Fred D. Heather

EXHIBITS A - C
ARE REDACTED IN THEIR ENTIRETY
AND FILED UNDER SEAL

EXHIBIT D

October 10, 2014

VIA E-MAIL

Aaron P. Allan (aallan@glaserweil.com)
Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, CA 90067

Re: *LegalZoom.com, Inc. v. Rocket Lawyer Incorporated*

Dear Aaron:

We are in receipt of your October 8, 2014, response to our October 6 letter regarding your nonproduction of the WTR Surveys and your noncompliance with the Protective Order.

Despite your assertions to the contrary, LegalZoom has not complied with its discovery obligations. LegalZoom's production of approximately 2,000 documents – half of which were produced in June and July 2014, including after summary judgment briefing began – is incomplete. Because you insist that your discovery is complete and we are not entitled to certain relevant documents that were not made known to us until the recent depositions, we intend to move in limine to preclude you from introducing evidence.

Based on the depositions of Mr. MacDonell, Mr. Liu, and Mr. Quispe, we have identified the following categories of documents that are absent from your document productions:

- WTR/MPS studies;
- Permissions from consumers to use their WTR/MPS responses in advertising;
- Usability studies or reports from focus groups;
- Periodic awareness studies;
- Payments to LegalSpring.com, Own Vision, and/or Mr. Giggy;
- Other agreements with LegalSpring.com, Own Vision, and/or Mr. Giggy;
- Performance of and analytics related to your advertising; and

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- Evidence relating to your disclosure of state fees in business formation ads, including the pricing disclosures for incorporation on your website.

See e.g., MacDonell Tr. at 54:7-56:24, 57:21-58:4; 131:3-135:22, 164:20-165:5; Liu Rough Tr. at 70:3-71:2; 88:24-91:23; Quispe Rough Tr. at 12:7-16, 19:2-22:15; 54:4-57:10.

Unless you reverse your position, we intend to include the above categories of documents and additional categories we identify in our motion in limine to exclude evidence based on your discovery deficiencies. This includes, for example, precluding LegalZoom from introducing any evidence relating to the WTR surveys, such as evidence on whether the WTR surveys were the source of reviews LegalZoom posted on LegalSpring.com, whether LegalZoom had permission to use the WTR survey responses in marketing, and whether LegalZoom's ads and complaints regarding those complaints support Rocket Lawyer's unclean hands defense.

Furthermore, because you are maintaining that LegalZoom need not supplement its document productions to address the above-referenced deficiencies given that the discovery cut-off has passed, Rocket Lawyer intends to adopt the same position and not produce any additional documents in response to your recent demands. As you are aware, Rocket Lawyer searched for documents based on an agreed upon list of custodians and search terms that included a majority of the terms proposed by LegalZoom, and produced documents after a review process. This resulted in Rocket Lawyer producing over 38,000 documents, including the usability studies, documents relating to such studies, and significant data pulls relating to Rocket Lawyer's ads and their performance. We have made every effort to meet and believe that we have met our discovery burden, and will no longer be subject to a double standard where LegalZoom refuses to meet its own burden while demanding more from Rocket Lawyer. Furthermore, as you state in your letter, the discovery cut-off has passed, and LegalZoom has waived any further response.

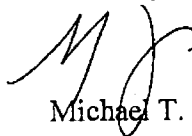
In addition, Rocket Lawyer reserves the right to move to preclude evidence based on LegalZoom's apparent failure to issue a litigation hold. As you are aware, Mr. Liu – designated to testify on behalf of LegalZoom regarding document retention policies and the collection and production of documents in this matter – testified that he had no knowledge of a litigation hold memorandum being sent out or any other preservation efforts in connection with this litigation.

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Regarding confidentiality, your response does not suffice. You have not made clear whether you have shared the usability studies or any other Attorneys' Eyes Only documents or information with your clients, including any derivative products such as your Rule 11 motion. As such, we reserve all rights to proceed with a motion based on your violation(s) of the Protective Order, including but not limited to seeking additional discovery into this question.

Sincerely,

 /HAV
Michael T. Jones

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

EXHIBIT E

Glaser Weil

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Aaron P. Allan

October 13, 2014

Direct Dial
310.282.6279
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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 – Document Productions and Motions in Limine**

Dear Michael,

I am in receipt of your October 10, 2014 letter, which appears to rest on several false premises.

With respect to the documents that you have identified as “absent from [our] document productions,” you are incorrect in claiming that we failed to produce documents showing payments to and agreements with Legalspring.com, Own Vision and/or Mr. Giggy (*see e.g.* LZ 001622-34; LZ 006832-41; LZ000883). As to the other identified categories, such as WTR/MPS studies, there was never an agreement by LegalZoom to produce such documents. We have reviewed the discovery requests, responses, supplemental responses, and meet and confer letters, and it appears that such documents were never identified by LegalZoom or by Rocket Lawyer as being documents for which there was an agreement that LegalZoom needed to produce them. This is in great contrast to the survey evidence that Rocket Lawyer agreed to produce, and yet largely withheld from production and concealed from the Court. If you believe that I am mistaken, and that there was in fact an agreement by LegalZoom to produce such documents, then I invite you to point out that agreement in the discovery record and we would reconsider.

For similar reasons, we do not understand the basis for your threatened motions *in limine*. Indeed, references to the WTR surveys were made by LegalZoom employees and an ex-employee during recent depositions in response to questioning by your firm, and it would seem unfair and improper to prevent LegalZoom from making reference to such surveys and similar evidence elicited by Rocket Lawyer if LegalZoom chooses to do so.

With regard to supplementation of prior discovery responses, you have acknowledged that Rocket Lawyer previously produced "usability studies" and "documents relating to such studies."

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That production was pursuant to our discovery agreements regarding Rocket Lawyer's production. Because we have now learned that Rocket Lawyer breached those prior discovery agreements by failing to produce several studies that were referenced by Rocket Lawyer witnesses in deposition, videotapes relating to such studies, and other related documents, we have appropriately asked Rocket Lawyer to correct the breach by producing fully and fairly what it previously agreed to produce. Indeed, it was so clear that Rocket Lawyer had previously agreed to produce these documents, that you stated, on the record during the deposition of Pete Franco (pp. 127-28), that these documents would be searched for and, if located, produced. By now reneging in your letter on that deposition agreement, Rocket Lawyer appears to be desperately seeking to hide the contents of these studies from both LegalZoom and from the Court. Moreover, without any ground or basis, Rocket Lawyer is engaging in sharp litigation practices that we do not believe the Court will tolerate. There is no "double standard" being employed by LegalZoom in refusing to produce the documents that Rocket Lawyer is now demanding. In contrast to Rocket Lawyer's withholding of documents that it previously *agreed to produce*, LegalZoom is simply adhering to the past agreements that it reached with Rocket Lawyer about what it would, and would not, have to produce, and it would be unfair to force LegalZoom to produce more than those agreements contemplated when the discovery cut-off has now passed.

With regard to the issuance of a litigation hold, I have confirmed that LegalZoom did in fact issue a litigation hold letter. Mr. Liu's testimony on behalf of LegalZoom on this subject was mistaken, and will be corrected when he has an opportunity to review his transcript. We understand that you may comment on the correction at trial.

Finally, with regard to confidentiality, my prior letter made absolutely clear that we have adhered to the requirements of the protective order in this case. The one mistaken court filing was immediately corrected, with no known disclosure to our client, and no harm to Rocket Lawyer. To specifically respond to your new allegations, we have not shared the usability studies or any other Attorneys' Eyes Only documents or information with our clients, including any derivative products such as our Rule 11 motion.

We would very much like to put an end to these time wasting disputes about document discovery, and move forward with the business of trying this case based on the agreed upon evidence. Your concealment of documents which are obviously material, and your letters, which are unnecessarily vitriolic, are counterproductive to that goal.

Michael T. Jones
Goodwin Procter LLP
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If there are particular documents you wish LegalZoom had previously agreed to produce, and that you would now like to see, I would invite you to pick up the telephone and call me to discuss the matter. Without waiving any rights, I can promise that we would meet and confer about that subject in a reasonable manner.

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