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Attorneys for Defendant
ROCKET LAWYER INCORPORATED

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

LEGALZOOM.COM, INC., a Delaware
 corporation,

Plaintiff,

v.

ROCKET LAWYER
 INCORPORATED, a Delaware
 corporation,

Defendant.

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

**ROCKET LAWYER
 INCORPORATED'S *EX PARTE*
 APPLICATION TO FILE MOTION
 TO SUPPLEMENT FACTUAL
 RECORD IN SUPPORT OF ITS
 MOTION FOR SUMMARY
 JUDGMENT AND TO SET
 BRIEFING SCHEDULE**

Date: TBD
 Time: TBD
 Judge: Judge Gary A. Feess
 Courtroom: 740
 255 East Temple Street
 Los Angeles, CA 90012
 Action Filed: November 20, 2012

1 **APPLICATION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that pursuant to Local Rule 7-19, Defendant
4 Rocket Lawyer Incorporated (“Rocket Lawyer”) hereby applies to this Court ex
5 parte for an order allowing it to (i) to file the accompanying motion to supplement
6 the factual record (“Motion to Supplement”) relating to Rocket Lawyer’s motion for
7 summary judgment (the “RLI MSJ”), ECF No. 60, with evidence provided to
8 Rocket Lawyer on October 3 and 6, 2014, and (ii) to set a briefing schedule such
9 that this motion to supplement may be heard on November 10, 2014, the date the
10 RLI MSJ is set to be heard.

11 LegalZoom has persistently refused to produce a witness to testify about its
12 alleged damages resulting from the Rocket Lawyer advertisements at issue in this
13 case. On October 6, 2014, it produced an expert report on damages that only
14 addresses damages for one of the four categories of advertisements at issue.
15 LegalZoom also refused to produce documents its experts supposedly relied on in
16 reaching his purported damages opinion. The evidence of LegalZoom’s lack of
17 damages relating to three of Rocket Lawyer’s allegedly misleading ads was
18 provided on October 3 and October 6, 2014 and as such, was not previously
19 available to Rocket Lawyer when it was briefing the RLI MSJ.

20 Ex parte relief is necessary because there is insufficient time before the
21 November 10, 2014 hearing on the Motion for a motion to supplement the record to
22 be heard, and Rocket Lawyer will be prejudiced if the Court does not consider this
23 recently produced evidence. To allow the Court sufficient time to review the
24 additional materials, Rocket Lawyer proposes the following briefing schedule:

- 25 • LegalZoom shall file its opposition to the Motion to Supplement on or before
26 October 28, 2014.
27 • Rocket Lawyer shall file a reply on or before October 31, 2014.
28

1 • Should the Court require oral argument, the Motion to Supplement shall be
2 heard on November 10, 2014 at the same time as the hearing on the RLI MSJ.
3 Rocket Lawyer gave notice of this application to Fred Heather and Aaron
4 Allan, counsel for LegalZoom, by email and telephone on October 20, 2014. The
5 name, address, and telephone number of counsel for Plaintiff is as follows:

6 Fred D. Heather
7 Aaron Allan
8 GLASER WEIL FINK HOWARD
9 AVCHEN & SHAPIRO LLP
 10250 Constellation Boulevard, 19th Floor
 Los Angeles, CA 90067
 (310) 553-3000

10 **I. THE COURT SHOULD ALLOW ROCKET LAWYER TO FILE THE**
11 **MOTION TO SUPPLEMENT**

12 The Court should permit Rocket Lawyer to supplement the summary
13 judgment record because the evidence it seeks to introduce is newly acquired and
14 was not previously available. On October 3, 2014, LegalZoom confirmed that it
15 will rely exclusively on testimony from its expert for damages. Declaration of
16 Hong-An Vu in Support of Ex Parte Application to File Motion to Supplement the
17 Factual Record and to Set Briefing Schedule (“Vu Decl.”) at ¶ 2.

18 On October 6, 2014, LegalZoom disclosed a third expert report from its
19 damages expert that supersedes all prior expert reports. *Id.* at ¶ 3. Rocket Lawyer
20 completed depositions of LegalZoom’s fact witnesses on October 9, 2014, *id.* at ¶ 4
21 and has brought this motion as soon as practicable after being made aware of
22 LegalZoom’s position.

23 Courts have permitted supplementation of newly acquired evidence after the
24 completion of briefing. *See, e.g., Lassen Mun. Utility Dist. v. Kinross Gold U.S.A.*
25 *Inc.*, 2013 WL 875974, at *2 (E.D. Cal. Mar. 7, 2013) (granting motion to
26 supplement summary judgment record with evidence obtained by the moving party
27 more than two months after submission of the summary judgment motion). Rocket
28

1 Lawyer requests that the Court consider allowing it to supplement the record in
2 advance of the November 10, 2014, hearing.

3 **II. GRANTING THIS APPLICATION WILL CAUSE NO PREJUDICE**

4 LegalZoom will not be prejudiced by the granting of this application because
5 the newly discovered evidence is uncomplicated, limited in scope and can be
6 addressed by LegalZoom under Rocket Lawyer's proposed briefing schedule.

7 **III. CONCLUSION**

8 For the foregoing reasons, Rocket Lawyer respectfully requests that the Court
9 allow it to file the accompanying motion to supplement and set the briefing
10 schedule proposed by Rocket Lawyer so that the Motion to Supplement may be
11 heard on November 10, 2014.

12
13 Dated: October 21, 2014

Respectfully submitted,

14
15 By: /s/ Hong-An Vu

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22 *Attorneys for Defendant*

23 **ROCKET LAWYER INCORPORATED**