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 9

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

13 LEGALZOOM.COM, INC., a Delaware
 14 corporation,
 15 Plaintiff,

16 v.

17 ROCKET LAWYER INCORPORATED,
 a Delaware corporation,
 18 Defendant.
 19

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

**LEGALZOOM'S MEMORANDUM
 OF CONTENTIONS OF FACT AND
 LAW**

Pre-Trial Conference:

Date: November 10, 2014
 Time: 3:30 p.m.

Trial:

Date: December 9, 2014
 Time: 8:30 a.m.
 Courtroom: 740

Complaint Filed: November 20, 2012

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

- I. INTRODUCTION 1
- II. PLAINTIFF’S CLAIMS 1
 - A. Summary of Claims 1
 - B. Elements of Plaintiff’s Claims and Evidence in Support Thereof..... 1
 - 1. Plaintiff’s Claim 1: Federal False Advertising – Lanham Act 1
 - a. Elements 1
 - b. Key Supporting Evidence 2
 - 2. Plaintiff’s Claim 2: California False Advertising Under Cal. Bus. & Prof. Code § 17500 6
 - a. Elements 6
 - 3. Plaintiff’s Claim 3: California Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq..... 7
 - a. Elements 7
 - b. Key Evidence 8
 - 4. Plaintiff’s Remedy for Permanent Injunctive Relief 8
 - a. Elements 8
 - b. Key Evidence 8
- III. DEFENDANT’S CLAIMS AND DEFENSES 9
 - A. Summary Statement of Defendant’s Counterclaims and Affirmative Defenses 9
 - B. Elements of Rocket Lawyer’s Counterclaims and Defenses, and Key Evidence Relied Upon in Opposition..... 10
 - a. Elements 10
 - b. Key Opposing Evidence 10
 - 2. Counterclaim 2: Declaratory Judgment -- Rocket Lawyer Did Not Violate Cal. Bus. & Prof. Code § 17500 10
 - a. Elements 10
 - b. Key Opposing Evidence 10
 - 3. Counterclaim 3: Declaratory Judgment – Rocket Lawyer Did Not violate Cal. Bus. & Prof. Code § 17200 et seq..... 10
 - a. Elements 10
 - b. Key Opposing Evidence 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Counterclaim 4: LegalZoom’s Violation of 15 U.S.C. § 1125(a)	11
a. Elements	11
b. Key Opposing Evidence	11
5. Counterclaim 5: LegalZoom’s Violation of Cal. Bus. & Prof. Code § 17500	11
a. Elements	11
b. Key Opposing Evidence	11
6. Counterclaim 6: LegalZoom’s Violation of Cal. Bus. & Prof. Code § 17200	11
a. Elements	11
b. Key Opposing Evidence	12
7. First Affirmative Defense: Unclean Hands	12
a. Elements	12
b. Key Opposing Evidence	12
8. Second Affirmative Defense: Laches, Waiver, and/or Estoppel	13
a. Elements of Laches	13
b. Elements of Waiver	14
c. Elements of Estoppel	14
d. Key Opposing Evidence for Laches, Waiver and/or Estoppel	14
9. Third Affirmative Defense: Any injury or loss was caused by third parties	15
a. Elements	15
b. Key Opposing Evidence	15
10. Fourth Affirmative Defense: Rocket Lawyer’s practices have not caused the likelihood of confusion	15
a. Elements	15
b. Key Opposing Evidence	16
IV. IDENTIFICATION OF ANTICIPATED EVIDENTIARY ISSUES	17
A. Evidentiary Presumptions	17
1. Literal Falsity	17
2. Intent to Deceive	18
B. Damages	19
1. Actual Damages Need Not Be Established to Recover	19
2. Rocket Lawyer’s Profits	20

1	V.	ISSUES OF LAW GERMANE TO THE CASE	21
2	A.	Context For Evaluating Whether Advertisement is False or Misleading.....	21
3	B.	Distinction Between Federal and State False Advertising Claims	22
4	C.	Laches	23
5	VI.	ISSUES TRIABLE TO A JURY	24
6	A.	Issues Triable to the Jury	24
7		1. Whether any party violated the Lanham Act.....	24
8		2. Whether any party violated Cal. Bus. & Prof. Code § 17500	24
9		3. Whether any party violated Cal. Bus. & Prof. Code § 17200	24
10		4. Damages.....	24
11	B.	Issues Triable to the Court	24
12		1. Unclean Hands	24
13		2. Laches, waiver and estoppel	24
14		3. Injunctive relief.....	24
15		4. Declaratory relief	24
16		5. Attorneys’ fees	24
17		6. Statutory damages under the Lanham Act, 15 U.S.C. §1117, including restitution and treble damages.....	24
18	VII.	RECOVERY OF ATTORNEYS’ FEES.....	24
19	VIII.	PLEADED CLAIMS OR AFFIRMATIVE DEFENSES ABANDONED...	25
20	A.	LegalZoom’s Claims and Defenses	25
21	B.	Rocket Lawyer’s Claims and Defenses	26
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Page

FEDERAL CASES

1		
2		
3		
4	<i>Am. Home Prods. Corp. v. Johnson & Johnson,</i>	
	654 F. Supp. 568 (S.D.N.Y. 1987)	2
5	<i>AMF Inc. v. Sleekcraft Boats,</i>	
6	599 F.2d 341 (9th Cir.1979)	15
7	<i>Andrew Smith Co. v. Paul’s Pak, Inc.,</i>	
8	754 F.Supp.2d 1120 (N.D. Cal. 2010).....	14
9	<i>Badger Meter, Inc. v. Grinnell Corp.,</i>	
	13 F.3d 1145 (7th Cir.1994)	20
10	<i>Bandag, Inc. v. Bolser's Tire Stores,</i>	
11	750 F.2d 903 (Fed.Cir.1984)	19, 20
12	<i>Bank of the West v. Superior Court,</i>	
	2 Cal.4th 1254,	
13	10 Cal.Rptr.2d 538 P.2d 545 (1992)	6, 22
14	<i>Brookfield Communications, Inc. v. West Coast Entertainment Corp.,</i>	
15	174 F.3d 1036 (9th Cir. 1999).....	22
16	<i>California State Bd. of Equalization v. Coast Radio Products,</i>	
	228 F.2d 520 (9th Cir. 1955)	14
17	<i>Colgan v. Leatherman Tool Group, Inc.,</i>	
18	38 Cal. Rptr. 3d 36,	
19	135 Cal. App. 4th 663 (Cal. App. 2006)	6, 22
20	<i>Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection Serv.,</i>	
	911 F.2d 242 (9th Cir. 1990)	2
21	<i>CRST Van Expedited, Inc. v. Werner Enter., Inc.,</i>	
22	479 F.3d 1099 (9th Cir. 2007)	7
23	<i>Danjaq LLC v. Sony Corp.,</i>	
	263 F.3d 942 (9th Cir. 2001)	13, 23
24	<i>eBay Inc. v. MercExchange, L.L.C.,</i>	
25	547 U.S. 388 (2006)	8
26	<i>Emco, Inc. v. Obst,</i>	
	2004 WL 1737355 at *4 (C.D. Cal. May 7, 2004).....	12
27	<i>Finance Exp. LLC v. Nowcom Corp.,</i>	
28	564 F.Supp.2d 1160 (C.D. Cal. 2008).....	21

1	<i>Freeman v. Time, Inc.</i> , 68 F.3d 285 (9th Cir. 1995).....	2, 6, 22
2	<i>Fuddruckers, Inc. v. Doc's B.R. Others, Inc.</i> ,	
3	826 F.2d 837 (9th Cir. 1987).....	12
4	<i>Gestuvo v. District Director of U.S. Immigration and Naturalization Service</i> ,	
5	337 F.Supp. 1093 (C.D. Cal. 1971).....	14
6	<i>Gonzalez v. Proctor and Gamble Co.</i> ,	
7	247 F.R.D. 616 (S.D. Cal. 2007).....	7
8	<i>Granite State Ins. Co. v. Smart Modular Techs.</i> ,	
9	76 F.3d 1023 (9th Cir. 1996).....	23
10	<i>Groves v. Pickett</i> ,	
11	420 F.2d 1119 (9th Cir. 1970).....	13
12	<i>Harper House, Inc. v. Thomas Nelson, Inc.</i> ,	
13	889 F.2d 197 (9th Cir. 1989).....	18
14	<i>Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises</i> ,	
15	559 F.3d 985 (9th Cir. 2009).....	13, 23
16	<i>Jarrow Formulas, Inc. v. Nutrition Now</i> ,	
17	304 F.3d 829 (9th Cir.2002).....	13, 23
18	<i>Kasky v. Nike, Inc.</i> ,	
19	45 P.3d 243 (2002)	
20	27 Cal.4th 939	
21	119 Cal. Rptr. 2d 296.....	7, 22
22	<i>Korea Supply Co. v. Lockheed Martin Corp.</i> ,	
23	29 Cal. 4th 1134 (2003).....	7
24	<i>Lavie v. Procter & Gamble Co.</i> ,	
25	105 Cal.App.4th 496	
26	129 Cal. Rptr. 2d 486 (2003).....	7, 22
27	<i>Lindy Pen Co. v. Bic Pen Corp.</i> ,	
28	982 F.2d 1400 (9th Cir.1993).....	19
	<i>Love v. Associated Newspapers, Ltd.</i> ,	
	611 F.3d 601 (9th Cir. 2010).....	25
	<i>Maier Brewing Co. v. Fleischmann Distilling Corp.</i> ,	
	390 F.2d 117 (9th Cir. 1968).....	20
	<i>Mutual Pharmaceutical Co. v. Ivax Pharmaceuticals, Inc.</i> ,	
	459 F.Supp.2d 925 (C.D. Cal. 2006).....	17
	<i>Newcal Indus., Inc. v. Ikon Office Solution</i> ,	

1	513 F.3d 1038 (9th Cir. 2008).....	2
2	<i>Playboy Enterprises, Inc. v. Netscape Communications Corp.</i> ,	
	354 F.3d 1020 (9th Cir. 2004).....	21
3	<i>POM Wonderful LLC v. Purely Juice, Inc.</i> ,	
4	No. CV-07-02663, 2008 WL 4222045 at *11 (C.D. Cal. 2008).....	17, 18
5	<i>Pom Wonderful, LLC v. Welch Foods, Inc.</i> ,	
6	737 F. Supp. 2d 1105 (C.D. Cal. Aug. 25, 2010).....	12
7	<i>Rice v. Fox Broad. Co.</i> ,	
	330 F.3d 1170 (9th Cir. 2003).....	2
8	<i>RiverWatch v. County of San Diego Dept. of Env'mtl Health</i>	
9	175 Cal.App.4th 768 (2009).....	25
10	<i>Scotts Co. v. United Indus. Corp.</i> ,	
	315 F.3d 264 (4th Cir. 2002).....	17
11	<i>Scotts Co. v. United Indust. Corp.</i> ,	
12	315 F.3d 264 (4th Cir. 2002).....	1
13	<i>Shouse v. Pierce County</i> ,	
14	559 F.2d 1142 (9th Cir. 1977).....	13, 23
15	<i>Skydive Ariz., Inc. v. Quattrochi</i> ,	
	704 F. Supp. 2d 841 (D. Ariz. 2010).....	20
16	<i>Smithkline Beecham Consumer Healthcare, L.P. v. Johnson & Johnson-Merck</i> ,	
17	906 F. Supp. 178 (S.D.N.Y. 1995).....	2
18	<i>Southland Sod Farms v. Stover Seed Co.</i> ,	
	108 F.3d 1139 (9th Cir. 1997).....	1, 2, 19
19	<i>Specialty Minerals . Pluess-Staufer AG</i> ,	
20	395 F. Supp. 2d 109 (S.D. N.Y. 2005).....	12
21	<i>Time Warner Cable, Inc. v. DIRECTV, Inc.</i> ,	
22	497 F.3d 144 (2d Cir. 2007).....	1
23	<i>TrafficSchool.com Inc. v. Edriver, Inc.</i> ,	
	633 F. Supp. 2d 1063 (C.D. Cal. 2008).....	2
24	<i>Trustees For Alaska Laborers-Constr. Indus. Health &Sec. Fund v. Ferrell</i> ,	
25	812 F.2d 512 (9th Cir. 1987).....	13, 23
26	<i>U-Haul Intl., Inc. v. Jartran Inc.</i> ,	
	793 F.2d 1034 (9th Cir. 1986).....	18, 19
27	<i>Warner-Lambert Co. v. Breathasure, Inc.</i> ,	
28	204 F.3d 87 (3rd Cir. 2000).....	18

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66 F.3d 255 (9th Cir. 1995)..... 17, 18, 19

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172 L.Ed.2d 249 (2008)..... 8

FEDERAL STATUTES

6 § 43(a) of the Lanham Act
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OTHER AUTHORITIES

11
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13 ed.2004), § 5:17, p. 5-103..... 7, 22

1 **I. INTRODUCTION**

2 Pursuant to Local Rule 16-4, Plaintiff and Counter-Defendant Legalzoom.com,
 3 Inc. (“LegalZoom” or “Plaintiff”) respectfully submits the following Memorandum of
 4 Contentions of Fact and Law as to this action against Rocket Lawyer Incorporated
 5 (“Rocket Lawyer” or “Defendant”).

6 **II. PLAINTIFF’S CLAIMS**

7 **A. Summary of Claims**

8 LegalZoom plans to pursue the following claims against Rocket Lawyer:

9 Claim 1: Federal False Advertising Under the Lanham Act, 15 U.S.C.
 10 § 1125(a)

11 Claim 2: California False Advertising Under Cal. Bus. & Prof. Code
 12 § 17500

13 Claim 3: California Unfair Competition Under Cal. Bus. & Prof.
 14 Code § 17200 *et seq.*

15 **B. Elements of Plaintiff’s Claims and Evidence in Support Thereof**

16 1. Plaintiff’s Claim 1: Federal False Advertising – Lanham Act

17 **a. Elements**

- 18 1) *Rocket Lawyer made a false or misleading statement of fact about its*
 19 *own product or another’s product in commercial advertising.*

20 A statement is literally false when it unambiguously states something that is
 21 untrue. *Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144, 158 (2d Cir.
 22 2007); *Scotts Co. v. United Indust. Corp.*, 315 F.3d 264, 275 (4th Cir. 2002).

- 23 2) *The statement actually deceived or has the tendency to deceive a*
 24 *substantial segment of its audience.*

25 In deciding whether Rocket Lawyer’s advertisements are false or misleading,
 26 each advertisement must be considered as a whole and in context, rather than a
 27 portion of the advertisement being considered in isolation. *Southland Sod Farms v.*
 28 *Stover Seed Co.*, 108 F.3d 1139 (9th Cir. 1997); *Freeman v. Time, Inc.*, 68 F.3d 285,

1 289 (9th Cir. 1995); Order Re: Pl's Mot. Summ. J. at 7, ECF No. 44. But footnotes
2 and disclaimers which are inconspicuously located do not remedy the false or
3 misleading nature of the advertisement. *Smithkline Beecham Consumer Healthcare,*
4 *L.P. v. Johnson & Johnson-Merck*, 906 F. Supp. 178, 185-86 (S.D.N.Y. 1995)
5 (quoting *Am. Home Prods. Corp. v. Johnson & Johnson*, 654 F. Supp. 568, 590
6 (S.D.N.Y. 1987)); *TrafficSchool.com Inc. v. Edriver, Inc.*, 633 F. Supp. 2d 1063, 1076
7 (C.D. Cal. 2008).

8 3) *The deception is material.*

9 To be a material deception, the false or misleading nature of the advertisement
10 must be likely to influence the purchasing decision. *Rice v. Fox Broad. Co.*, 330 F.3d
11 1170, 1181 (9th Cir. 2003); *Cook, Perkiss, and Liehe, Inc. v. N. Cal. Collection Serv.*,
12 911 F.2d 242, 244 (9th Cir. 1990).

13 4) *Rocket Lawyer caused its false or misleading statement to enter*
14 *interstate commerce.*

15 The parties have stipulated that the subject Rocket Lawyer advertisements were
16 placed into interstate commerce.

17 5) *LegalZoom has been or is likely to be injured as a result of the false or*
18 *misleading statement.*

19 Injury can be established either by direct diversion of sales from LegalZoom to
20 Rocket Lawyer or by a lessening of the goodwill associated with LegalZoom's
21 products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir.
22 1997); *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1054 (9th Cir.
23 2008); 15 U.S.C. § 1125(a)(1)(B).

24 **b. Key Supporting Evidence**

25 Much of the key evidence has been already determined by the Court or is based
26 on the undisputed summary judgment record.

27 For example, the Court held that LegalZoom and Rocket Lawyer are both
28 providers of online legal products and compete with one another in the online legal

1 products industry. Both offer incorporation and formation services and other online
2 legal products. The Court also held that Rocket lawyer was advertising several free
3 services online, including the following: 1) “Incorporate for Free. . . Pay No Fees
4 (\$0);” 2) “Free. . .LLCs;” 3) “Free help from local attorneys” and “Free legal review;”
5 4) “Zoom Charges \$99. Rocket Lawyer is Fast, Easy, & Free. Incorporate Your
6 Business Today;” and 5) “Free” trials of Defendant’s “Basic Legal Plan” and “Pro
7 Legal Plan.” Each advertisement either contains a link to Rocket Lawyer’s website or
8 is published directly on the website.

9 As to “free” incorporation, these advertisements were literally false because
10 Rocket Lawyer’s customers had to pay money to incorporate (in the form of state
11 fees). These advertisements were misleading because Rocket Lawyer’s customers
12 were unable to discover the requirement for paying state filing fees until after they
13 accessed the Rocket Lawyer website, completed a “setup” page, and filled out
14 information relating to “company details.” Expert testimony will confirm these
15 details and the length of this process. As to literal falsity, the jury can determine that
16 the advertisements were literally false by examining the advertisement content and by
17 hearing testimony that state filing fees are required.

18 As to “free help from local attorneys” and “free legal review” advertisements,
19 these advertisements were literally false because Rocket Lawyer customers were not
20 able to access these services unless they were “eligible members” who had purchased
21 either a monthly or annual “Legal Plan” from Rocket Lawyer by enrolling in Rocket
22 Lawyer’s trial membership and then either paying for a year in advance or remaining
23 a paying monthly member for three months. The advertisements are misleading
24 because the paid membership requirement was not disclosed in close proximity to the
25 advertisements on the Rocket Lawyer website, and was only accessible by clicking on
26 a separate link. The jury can determine that the advertisements were misleading and
27 false by examining the advertisement content, the Rocket Lawyer web pages, and by
28 hearing testimony about what was required in order to get “free help from local

1 attorneys” and “free legal review.”

2 As to “free trial” advertisements, which tout that customers can “try” Rocket
3 Lawyer’s “Basic Legal Plan” or “Pro Legal Plan” for “free,” the advertisements were
4 literally false because customers were required to first provide Rocket Lawyer with
5 their credit card information and enroll in a “negative option” program in which
6 customers are enrolled and billed after a set period of time if they fail to cancel out of
7 the program. The disclosure of Rocket Lawyer’s negative option program is found in
8 a standard font without adequate disclosure to consumers. LegalZoom will present
9 evidence showing that Rocket Lawyer’s negative option program failed to meet the
10 requirements of California’s negative option law, which spells out the requirements of
11 “clear and conspicuous” and provides that a disclosure must be “in larger type than
12 the surrounding text, or in contrasting type, font or color to the surrounding text of the
13 same size, or set off from the surrounding text of the same size by symbols or other
14 marks, in a manner that clearly calls attention to the language.” In addition, the
15 statute requires that the customer be provided with an acknowledgement that includes
16 the automatic renewal or continuous service offer terms, cancellation policy and
17 information regarding how to cancel in a manner that is capable of being retained by
18 the customer. Rocket Lawyer’s advertisements failed to meet these requirements.

19 As to the misleading nature of the advertisements, LegalZoom will present
20 expert testimony from Dr. Bruce Isaacson regarding the results of a survey that he
21 performed which measures the impressions conveyed by Rocket Lawyer’s “free”
22 advertisements as compared against control advertisements that were altered to add
23 certain disclaimers and/or additional specificity to the copy. Dr. Isaacson concludes
24 that a significantly greater number of the respondents who viewed the Rocket Lawyer
25 “free” advertisements believed that you can incorporate a business through Rocket
26 Lawyer’s service without paying any fees, than the number of respondents who
27 viewed the control advertisements. This market research supports the fact that these
28 advertisements are materially misleading.

1 LegalZoom will also present evidence of Rocket Lawyer’s intent to deceive
2 consumers with these advertisements. This evidence will be in the form of internal
3 Rocket Lawyer studies and a study prepared by Google Ventures, reviewed and
4 considered by Rocket Lawyer management, showing that small business owners felt
5 “deceived” by Rocket Lawyer’s “free” advertisements, that Rocket Lawyer was
6 employing a “bait and switch,” and that the advertisements were “sneaky” which
7 “undermined their trust.” These reports, coupled with internal Rocket Lawyer emails
8 regarding a Rocket Lawyer policy to disregard customer feedback and preferences
9 because of a concerted effort by the executive team at Rocket Lawyer to minimize
10 changes that might negatively impact revenue, will be used to demonstrate that
11 Rocket Lawyer had an intent to deceive consumers with its “free” advertisements. It
12 was only after this lawsuit was filed that Rocket Lawyer finally changed many of its
13 advertisements to address the false and misleading nature of those advertisements.

14 As a result of Rocket Lawyer’s “free” advertisements, LegalZoom’s co-founder
15 Brian Liu contacted Charles Moore at Rocket Lawyer several times to communicate
16 that Rocket Lawyer was engaging in false advertising and unfair competition, and to
17 request that Rocket Lawyer take down its advertisements relating to free trials and
18 free services. Rocket Lawyer did not comply with those requests. In addition,
19 LegalZoom will present evidence that there were communications between Google
20 and Rocket Lawyer in which Google stated that Rocket Lawyer’s advertisements
21 violated Google’s “Offer Not Found Policy” by saying: (1) Incorporate for Free, but
22 failing to disclose state fees, and (2) saying “Free Legal Document” but failing to
23 disclose the contingency, and in which Google threatened to discontinue running
24 Rocket Lawyer advertisements because of the false and misleading nature of those
25 advertisements.

26 LegalZoom will present evidence that it has suffered actual damages and
27 irreparable harm as a result of Rocket Lawyer’s false and misleading advertising
28 practices. Expert testimony from Dr. Alan Goedde will establish that LegalZoom lost

1 business to Rocket Lawyer as a result of consumers clicking on Rocket Lawyer “free”
2 advertisements, and that LegalZoom lost profits based on Rocket Lawyer
3 advertisements which included the terms “free trial” and “free legal help,” either in
4 Rocket Lawyer’s “free” business formation advertisements that do not mention state
5 filing fees, or in Rocket Lawyer’s advertisements using LegalZoom trademarks or
6 similar terms as internet search terms. Dr. Goedde will support his opinions with
7 spread-sheets, summaries, and other documents which show the number of clicks on
8 Rocket Lawyer’s “free” advertisements, the conversions to purchase, the relative
9 market share, the illicit profits gained by Rocket Lawyer and the damages suffered by
10 LegalZoom. Expert testimony from Dr. Larry Chiagouris will show that LegalZoom
11 suffered a potential decline in market share and a likely loss of consumer goodwill
12 based on Rocket Lawyer’s false and misleading “free” advertisements.

13 2. Plaintiff’s Claim 2: California False Advertising Under Cal. Bus.
14 & Prof. Code § 17500

15 a. Elements

- 16 1) *Rocket Lawyer made or disseminated a statement in connection with the*
17 *sale or disposition of goods or services.*

18 This element generally tracks with the Lanham Act, which requires a
19 “statement of fact about its own product or another’s product in commercial
20 advertising.”

- 21 2) *Rocket Lawyer’s statement was untrue or misleading.*

22 To show that an advertisement is “misleading” under the California False
23 Advertising statute, the plaintiff must show that members of the intended audience are
24 “likely” to be deceived. It is not necessary for the plaintiff to show that the
25 “advertisements actually deceived or have the tendency to deceive a substantial
26 segment of their audience.” *Colgan v. Leatherman Tool Group, Inc.*, 38 Cal. Rptr. 3d
27 36, 135 Cal. App. 4th 663 (Cal. App. 2006) (citing *Freeman v. Time, Inc.*, 68 F.3d
28 285, 289 (9th Cir. 1995); *Bank of the West v. Superior Court*, 2 Ca1.4th 1254, 1267,

1 10 Cal.Rptr.2d 538, 833 P.2d 545 (1992); *Lavie v. Procter & Gamble Co.*, 105
 2 Cal.App.4th 496, 504-13, 129 Cal. Rptr. 2d 486 (2003); *Kasky v. Nike, Inc.*, 27
 3 Ca1.4th 939, 951, 119 Cal. Rptr. 2d 296, 45 P.3d 243 (2002) (“[T]o state a claim
 4 under either the UCL or the false advertising law, based on false advertising or
 5 promotional practices, ‘it is necessary only to show that “members of the public are
 6 likely to be deceived.’ “); 1A CALLMANN ON UNFAIR COMPETITION, TRADEMARKS
 7 AND MONOPOLIES (4th ed.2004), § 5:17, p. 5-103).

8 3) *Rocket Lawyer either knew, or which by the exercise of reasonable care*
 9 *should have known, that its statement was untrue or misleading.*

10 This element does not appear in the Lanham Act.

11 4) *Members of the target audience for the statement were likely to be*
 12 *deceived.*

13 See discussion of the second element above.

14 Note, that there is no required element under the California False Advertising
 15 law that the Plaintiff suffer damage or injury in order to obtain judgment.

16 b. Key Supporting Evidence

17 See evidence cited for Claim 1 above.

18 3. Plaintiff’s Claim 3: California Unfair Competition Under Cal.
 19 Bus. & Prof. Code § 17200 *et seq.*

20 a. Elements

21 1) *Rocket Lawyer engaged in a business practice that is forbidden by law.*

22
 23 2) *Rocket Lawyer committed false advertising under the federal Lanham*
 24 *Act and/or false advertising under California Business and Professions*
 25 *Code § 17500.*

26 *Gonzalez v. Procter and Gamble Co.*, 247 F.R.D. 616, 625 (S.D. Cal. 2007); *Korea*
 27 *Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003); *CRST Van*
 28 *Expedited, Inc. v. Werner Enter., Inc.*, 479 F.3d 1099, 1107 (9th Cir. 2007).

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b. Key Evidence

See Evidence cited for Claim 1 above.

4. Plaintiff’s Remedy for Permanent Injunctive Relief

Plaintiff seeks to enjoin Rocket Lawyer from running advertisements using the word “free” absent a conspicuous disclosure made in the same advertisement, of any required payments or charges. Plaintiff seeks to enjoin Rocket Lawyer from running advertisements on its website using the word “free” absent a conspicuous disclosure on the same page as the word “free” in the advertisement, of any required payments or charges.

a. Elements

- 1) *LegalZoom has suffered an irreparable injury, or is likely to suffer an irreparable injury if injunctive relief is not granted.*
- 2) *Remedies available at law, such as monetary damages, are inadequate to compensate LegalZoom for that injury.*
- 3) *Considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted.*
- 4) *The public interest would not be disserved by a permanent injunction.*

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006); *Winter v. Natural Res. Def. Counsel*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

b. Key Evidence

See evidence cited for Claim 1 above.

In addition, LegalZoom will present expert testimony from Dr. Larry Chiagouris that the use of “free” advertisements unfairly tilts the playing field for online companies like LegalZoom and Rocket Lawyer, and that LegalZoom is likely

1 to suffer a decrease of market share and good will if Rocket Lawyer continues to use
 2 “free” advertisements without adequate disclosure of actual costs to be borne by the
 3 consumer.

4 **III. DEFENDANT’S CLAIMS AND DEFENSES**

5 **A. Summary Statement of Defendant’s Counterclaims and Affirmative**
 6 **Defenses**

7 Rocket Lawyer plans to pursue the following claims and affirmative defenses
 8 against LegalZoom:

9 Counterclaim 1: Declaratory Judgment – Rocket Lawyer Did Not
 10 Violate the Lanham Act, 15 U.S.C. § 1125(a)

11 Counterclaim 2: Declaratory Judgment -- Rocket Lawyer Did Not
 12 Violate Cal. Bus. & Prof. Code § 17500

13 Counterclaim 3: Declaratory Judgment – Rocket Lawyer Did Not
 14 Violate Cal. Bus. & Prof. Code § 17200 *et seq.*

15 Counterclaim 4: LegalZoom’s Violation of 15 U.S.C. § 1125(a)

16 Counterclaim 5: LegalZoom’s Violation of Cal. Bus. & Prof. Code §
 17 17500

18 Counterclaim 6: LegalZoom’s Violation of Cal. Bus. & Prof. Code §
 19 17200

20 First Affirmative Defense: Unclean Hands

21 Second Affirmative Defense: Laches, Waiver, and/or Estoppel

22 Third Affirmative Defense: Any injury or loss caused by third parties

23 Fourth Affirmative Defense: Rocket Lawyer’s practices have not caused
 24 the likelihood of confusion

25 Fifth Affirmative Defense: Damages not an available remedy for an
 26 alleged violation of Cal. Bus. & Prof. Code § 17200 to recover lost
 27 profits.
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B. Elements of Rocket Lawyer’s Counterclaims and Defenses, and Key Evidence Relied Upon in Opposition

1. Counterclaim 1: Declaratory Judgment – Rocket Lawyer Did Not Violate the Lanham Act, 15 U.S.C. § 1125(a)

a. Elements

Under the federal Declaratory Judgment Act, in a case of actual controversy within its jurisdiction, any court of the United States may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. See Plaintiff’s Claim 1 for the elements of a Lanham Act violation.

b. Key Opposing Evidence

See evidence cited for Plaintiff’s Claim 1.

2. Counterclaim 2: Declaratory Judgment -- Rocket Lawyer Did Not Violate Cal. Bus. & Prof. Code § 17500

a. Elements

See Plaintiff’s Claim 2 for the elements of a Cal. Bus. & Prof. Code § 17500 violation.

b. Key Opposing Evidence

See evidence cited for Plaintiff’s Claim 1.

3. Counterclaim 3: Declaratory Judgment – Rocket Lawyer Did Not violate Cal. Bus. & Prof. Code § 17200 *et seq.*

a. Elements

See Plaintiff’s Claim 3 for the elements of a Cal. Bus. & Prof. Code § 17200 violation.

b. Key Opposing Evidence

See evidence cited for Plaintiff’s Claim 1.

1 4. Counterclaim 4: LegalZoom’s Violation of 15 U.S.C. § 1125(a)

2 **a. Elements**

3 See Plaintiff’s Claim 1 for the elements of a Lanham Act violation. Rocket
 4 Lawyer’s claim is based on a review web page called Legalspring.com, which was at
 5 one time operated by a former LegalZoom employee, Travis Giggy. Rocket Lawyer
 6 claims that LegalZoom controlled the site through its agent, Mr. Giggy, and used the
 7 site to falsely advertise and unfairly compete.

8 **b. Key Opposing Evidence**

9 LegalZoom will present testimony from Mr. Giggy, as well as from
 10 LegalZoom’s current and former employees, that the site was never operated by
 11 LegalZoom. LegalZoom will also present evidence that the site does not contain any
 12 statements of fact about any products which are false or misleading -- the site contains
 13 solely opinions and puffery about online legal solutions companies, and does not
 14 mention Rocket Lawyer. Finally, Rocket Lawyer has produced no evidence, in the
 15 form of market research or otherwise, showing that consumers have been misled by
 16 any of the content of Legalspring.com.

17 5. Counterclaim 5: LegalZoom’s Violation of Cal. Bus. & Prof.
 18 Code § 17500

19 **a. Elements**

20 See Plaintiff’s Claim 2 for the elements of a Cal. Bus. & Prof. Code § 17500
 21 violation.

22 **b. Key Opposing Evidence**

23 See evidence described above for Counterclaim 4.

24 6. Counterclaim 6: LegalZoom’s Violation of Cal. Bus. & Prof.
 25 Code § 17200

26 **a. Elements**

27 See Plaintiff’s Claim 3 for the elements of a Cal. Bus. & Prof. Code § 17200
 28 violation.

1 **b. Key Opposing Evidence**

2 See evidence described above for Counterclaim 4.

3 7. First Affirmative Defense: **Unclean Hands**

4 **a. Elements**

5 1) That LegalZoom’s conduct is inequitable.

6 2) That LegalZoom’s conduct relates to the subject matter of LegalZoom’s
7 claims against Rocket Lawyer.

8 3) The misconduct that forms the basis for the unclean hands defense must
9 be directly related to plaintiff’s use or acquisition of the right in suit.

10 *Emco, Inc. v. Obst*, 2004 WL 1737355 at *4 (C.D. Cal. May 7, 2004) (citing

11 *Fuddruckers, Inc. v. Doc’s B.R. Others, Inc.*, 826 F.2d 837, 847 (9th Cir. 1987));

12 *Pom Wonderful, LLC v. Welch Foods, Inc.*, 737 F. Supp. 2d 1105, 1110 (C.D. Cal.

13 Aug. 25, 2010) (internal citations omitted) (emphasis added); *Specialty Minerals v.*

14 *Pluess-Staufer AG*, 395 F. Supp. 2d 109, 112-13 (S.D. N.Y. 2005).

15 **b. Key Opposing Evidence**

16 In attempting to support an unclean hands defense, Rocket Lawyer contends

17 that LegalZoom also advertises the price of its services without disclosing the

18 additional cost of state fees. In particular, Rocket Lawyer has argued that

19 LegalZoom’s advertisement for incorporation services (“Incorporation Services...

20 Sign in to our secure server to start your incorporation... Economy \$99”) is the

21 “same” as Rocket Lawyer’s advertisement for its incorporation services (“Incorporate

22 your business for Free – Rocket Lawyer... Free Incorporation. Get a Free

23 Incorporation in any State. How to Incorporate in Any State For Free”) simply

24 because neither advertisement references state fees.

25 The difference however is both factually and legally significant. LegalZoom

26 will present documentary and testimonial evidence that its advertisements specifically

27 refer to LegalZoom’s incorporation “services,” in contrast to Rocket Lawyer’s

28 advertisements which promise a full incorporation. Moreover, LegalZoom’s

1 advertisements do not allege that it offers anything for “free.” Rocket Lawyer’s
2 advertisements, on the other hand, state that customers can “Incorporate your business
3 for Free... Free Incorporation. Get a Free Incorporation in any State,” “incorporate
4 for free... pay no fees (\$0),” “form your LLC free at Rocket Lawyer,” “free help from
5 local attorneys,” “free legal review,” and “free” trials of Rocket Lawyer’s “Basic
6 Legal Plan” and “Pro Legal Plan.”

7 LegalZoom will present expert testimony from Dr. Chiagouris that “free” is an
8 especially powerful tool in marketing. Rocket Lawyer’s advertisements do not limit
9 the term “free” to Rocket Lawyer’s “services.” As a result of the state fees, which are
10 unavoidably associated with incorporation, Rocket Lawyer’s advertisements are false
11 because Rocket Lawyer’s customers cannot “Incorporate [their] business for Free,”
12 get “Free Incorporation,” “Get a Free Incorporation in any State,” “Incorporate in
13 Any State For Free” or “pay no fees (\$0)” as promised by the express language in
14 Rocket Lawyer’s advertisements. Thus, Rocket Lawyer’s “unclean hands” defense is
15 unsupportable.

16 8. Second Affirmative Defense: Laches, Waiver, and/or Estoppel

17 a. **Elements of Laches**

- 18 1) The plaintiff unreasonably delayed in bringing suit measured beginning
19 from the time that the plaintiff knew or should have known of the of the
20 allegedly infringing conduct.
- 21 2) The delay caused material prejudice to the defendant-party.
- 22 3) There is an exceptionally strong presumption that laches cannot be found
23 when a case is brought within the statute of limitations.

24 *Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises*, 559 F.3d 985, 990 (9th
25 Cir. 2009); *Jarrow Formulas, Inc. v. Nutrition Now*, 304 F.3d 829, 838 (9th
26 Cir.2002); *Trustees For Alaska Laborers-Constr. Indus. Health &Sec. Fund v.*
27 *Ferrell*, 812 F.2d 512, 518 (9th Cir. 1987); *Danjaq LLC v. Sony Corp.*, 263 F.3d 942,
28 952 (9th Cir. 2001); *Shouse v. Pierce County*, 559 F.2d 1142, 1147 (9th Cir. 1977).

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b. Elements of Waiver

Waiver is the intentional relinquishment of a known right. *Groves v. Pickett*, 420 F.2d 1119, 1125 (9th Cir. 1970).

A waiver is not effective unless the party executing it is fully informed of:

- 1) the existence of the right being waived;
- 2) the meaning of the waiver;
- 3) the effect of the waiver; and
- 4) a full understanding of the explanation of the waiver.

Andrew Smith Co. v. Paul’s Pak, Inc., 754 F.Supp.2d 1120, 1131 (N.D. Cal. 2010). The burden is on the party claiming a waiver to prove it by clear and convincing evidence. *Id.*

c. Elements of Estoppel

- 1) the party to be estopped must know the facts;
- 2) he must intend that his conduct shall be acted on or must so act that the party asserting estoppel has a right to believe it is so intended;
- 3) the latter must be ignorant of the true facts;
- 4) he must rely on the former’s conduct to his injury.

Gestuvo v. District Director of U.S. Immigration and Naturalization Service, 337 F.Supp. 1093, 1101 (C.D. Cal. 1971); *California State Bd. of Equalization v. Coast Radio Products*, 228 F.2d 520, 525 (9th Cir. 1955).

d. Key Opposing Evidence for Laches, Waiver and/or Estoppel

Rocket Lawyer’s false advertising activities took place in 2010 – 2012. LegalZoom will present emails and related testimony showing that LegalZoom demanded that Rocket Lawyer cease engaging in such conduct during 2011. LegalZoom filed its lawsuit in November 2012, well within the statute of limitations. Rocket Lawyer has not raised any defense based on the statute of limitations. Moreover, Rocket Lawyer has not alleged any facts or produced any evidence

1 demonstrating that LegalZoom intended to relinquish its rights against Rocket Lawyer
 2 with respect to the conduct at issue, or that Rocket Lawyer relied to its injury on any
 3 conduct engaged in by LegalZoom.

4 9. Third Affirmative Defense: Any injury or loss was caused by
 5 third parties

6 **a. Elements**

- 7 1) That third party conduct occurred after the conduct of Rocket Lawyer
- 8 2) That a reasonable person would consider the third party’s
- 9 conduct as a highly unusual or an extraordinary response to the
- 10 situation created by Rocket Lawyer
- 11 3) That Rocket Lawyer did not know and had no reason to expect that the third
- 12 party would act in a negligent/wrongful manner
- 13 4) That the kind of harm resulting from the third party’s conduct was different
- 14 from the kind of harm that could have been reasonably expected from
- 15 Rocket Lawyer’s conduct

16 Judicial Council of California Civil Jury Instructions No. 432.

17 **b. Key Opposing Evidence**

18 Because LegalZoom is complaining solely about Rocket Lawyer
 19 advertisements, LegalZoom believes that this defense has no merit. Nor has Rocket
 20 Lawyer ever adequately explained it.

21 10. Fourth Affirmative Defense: Rocket Lawyer’s practices have not
 22 caused the likelihood of confusion

23 **a. Elements**

24 In *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir.1979), the
 25 Ninth Circuit set forth eight factors which are relevant to the likelihood of confusion:
 26 (1) strength of the mark; (2) proximity of the goods; (3) similarity of the marks; (4)
 27 evidence of actual confusion; (5) marketing channels used; (6) type of goods and the
 28 degree of care likely to be exercised by the purchaser; (7) defendant’s intent in

1 selecting the mark; and (8) likelihood of expansion of the product lines.

2 The similarity or strength of the marks refers to how similar the two trademarks
3 look physically, how similar they sound and how similar the meaning of the
4 trademark is after interpreted by the public. There is little infringement defense that
5 can take place if two markings look almost identical and one clearly was established
6 first. The type of goods or services plays a role in possible confusion because similar
7 trademarks with similar products (such as Nike and Adidas having the same slogan
8 minus a word or two) would be a cause for confusion and trademark infringement.
9 Evidence of actual confusion can be shown by actual confusion among consumers
10 who mistook one company for another because of trademark confusion. If a possible
11 trademark infringer targets consumers in the same market as another similar
12 trademark, the judge will view this as causing a higher likelihood of confusion. If
13 similar trademarks also sell their products in close proximity to one another,
14 confusion among consumers is likely to occur. Defendant's intent when the
15 trademark in question was created is relevant, and the infringement defense must
16 prove the existing trademark had no influence on the creation of the plaintiff's
17 marking.

18 **b. Key Opposing Evidence**

19 The two marks at issue are web domains, www.legalzoomer.com and
20 www.legalzoomgadget.com. Rocket Lawyer stated in its answer that it was prepared
21 to return these domains to LegalZoom, but has failed to do so. The two marks are
22 extremely similar to Legalzoom.com, and the types of goods or services provided are
23 substantially the same, targeting the same consumers in the same marketplace.
24 LegalZoom anticipates that evidence of Rocket Lawyer's intent in creating these
25 marks will be established based on testimony.

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1 **IV. IDENTIFICATION OF ANTICIPATED EVIDENTIARY ISSUES**

2 **A. Evidentiary Presumptions**

3 1. Literal Falsity

4 If the plaintiff proves “literally falsity,” the trier of fact must presume that
5 consumers were misled, and the Court does not need to inquire into whether
6 consumers were deceived or misled. “A plaintiff is entitled to relief under the
7 Lanham Act on proof of literal falsity alone, as the court will assume that false
8 statements actually mislead consumers.” *POM Wonderful LLC v. Purely Juice, Inc.*,
9 No. CV-07-02663, 2008 WL 4222045 at *11 (C.D. Cal. 2008); *see also Mutual*
10 *Pharmaceutical Co. v. Ivax Pharmaceuticals, Inc.*, 459 F.Supp.2d 925, 933 (C.D. Cal.
11 2006) (“Where the advertisement is literally false, a violation may be established
12 without evidence of consumer deception.”) (quoting *Scotts Co. v. United Indus.*
13 *Corp.*, 315 F.3d 264, 273 (4th Cir. 2002)).

14 Displeased with this legal principle, Rocket Lawyer attempts to add an
15 additional element not required by either of the two above-cited cases before the trier
16 of fact will presume that consumers were deceived or misled. In particular, Rocket
17 Lawyer argues that, in addition to proving “literally falsity,” the plaintiff must also
18 prove that the defendant intended to deceive consumers. In support of this erroneous
19 proposition, Rocket Lawyer cites several cases where, upon a showing of intentional
20 deception, the court presumed that consumers were misled. These cases set forth a
21 separate, distinct and standalone means for creating a presumption that consumers
22 were misled. Rocket Lawyer’s cases do not overrule, nor supplement, the
23 presumption that consumers were misled that arises from proof of “literal falsity.”
24 Thus, there are two separate means of creating a presumption that consumers were
25 misled: (1) proof of literal falsity; or (2) proof of an intent to deceive. A plaintiff may
26 invoke the presumption “on proof of literal falsity *alone*,” without additional proof of
27 intentional deception. *POM Wonderful LLC, supra* (emphasis added). The cases
28 cited by LegalZoom – *POM Wonderful* and *Mutual Pharmaceutical* – do not require

1 additional proof of intent, and Rocket Lawyer has not cited any legal authority
2 holding that literal falsity is insufficient without an additional showing of intent. To
3 the contrary, in *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255, 258 (9th Cir.
4 1995) – cited by Rocket Lawyer in separate briefing – the Court: (1) initially held that
5 “Omicron’s letter contains no literally false statements” (p. 257) and refused to
6 invoke the presumption on that basis, but later (2) “remand[ed] to allow the district
7 court to make an explicit finding as to whether Omicron acted with the intent to
8 deceive” which might independently serve as the basis to invoke the presumption (p.
9 259). The *William H. Macy* Court dealt with the two tests separately, precisely
10 because they are two independent grounds for invoking the same presumption.

11 2. Intent to Deceive

12 If LegalZoom establishes that Rocket Lawyer engaged in intentional deception,
13 the trier of fact must then presume that the advertisement actually deceived or has the
14 tendency to deceive a substantial segment of the audience, and Rocket Lawyer has the
15 burden of proving otherwise. *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255,
16 258 (9th Cir. 1995) (“If Omicron intentionally misled consumers, we would presume
17 consumers were in fact deceived and Omicron would have the burden of
18 demonstrating otherwise.”); *POM Wonderful LLC v. Purely Juice, Inc.*, No. CV-07-
19 02663, 2008 WL 4222045, at *11 (C.D. Cal. July 17, 2008); *U-Haul Intl., Inc. v.*
20 *Jartran Inc.*, 793 F.2d 1034, 1040-41 (9th Cir. 1986); *Harper House, Inc. v. Thomas*
21 *Nelson, Inc.*, 889 F.2d 197, 208-09 (9th Cir. 1989); *Warner-Lambert Co. v.*
22 *Breathasure, Inc.*, 204 F.3d 87, 92 (3rd Cir. 2000).

23 Rocket Lawyer does not dispute this general premise, nor the cited authorities
24 (the first cited authority come from Rocket Lawyer’s briefing). Likewise, Rocket
25 Lawyer concedes that, if LegalZoom is able to prove intentional deception and invoke
26 this presumption, *the burden shifts and Rocket Lawyer must thereafter rebut the*
27 *presumption. Id.* Nevertheless, Rocket Lawyer seeks to circumvent its burden of
28 rebutting the presumption by empowering the jury to simply ignore the presumption

1 even if LegalZoom proves intentional deception. In particular, Rocket Lawyer asks
2 the Court to add discretionary language – “*may* presume” – and thereby transform this
3 firmly established presumption, and shifting burden of proof, into something akin to
4 an optional guideline that the jury may freely ignore even if Rocket Lawyer is unable
5 to rebut the presumption. Rocket Lawyer’s requested change is contrary to the above-
6 cited authorities, and renders the rebuttable presumption ineffective and moot.

7 “It is not easy to establish actual consumer deception through direct
8 evidence. The expenditure by a competitor of substantial funds in an
9 effort to deceive consumers and influence their purchasing decisions
10 justifies the existence of a presumption that consumers are, in fact, being
11 deceived. He who has attempted to deceive should not complain when
12 required to bear the burden of rebutting a presumption that he
13 succeeded.”

14 *U-Haul Intl., Inc. v. Jartran Inc.*, 793 F.2d 1034, 1041 (9th Cir. 1986). In the case
15 cited by Rocket Lawyer – *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255, 258
16 (9th Cir. 1995) – the Court held that “if Omicron intentionally misled consumers, we
17 *would* presume consumers were in fact deceived and Omicron would have the burden
18 of demonstrating otherwise” (emphasis added). The *William H. Macy* Court did not
19 hold that the Court “might” or “may” presume; rather, the Court “would” presume,
20 precisely because the presumption is neither optional, nor discretionary.

21 **B. Damages**

22 1. Actual Damages Need Not Be Established to Recover

23 LegalZoom need not prove actual damages in order to obtain a monetary award
24 pursuant to 15 U.S.C. section 1117(a); rather, the preferred approach allows the Court
25 to fashion relief, *including monetary*, based on the totality of the circumstances.
26 *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1146 (9th Cir. 1997).

27 “[A]lthough the Ninth Circuit in *Harper House* stated that ‘actual
28 evidence of some injury resulting from the deception is an essential

1 element' in a suit for damages under § 43(a), *id.* (emphasis omitted), a
2 more recent decision holds that 'an inability to show actual damages
3 does not alone preclude a recovery under section 1117.' *Lindy Pen Co. v.*
4 *Bic Pen Corp.*, 982 F.2d 1400, 1411 (9th Cir.1993) (quoting *Bandag,*
5 *Inc. v. Bolser's Tire Stores*, 750 F.2d 903, 919 (Fed.Cir.1984)). Under
6 *Lindy Pen*, the preferred approach allows the district court in its
7 discretion to fashion relief, including monetary relief, based on the
8 totality of the circumstances. *Id.*; *see also Badger Meter, Inc. v. Grinnell*
9 *Corp.*, 13 F.3d 1145, 1157 (7th Cir.1994) (stating that, even if a plaintiff
10 is unable to demonstrate damages resulting from the defendant's § 43(a)
11 violation, § 1117 allows the district court to award the plaintiff any just
12 monetary award so long as it constitutes 'compensation' for the
13 plaintiff's losses or the defendant's unjust enrichment and is not simply a
14 "penalty" for the defendant's conduct)."

15 *Id.* Moreover, even if proof of actual damage were required, LegalZoom will offer
16 the testimony of two separate experts – Dr. Goedde and Dr. Chiagouris – to firmly
17 establish the existence of damage suffered by LegalZoom, including loss of market
18 share and loss of goodwill.

19 2. Rocket Lawyer's Profits

20 In addition to its own damages, LegalZoom is also and separately entitled to
21 any profits earned by Rocket Lawyer that are attributable to the false advertising. 15
22 U.S.C. §§ 1117(a) and 1125(a); *Skydive Ariz., Inc. v. Quattrochi*, 704 F. Supp. 2d
23 841, 848 (D. Ariz. 2010) rev'd in part (on other grounds) sub nom. *Skydive Arizona,*
24 *Inc. v. Quattrocchi*, 673 F.3d 1105 (9th Cir. 2012) ("When seeking profits, the
25 Plaintiff's only burden is to prove the Defendants' gross revenues. . . . The burden falls
26 on the Defendant to prove all deductions and expenses that it believes are necessary to
27 reach an accurate calculation of profits."); *Maier Brewing Co. v. Fleischmann*
28 *Distilling Corp.*, 390 F.2d 117, 124 (9th Cir. 1968) ("the defendant has the burden of

1 proof as to any deductions from his gross sales.”).

2 **V. ISSUES OF LAW GERMANE TO THE CASE**

3 The parties are largely in agreement concerning the substantive law and the
4 elements of that law which are applicable to the facts of this case. But there are a few
5 areas of disagreement.

6 **A. Context For Evaluating Whether Advertisement is False or**
7 **Misleading**

8 The parties dispute the meaning of “context” when applied to the determination
9 of whether advertisements are false or misleading.

10 LegalZoom contends that the “context” to be evaluated for determining false
11 advertising is the entire advertisement (or webpage) which is intended to draw
12 consumers into the store (or website). Thus, it would be unfair to prove up false
13 advertising by showing the jury only the top half of a webpage, without showing the
14 portion of the advertisement which contains additional qualifying language.

15 Rocket Lawyer contends that the “context” to be evaluated for determining
16 false advertising is the entire set of web pages, including the multiple web screens
17 that appear at the Rocket Lawyer website all along the “typical consumer journey”
18 that leads to the page where consumers are finally asked to enter credit card
19 information (the web store). Of course, this “context” is not apparent or discernible
20 on the webpage with the false statements, and therefore consumers are lured by the
21 deception to click through to the subsequent web pages.

22 If Rocket Lawyer’s argument is accepted, then a false advertiser can attract
23 consumers to its website through blatant false advertising, so long as the false
24 advertiser reveals its deception at some point during the “typical consumer journey”
25 before a purchase is consummated. More to the point, a company can falsely
26 advertise its products and services as “free” throughout the internet so long as the
27 company discloses the hidden cost before taking the consumer’s money. Rocket
28 Lawyer’s argument is contrary to well established case law interpreting the Lanham

1 Act. Deceptive conduct which creates “initial interest confusion” is actionable even if
2 “dispelled before an actual sale occurs.” *Playboy Enterprises, Inc. v. Netscape*
3 *Communications Corp.*, 354 F.3d 1020, 1024-25 (9th Cir. 2004); *Finance Exp. LLC v.*
4 *Nowcom Corp.*, 564 F.Supp.2d 1160, 1175 (C.D. Cal. 2008), (same); *Brookfield*
5 *Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1062-64
6 (9th Cir. 1999) (holding actionable acts intended “to capture initial consumer
7 attention, even though no actual sale is finally completed as a result of the confusion.
8 . . . actual or potential confusion at the time of purchase” is not necessary.). Although
9 this principle originates in trademark law, “[i]nitial interest confusion is actionable
10 under the Lanham Act . . . unfair competition laws do protect against this form of
11 consumer confusion.” *Brookfield, supra*, 174 F.3d 1062-63.

12 Thus, if Rocket Lawyer’s position were permitted, companies would be free to
13 openly deceive consumers, in order to attract and retain them, so long as they come
14 clean at some point before the final purchase. Respectfully, that cannot possibly be
15 what the *Southland Sod* court intended when it instructed the trier of fact to consider
16 the “entire context” of the false advertisement.

17 **B. Distinction Between Federal and State False Advertising Claims**

18 To prevail on a false advertising claim under California Business and
19 Professions Code § 17500, the plaintiff must show that members of the intended
20 audience are “likely to be deceived.” *Colgan v. Leatherman Tool Group, Inc.*, 38 Cal.
21 Rptr. 3d 36, 135 Cal. App. 4th 663 (Cal. App. 2006) (citing *Freeman v. Time, Inc.*, 68
22 F.3d 285, 289 (9th Cir. 1995); *Bank of the West v. Superior Court*, 2 Cal.4th 1254,
23 1267, 10 Cal.Rptr.2d 538, 833 P.2d 545 (1992); *Lavie v. Procter & Gamble Co.*, 105
24 Cal.App.4th 496, 504-13, 129 Cal. Rptr. 2d 486 (2003); *Kasky v. Nike, Inc.*, 27
25 Cal.4th 939, 951, 119 Cal. Rptr. 2d 296, 45 P.3d 243 (2002) (“[T]o state a claim
26 under either the UCL or the false advertising law, based on false advertising or
27 promotional practices, ‘it is necessary only to show that “members of the public are
28 likely to be deceived.’ “); 1A CALLMANN ON UNFAIR COMPETITION, TRADEMARKS

1 AND MONOPOLIES (4th ed.2004), § 5:17, p. 5-103).

2 Rocket Lawyer does not dispute the law in this regard, nor the above-cited
3 authorities. Nevertheless, Rocket Lawyer urges that “Lanham Act and FAL claims
4 are treated as substantially the same standard in federal court” and, therefore, a jury
5 instruction addressing the need to prove that the audience is “likely to be deceived” is
6 unnecessary and duplicative of other jury instructions. While Rocket Lawyer is
7 correct that Lanham Act and state false advertising claims employ “substantially the
8 same standard,” there remain a few important distinctions. Most importantly,
9 California Business and Professions Code § 17500 does not require proof that the
10 advertising statement “actually deceived or has the tendency to deceive,” and instead
11 requires proof that the public was “likely to be deceived.” *Id.* Therefore, a jury
12 instruction setting forth this separate requirement is necessary and appropriate.

13 **C. Laches**

14 Rocket Lawyer is asserting laches as an affirmative defense. Laches is an
15 equitable defense to be determined by the Court, rather than the jury. *Danjaq LLC v.*
16 *Sony Corp.*, 263 F.3d 942, 962 (“there is no right to a jury on the equitable defense of
17 laches,” citing *Granite State Ins. Co. v. Smart Modular Techs.*, 76 F.3d 1023, 1027
18 (9th Cir. 1996) (“A litigant is not entitled to have a jury resolve a disputed affirmative
19 defense if the defense is equitable in nature”). Therefore, the jury need not be
20 instructed on laches.

21 Moreover, Rocket Lawyer’s (erroneous) description of the elements of a *state*
22 *law* laches defense is inappropriate. In this Federal Court, laches requires proof that:
23 (1) the plaintiff unreasonably delayed in bringing suit; and (2) the delay caused
24 material prejudice to the defendant-party. *Internet Specialties W., Inc. v. Milon-*
25 *DiGiorgio Enterprises*, 559 F.3d 985, 990 (9th Cir. 2009); *Jarrow Formulas, Inc. v.*
26 *Nutrition Now*, 304 F.3d 829, 838 (9th Cir.2002); *Trustees For Alaska Laborers-*
27 *Constr. Indus. Health &Sec. Fund v. Ferrell*, 812 F.2d 512, 518 (9th Cir. 1987). The
28 period of delay is measured beginning from the time that the plaintiff knew or should

1 have known of the of the allegedly infringing conduct. *Danjaq LLC v. Sony Corp.*,
 2 263 F.3d 942, 952 (9th Cir. 2001). There is an exceptionally strong presumption that
 3 laches cannot be found when a case is brought within the statute of limitations.
 4 *Shouse v. Pierce County*, 559 F.2d 1142, 1147 (9th Cir. 1977). Finally, Rocket
 5 Lawyer’s reference to “acquiescence” and a plaintiff’s “duty to investigate” are not
 6 factors in the Federal Court analysis of laches (nor are these factors supported by
 7 Rocket Lawyer’s cited authorities).

8 **VI. ISSUES TRIABLE TO A JURY**

9 LegalZoom made a timely jury trial demand together with its First Amended
 10 Complaint filed on January 7, 2013 (ECF No. 14) as to all claims and issues so
 11 triable.

12 **A. Issues Triable to the Jury**

- 13 1. Whether any party violated the Lanham Act
- 14 2. Whether any party violated Cal. Bus. & Prof. Code § 17500
- 15 3. Whether any party violated Cal. Bus. & Prof. Code § 17200
- 16 4. Damages

17 **B. Issues Triable to the Court**

- 18 1. Unclean Hands
- 19 2. Laches, waiver and estoppel
- 20 3. Injunctive relief
- 21 4. Declaratory relief
- 22 5. Attorneys’ fees
- 23 6. Statutory damages under the Lanham Act, 15 U.S.C. §1117,
 24 including restitution and treble damages.

25 **VII. RECOVERY OF ATTORNEYS’ FEES**

26 LegalZoom seeks the recovery of its attorneys’ fees pursuant to two statutes:
 27 California Code of Civil Procedure section 1021.5 (“CCP 1021.5), and 15 U.S.C.
 28 section 1117(a) (“Section 1117(a”).

1 Under CCP 1021.5, LegalZoom will be entitled to an award of fees if the Court
2 determines that the litigation served to vindicate an important public right, conferred a
3 significant benefit on the general public, and was necessary and imposed a financial
4 burden on LegalZoom that was out of proportion to its individual stake in the
5 litigation. *RiverWatch v. County of San Diego Dept. of Env'mtl Health* (2009) 175
6 Cal.App.4th 768, 775.

7 Under Section §1117(a), LegalZoom will be entitled to an award of attorneys'
8 fees if it is established that Rocket Lawyer violated 15 U.S.C. section 1125(a), and
9 did so maliciously, fraudulently, deliberately, or willfully. *Love v. Associated*
10 *Newspapers, Ltd.*, 611 F.3d 601, 615 (9th Cir. 2010).

11 LegalZoom will present evidence of the legal fees and costs incurred by
12 LegalZoom to prosecute this action. Based on the evidence cited for Claim 1 above,
13 including but not limited to the usability studies which put Rocket Lawyer on notice
14 that consumers were being deceived but which did not dissuade Rocket Lawyer from
15 continuing to post its deceptive advertisements, LegalZoom will demonstrate that
16 Rocket Lawyer acted both deliberately and willfully. LegalZoom will also present
17 expert testimony from Dr. Larry Chiagouris regarding how search engine marketing
18 and use of the word "free" impacts the public, and why this litigation therefore
19 confers a benefit on the public.

20 **VIII. PLEADED CLAIMS OR AFFIRMATIVE DEFENSES ABANDONED**

21 **A. LegalZoom's Claims and Defenses**

22 LegalZoom continues to pursue its false advertising claims based on the
23 Lanham Act and California Business and Professions Code section 17500, and its
24 claim for unfair competition based on California Business and Professions Code
25 section 17200.

26 LegalZoom continues to pursue affirmative defenses for unclean hands and no
27 agency as to Rocket Lawyer's counterclaim, but is abandoning the following
28 affirmative defenses: (1) failure to state a claim; (2) injunctive relief unavailable; (3)

1 laches; (4) statute of limitations; (5) punitive damages unavailable; and (6) lack of
2 standing.

3 **B. Rocket Lawyer’s Claims and Defenses**

4 Rocket Lawyer has not abandoned any of its claims.

5 Rocket Lawyer has abandoned the following affirmative defenses: (1) failure
6 to state a claim; (2) punitive damages unavailable; and (3) lack of standing.

7
8 DATED: October 28, 2014

GLASER WEIL FINK HOWARD AVCHEN &
SHAPIRO LLP

9
10 By: /s/ Fred D. Heather
11 PATRICIA GLASER
12 FRED HEATHER
13 AARON ALLAN
14 Attorneys for Plaintiff
15 LEGALZOOM.COM, INC.
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, 19th Floor, Los Angeles, California 90067.

On October 28, 2014, I electronically filed the following document(s) using the CM/ECF system.

LEGALZOOM’S MEMORANDUM OF CONTENTIONS OF FACT AND LAW

Participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on October 29, 2014 at Los Angeles, California.

_____/s/ Fred D. Heather

Fred D. Heather