Patricia L. Glaser (SBN 55668)
pglaser@glaserweil.com
Fred D. Heather (SBN 110650)
fheather@glaserweil.com
Aaron P. Allan (SBN 144406)
aallan@glaserweil.com
GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP
10250 Constellation Blvd., 19th Floor
Los Angeles, California 90067
Telephone: (310) 553-3000
Facsimile: (310) 556-2920

Attorneys for Plaintiff
LEGALZOOM.COM, INC.

Forrest A. Hainline III (SBN 64166)
fhainline@goodwinprocter.com
Hong-An Vu (SBN 266268)
hvu@goodwinprocter.com
GOODWIN PROCTER LLP
Three Embarcadero Center, 24th Floor
San Francisco, California 94111
Tel.: 415.733.6000
Fax.: 415.677.9041

Michael T. Jones (SBN 290660)
mjones@goodwinprocter.com
GOODWIN PROCTER LLP
135 Commonwealth Drive
Menlo Park, California 94025-1105
Tel.: 650.752.3100
Fax.: 650.853.1038

[*Addt'l counsel listed in signature block]*

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

DISPUTED JURY INSTRUCTIONS

PTC: November 10, 2014
1:30 p.m.
Trial: December 9, 2014

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

Dockets.Justia.com

Pursuant to the Court's Case Management and Scheduling Order, dated April 11, 2013, Plaintiff LegalZoom.com, Inc. and Defendant Rocket Lawyer Incorporated hereby provide their disputed jury instructions.

Dated: October 28, 2014

Respectfully submitted,

By: /s/ Michael T. Jones

Forrest A. Hainline III
fhainline@goodwinprocter.com
Hong-An Vu (SBN 266268)
hvu@goodwinprocter.com
Michael T. Jones (SBN 290660)
mjones@goodwinprocter.com
Brian W. Cook (*Pro Hac Vice*)
bcook@goodwinprocter.com
GOODWIN PROCTER LLP
Three Embarcadero Center
24th Floor
San Francisco, California 94111
Tel.: 415.733.6000
Fax.: 415.677.9041

Attorneys for Defendant
ROCKET LAWYER INCORPORATED

Dated: October 28, 2014

Respectfully submitted,

By: /s/ Fred D. Heather

PATRICIA GLASER
FRED HEATHER
AARON ALLAN

Attorneys for Plaintiff
LEGALZOOM.COM, INC.

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I. LEGALZOOM'S PROPOSED INSTRUCTIONS

DISPUTED INSTRUCTION NUMBER 1

BAIT AND SWITCH

In considering whether Rocket Lawyer engaged in deceptive advertising, you may evaluate whether the advertisement in question was designed to lure potential customers to Rocket Lawyer's website under false pretenses with an intent to sell to those customers a product for a different price, or on different terms, than what was advertised.

Authority: *In the matter of Consumer Products of America, Inc., et al*., 72 F.T.C. 533 (1967) (enforcing cease and desist order); affirmed, *Consumer Products of America, Inc. v. F.T.C*., 400 F.2d 930 (3d Cir. 1968).

Rocket Lawyer's Position: This instruction is wholly inappropriate. The Federal Trade Commission Guide does not have the force of law and cannot be used to bootstrap claims of false advertising or unfair competition. *Laster v. T-Mobile USA, Inc.*, 05CV1167, 2009 WL 4842801 (S.D. Cal. Dec. 14, 2009) ("[T]he FTC's guide does not have the force of law, so it cannot be 'borrowed' under the UCL.") *vacated in part*, 466 F. App'x 613 (9th Cir. 2012); *see also* 16 C.F.R. § 240.1 (the FTC's guides "do not have the force of law"); *Pocino v. Jostens, Inc*., B181449, 2006 WL 1163785, at *6 (Cal. Ct. App. May 3, 2006) (distinguishing violation of federal law from violation of FTC guide, requiring instead a violation of the underlying statute on which the guide is based).

LegalZoom's Position: This instruction is not intended to be conclusive on whether Rocket Lawyer violated the Lanham Act. Nor is LegalZoom attempting to "borrow" an FTC violation for purposes of establishing unfair competition. But the Jury should be able to consider whether there was an intent to deceive by Rocket Lawyer, justifying a presumption of actual deception, if the advertisement in question

1 was designed to lure customers to Rocket Lawyer's website under false pretenses with
2 an intent to sell non-conforming products or services.
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DISPUTED INSTRUCTION NUMBER 2

DECEPTION

To establish the second element of a false advertising claim, the plaintiff must show that the defendant's advertising actually deceived, or had the tendency to deceive, a substantial segment of its audience. This element is satisfied if the defendant's advertising was literally false.

Authority: Southland Sod Farms v. Stover Seed Co., 108 F.3d 1134, 1140 (9th Cir. 1997); *William H.* Morris *Co. v. Group W, Inc.*, 66 F.3d 255, 258 (9th Cir. 1995); *POM Wonderful LLC v. Purely Juice, Inc.*, No. CV-07-02663, 2008 WL 4222045, at *11 (C.D. Cal. July 17, 2008)

Rocket Lawyer's Position: The sentence "This element [consumer deception] is satisfied if the defendant's advertising was literally false" describes an incorrect presumption. Consumer deception is presumed only in the case of deliberately false claims for the purposes of an injunction. *See Southland Sod Farms*, 108 F.3d 1134, 1146 (9th Cir. 1997) ("Publication of deliberately false comparative claims gives rise to a presumption of actual deception and reliance."); *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255, 258 (9th Cir. 1995) ("If Omicron intentionally misled consumers, we would presume consumers were in fact deceived and Omicron would have the burden of demonstrating otherwise."). Even if the presumption applies, it is rebuttable. Accordingly, the jury should not be instructed that the element is satisfied even in the case of deliberately false claims. *See William H. Morris Co.*, 66 F.3d at 258.

LegalZoom's citation of POM Wonderful does not help, as shown by cases cited therein. *POM Wonderful LLC v. Purely Juice, Inc.*, CV-07-02633CAS(JWJX), 2008 WL 4222045, at *11 (C.D. Cal. July 17, 2008) *aff'd*, 362 F. App'x 577 (9th Cir. 2009) (emphasis added):

Harper House, Inc. v. Thomas Nelson, Inc., 889 F.2d 197, 209 (9th Cir.1989) (even in non-comparative advertising case, no need for actual evidence of consumer deception **where defendant engaged in intentional deception**); *see also Warner-Lambert Co. v. Breathasure, Inc*., 204 F.3d 87 (3rd Cir.2000) (where claim was "literally false, [plaintiff] did not have to introduce consumer testimony, marketing surveys or proof of lost profits t**o enjoin the use**") *Smithkline Beecham Consumer Healthcare, L.P. v. Johnson & Johnson-Merck Consumer Pharm. Co*., 906 F.Supp. 178, 181 (S.D.N.Y.1995) ("**a court may enjoin an ad** which is explicitly or literally false without reference to the advertisement's impact on the buying public.")[.].

LegalZoom's Position: The instruction is confirmed by existing precedent. In *POM Wonderful LLC v. Purely Juice, Inc.*, No. CV-07-02663, 2008 WL 4222045 at *11 (C.D. Cal. 2008), the court stated when "an advertisement is demonstrated to be literally false, the Court does not need to inquire into whether consumers were deceived or misled. A plaintiff is entitled to relief under the Lanham Act on proof of literal falsity alone, as the court will assume that false statements actually mislead consumers." *See also Mutual Pharmaceutical Co. v. Ivax Pharmaceuticals, Inc.*, 459 F.Supp.2d 925, 933 (C.D. Cal. 2006) ("'Where the advertisement is literally false, a violation may be established without evidence of consumer deception.") (quoting *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 273 (4th Cir. 2002)).

DISPUTED INSTRUCTION NUMBER 3

PRESUMPTION OF DECEPTION

If the plaintiff has established that the defendant engaged in intentional deception, then you must then presume that the advertisement actually deceived or has the tendency to deceive a substantial segment of the audience, and the defendant has the burden of proving otherwise.

Authority: POM Wonderful LLC v. Purely Juice, Inc., No. CV-07-02663, 2008 WL 4222045, at *11 (C.D. Cal. July 17, 2008); *U-Haul Intl., Inc. v. Jartran Inc.*, 793 F.2d 1034, 1040-41 (9th Cir. 1986); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 208-09 (9th Cir. 1989); *Warner-Lambert Co. v. Breathasure, Inc.*, 204 F.3d 87, 92 (3rd Cir. 2000).

Rocket Lawyer's Position: The instruction misstates the law. The presumption of deception is limited to the case of **intentional** false advertising and is **rebuttable**, not mandatory. *William H. Morris Co. v. Grp. W, Inc*., 66 F.3d 255, 258 (9th Cir. 1995) ("If Omicron intentionally misled consumers, we would presume consumers were in fact deceived and Omicron would have the burden of demonstrating otherwise."); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209 (9th Cir. 1989) ("The relevant jury instruction correctly followed *Jartran II*: it stated that **in order for this presumption to apply, the jury must find that defendants engaged in intentional deception**.") (emphasis added); *U-Haul Intl., Inc. v. Jartran Inc.*, 793 F.2d 1034, 1040-41 (9th Cir. 1986) ("The expenditure by a competitor of substantial funds in an effort to deceive consumers and influence their purchasing decisions justifies the existence of a presumption that consumers are, in fact, being deceived. He who has attempted to deceive should not complain when required to bear the burden of rebutting a presumption that he succeeded.").

Rocket Lawyer would accept an instruction as follows (changing the word

"must" to "may"):

> If the plaintiff has established that the defendant engaged in intentional deception, then you may then presume that the advertisement actually deceived or has the tendency to deceive a substantial segment of the audience, and the defendant has the burden of proving otherwise.

Otherwise, Disputed Instruction Number 7, below, is more appropriate.

LegalZoom's Response: LegalZoom opposes the modification that Rocket Lawyer has proposed, changing "must" to "may." While LegalZoom agrees that the presumption is rebuttable, LegalZoom does not agree that the presumption is optional. The jury should be instructed that the burden of proof shifts to Rocket Lawyer in the case of intentional deception. The case law cited above is very clear on this point, and it is not for the jury to decide whether to apply the presumption.

DISPUTED INSTRUCTION NUMBER 4

DEFENDANT'S PROFITS

In addition to actual damages, the plaintiff is entitled to any profits earned by the defendant that are attributable to the false advertising, which the plaintiff proves by a preponderance of the evidence. You may not, however, include in any award of profits any amount that you took into account in determining actual damages.

Profit is determined by deducting all expenses from gross revenue. Gross revenue is all of defendant's receipts from using the false advertisement in creating sales. The plaintiff has the burden of proving a defendant's gross revenue by a preponderance of the evidence.

Expenses are all operating and production costs incurred in producing the gross revenue. The defendant has the burden of proving the expenses and the portion of the profit attributable to factors other than use of the false advertisement by a preponderance of the evidence.

Unless you find that a portion of the profit from sales using the accused false advertisement is attributable to factors other than use of the accused false advertisement, you shall find that the total profit is attributable to the false advertising.

Authority: Ninth Circuit Manual of Model Civil Jury Instructions 15.26 (Rev. 2007) (modified for false advertising claim); 15 U.S.C. § 1117(a).

Rocket Lawyer's Position: If false advertising occurred, LegalZoom is not entitled to all profits gained as a result from that false advertising. LegalZoom is only entitled to its actual damages, which would be limiting to profits gained by diverting sales *from* LegalZoom, or its lost profits—those that *would have been received by LegalZoom* but for the false advertising—not all profits gained by Rocket Lawyer as a result of such advertising. *Novell Inc. v. Network Trade Center*, 25 F. Supp. 2d 1233, 1240 (D. Utah 1998); *Morley-Murphy Co. v. Zenith Electronics Corp*, 142 F.3d 373,

381 (7th Cir 1998).

This is already covered by undisputed instruction 30.

Skydive Ariz., Inc. v. Quattrochi, 704 F.Supp.2d 841 (D. Ariz. 2010) is inapposite. There the malfeasance in question was trademark infringement—thus the only loss of profits would be attributable to the plaintiff. *Id.* at 848. Here, by contrast, LegalZoom would be seeking profits to which it was never entitled. "When awarding profits ... Plaintiff is not ... entitled to a windfall." *Lindy Pen Co., Inc. v. Bic Pen Corp.*, 982 F.2d 1400, 1405 (9th Cir.1993). In addition, the defendant in *Skydive* failed to object to the instruction in question. Skydive, 704 F. Supp. 2d at 850.

LegalZoom's Position: The plaintiff is statutorily entitled to recover the defendant's profits attributable to the offending advertisement. *See* 15 U.S.C. sections 1117(a) and 1125(a). "When seeking profits, the Plaintiff's only burden is to prove the Defendants' gross revenues. . . . The burden falls on the Defendant to prove all deductions and expenses that it believes are necessary to reach an accurate calculation of profits." *Skydive Ariz., Inc. v. Quattrochi*, 704 F. Supp. 2d 841, 848 (D. Ariz. 2010) rev'd in part (on other grounds) sub nom. Skydive Arizona, Inc. v. Quattrocchi, 673 F.3d 1105 (9th Cir. 2012). *See also Maier Brewing Co. v. Fleischmann Distilling Corp*., 390 F.2d 117, 124 (9th Cir. 1968) ("the defendant has the burden of proof as to any deductions from his gross sales."). LZ's proposed instruction is consistent with these precedents. A very similar instruction was approved by the United States District Court in in a Lanham Act case, SKYDIVE ARIZONA, INC., Plaintiff, v. Cary QUATTROCHI, et al., Defendants., 2009 WL 4956477 (D.Ariz.).

DISPUTED INSTRUCTION NUMBER 5

DISTINCTION BETWEEN FEDERAL AND CALIFORNIA FALSE ADVERTISING LAW

To prevail on a false advertising claim under California Business and Professions Code § 17500, the plaintiff must show that members of the intended audience are likely to be deceived. It is not necessary for the plaintiff to show that the "advertisements actually deceived or have the tendency to deceive a substantial segment of their audience."

Authority: Colgan v. Leatherman Tool Group, Inc., 38 Cal. Rptr. 3d 36, 135 Cal. App. 4th 663 (Cal. App. 2006) (citing *Freeman v. Time, Inc.*, 68 F.3d 285, 289 (9th Cir. 1995); *Bank of the West v. Superior Court*, 2 Ca1.4th 1254, 1267, 10 Cal.Rptr.2d 538, 833 P.2d 545 (1992); *Lavie v. Procter & Gamble Co.*,105 Cal.App.4th 496, 504-13, 129 Cal. Rptr. 2d 486 (2003); *Kasky v. Nike, Inc.*, 27 Ca1.4th 939, 951, 119 Cal. Rptr. 2d 296, 45 P.3d 243 (2002) ("[T]o state a claim under either the UCL or the false advertising law, based on false advertising or promotional practices, 'it is necessary only to show that "members of the public are likely to be deceived.' "); 1A CALLMANN ON UNFAIR COMPETITION, TRADEMARKS AND MONOPOLIES (4th ed.2004), § 5:17, p. 5-103).

Rocket Lawyer's Position: Lanham Act and FAL claims are treated as substantially the same standard in federal court; thus this instruction is unnecessary and improper. *CytoSport, Inc. v. Vital Pharm., Inc.*, 894 F. Supp. 2d 1285, 1295 (E.D. Cal. 2012); *Walker & Zanger*, 549 F. Supp. 2d at 1182; *see also Kwan Software Eng'g v. Foray Techs., LLC*, 2013 U.S. Dist. LEXIS 14708, at *7 n.2 (N.D. Cal. Jan. 22, 2013) ("The parties agree that false advertising under California law requires the same showing of falsity as the Lanham Act.").

LegalZoom's Response: While LegalZoom agrees with Rocket Lawyer that

Lanham Act and state false advertising claims employ "substantially the same standard," there is a distinction which is supported by the case law cited above. To prevail on a claim under California Business and Professions Code section 17500, the parties will have to show that members of the intended public are "likely to be deceived." The jury should be instructed to apply that standard as to any claim brought pursuant to California Business and Professions Code section 17500.

UNDISPUTED INSTRUCTION NUMBER 6

CALIFORNIA UNFAIR COMPETITION LAW

Both parties assert claims for relief under California's Unfair Competition Law, which prohibits any business practice that is forbidden by law. If you find that either party committed false advertising under the federal Lanham Act or false advertising under California Business and Professions Code § 17500, then you may also find that such conduct constitutes unfair competition under California Business and Professions Code § 17200.

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

Rocket Lawyer's Position: A UCL action is equitable in nature, *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003), and there is no right to a jury trial for a UCL cause of action, *Hodge v. Superior Court*, 145 Cal. App. 4th 278, 284-85 (2006). *See also People v. Bestline Products, Inc*., 61 Cal.App.3d 879, 916 (1976); *People v. Toomey*, 157 Cal.App.3d 1, 17–18 (1984); *People v. First Federal Credit Corp*., 104 Cal.App.4th 721, 733(2002). Any question underlying the UCL claim that is properly before the jury will be decided as part of the Lanham Act and FAL claims. Thus, this instruction is improper.

LegalZoom's Response: *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144, 63 P.3d 937 (2003), states that California unfair competition claims are equitable in nature, but does not say anything about whether a jury may decide such claims. We did, however, locate one district court opinion which indicates that such claims are appropriately presented to a jury. *See Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 485 (S.D. Cal. 2013) ("For liability to attach under [sections 17200

and 17500], it is necessary to show only that members of the public are likely to be deceived. This is a question, ultimately, of the materiality of the alleged misrepresentation, which is for a jury to decide at trial rather than a court at the class certification stage, considering that California law ties materiality to a hypothetical reasonable person standard.") (Emphasis added).

II. ROCKET LAWYER'S PROPOSED INSTRUCTIONS

DISPUTED INSTRUCTION NUMBER 7

DECEPTION MAY BE ESTABLISHED IF DEFENDANT PARTY INTENDED TO DECEIVE

If you find that defendant-party deliberately sought to deceive consumers through its advertisement, you may, but are not required to, presume that plaintiff-party has met its burden of establishing that a substantial portion of consumers were actually deceived, unless other evidence convinces you that the advertisement did not actually deceive a substantial portion of consumers.

Authority: BAJI § 10:3 Special Instruction 2; *William H. Morris Co. v. Group W, Inc.*, 66 F.3d 255, 258 (9th Cir. 1995).

LegalZoom's Position: We believe this instruction, as written, is incorrect in giving the jury the option to presume deception (instead of requiring the presumption), and in failing to point out that there is a presumption of consumer deception upon a finding of literal falsity. We request that the parties agree to use LegalZoom's proposed [Disputed Instruction Number 5, *supra*] instead.

Rocket Lawyer's Response: The instruction misstates the law. The presumption of deception is limited to the case of intentional false advertising and is rebuttable, not mandatory. *William H. Morris Co. v. Grp. W, Inc.*, 66 F.3d 255, 258 (9th Cir. 1995) ("If Omicron intentionally misled consumers, we would presume consumers were in fact deceived and Omicron would have the burden of demonstrating otherwise."); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209 (9th Cir. 1989) ("The relevant jury instruction correctly followed *Jartran II*: it stated that **in order for this presumption to apply, the jury must find that defendants engaged in intentional deception**.") (emphasis added); *U-Haul Intl., Inc. v. Jartran Inc.*, 793 F.2d 1034, 1040-41 (9th Cir. 1986) ("The expenditure by a

competitor of substantial funds in an effort to deceive consumers and influence their purchasing decisions justifies the existence of a presumption that consumers are, in fact, being deceived. He who has attempted to deceive should not complain when required to bear the burden of rebutting a presumption that he succeeded.").

DISPUTED INSTRUCTION NUMBER 8

AFFIRMATIVE DEFENSE OF LACHES

The defense of laches has been asserted by a defendant-party. To prevail in the defense of laches, the defendant-party in a particular claim must prove, by a preponderance of the evidence, that:

1. The plaintiff-party unreasonably and inexcusably delayed in bringing suit, and
2. Either: (a) that the delay caused prejudice to the defendant-party, or (b) the plaintiff-party acquiesced in the conduct about which it complains.

The period of delay is measured from the time that the plaintiff-party knew or reasonably should have known of the alleged activities on which the plaintiff-party bases its claims. In deciding whether the plaintiff-party "should have known" of the claims it is now making, you should consider:

1. Whether plaintiff had knowledge of the circumstances that would have made a reasonable person in the plaintiff-party's position suspicious of the acts and conduct of the defendant-party; and
2. Whether inquiring into those circumstances would have led to knowledge of the essential facts giving rise to the plaintiff-party's claim.

If the plaintiff-party becomes aware of facts that would make a reasonably prudent person in the same or similar circumstances suspicious, a duty to investigate arises.

Material prejudice may exist where, in reliance upon the delay in bringing suit, the defendant-party made a substantial investment in building up its business, or where the defendant would have acted differently had the plaintiff brought its lawsuit earlier.

Authority: *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1033 (Fed. Cir. 1992).

LegalZoom's Position: We object to any instruction whatsoever regarding laches, because laches is an equitable defense that is a question for the Court, not the jury. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 962 ("there is no right to a jury on the equitable defense of laches," citing *Granite State Ins. Co. v. Smart Modular Techs.*, 76 F.3d 1023, 1027 (9th Cir. 1996) ("A litigant is not entitled to have a jury resolve a disputed affirmative defense if the defense is equitable in nature")).

We additionally object that this instruction, as written, does not reflect Ninth Circuit law. Ninth Circuit authority provides that to prevail on a laches defense, the defendant-party must prove by a preponderance of the evidence that: (1) the plaintiff-party unreasonably delayed in bringing suit; and (2) the delay caused material prejudice to the defendant-party. *Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises*, 559 F.3d 985, 990 (9th Cir. 2009); *Jarrow Formulas, Inc. v. Nutrition Now*, 304 F.3d 829, 838 (9th Cir.2002); *Trustees For Alaska Laborers-Constr. Indus. Health &Sec. Fund v. Ferrell*, 812 F.2d 512, 518 (9th Cir. 1987). The period of delay is measured beginning from the time that the plaintiff-party knew or should have known of the of the allegedly infringing conduct. *Danjaq LLC v. Sony* Corp., 263 F.3d 942, 952 (9th Cir. 2001). There is an exceptionally strong presumption that laches cannot be found when a case is brought within the statute of limitations or analogous statute of limitations. *Shouse v. Pierce County*, 559 F.2d 1142, 1147 (9th Cir. 1977). We further object because the case you cite as authority does not support the instruction's language regarding: (1) considerations for what a plaintiff-party "should have known"; (2) the plaintiff-party's duty to investigate; or (3) the existence of material prejudice.

Rocket Lawyer's Response: The assertion of an equitable defense in an action at law does not "warrant separate and prior trial by the court." *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App. 4th 612, 622, (1992). "Moreover, the trial court has discretion whether to submit an equitable defense to the jury." *Id.* Should the Court

decide to submit Rocket Lawyer's equitable defenses to the jury, this instruction is necessary and appropriate.

DISPUTED INSTRUCTION NUMBER 9

AFFIRMATIVE DEFENSE OF UNCLEAN HANDS

Rocket Lawyer has asserted the defense of 'unclean hands' against the false advertising claims of LegalZoom. This requires Rocket Lawyer to demonstrate by clear and convincing evidence that:

1. LegalZoom's conduct was inequitable; and
2. The inequitable conduct of LegalZoom related directly to the subject matter of LegalZoom's claims against Rocket Lawyer.

Conduct that is 'inequitable' means misconduct which is sufficiently egregious that, after considering the public's interest in preventing misleading advertisements, and after considering the merits of LegalZoom's false advertising claims against Rocket Lawyer, LegalZoom's claims should be barred outright because of its conduct.

LegalZoom's conduct 'directly relates to the subject matter' of its claims if LegalZoom has engaged in directly the same type of conduct about which it complaints, and such conduct has an immediate and necessary relation to the relief that LegalZoom seeks.

Authority: BAJI § 10:3 Special Instruction 4; *Brother Records, Inc. v Jardine*, 318 F.3d 900, 909 (9th Cir. 2003); *Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 841 (9th Cir. 2002); *Ellenburg v. Brockway, Inc.*, 763 F.2d 1091, 1097 (9th Cir. 1985); *Pfizer, Inc. v. Int'l Rectifier Corp.*, 685 F.2d 357, 359 (9th Cir. 1982).

LegalZoom's Position: We object to this instruction because, like laches, unclean hands is an equitable defense to be resolved by the Court. *Cal-Agrex v. Tassell*, 258 F.R.D. 340, 348 (N.D. Cal. 2009) *aff d*, 408 F. App'x 5 8 (9th Cir. 2011).

Rocket Lawyer's Response: The assertion of an equitable defense in an action at law does not "warrant separate and prior trial by the court." Unilogic, Inc. v.

Burroughs Corp., 10 Cal. App. 4th 612, 622, (1992). "Moreover, the trial court has discretion whether to submit an equitable defense to the jury." *Id.* Should the Court decide to submit Rocket Lawyer's equitable defenses to the jury, under its discretion, *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App. 4th 612, 622 (1992), this instruction is appropriate.