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 27 **ROCKET LAWYER INCORPORATED**

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LEGALZOOM.COM, INC., a Delaware corporation,

Plaintiff,

v.

ROCKET LAWYER
 INCORPORATED, a Delaware corporation,

Defendant.

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

**JOINT SCHEDULING
 CONFERENCE REPORT
 PURSUANT TO RULE 26(f)**

Date: April 15, 2013
 Time: 1:30 p.m.
 Judge: Judge Gary A. Fees
 Courtroom: 740
 255 East Temple Street
 Los Angeles, CA 90012
 Action Filed: November 20, 2012

1 Plaintiff LegalZoom.com, Inc. (“Plaintiff” or “LegalZoom”) and Defendant
2 Rocket Lawyer Incorporated (“Defendant” or “Rocket Lawyer,” collectively “the
3 Parties”) hereby submit this Joint Scheduling Conference Report Pursuant to Rule
4 26(f) and the Court’s Order Regarding Rule 26(f) Scheduling Conference and Joint
5 Report, ECF No. 12, following a series of conferences of the Parties first held on
6 March 1, 2013 and the final conference held on April 4, 2013.

7 **I. SYNOPSIS**

8 **A. Plaintiff**

9 LegalZoom asserts that Rocket Lawyer has engaged in willful and systematic
10 acts of false advertising and unfair competition in violation of the Lanham Act, 15
11 U.S.C. § 1125(a) and California Business & Professions Code §§ 17500 and 17200
12 *et seq.* In particular, LegalZoom asserts that Rocket Lawyer falsely and
13 misleadingly advertises “free” products and services, which Rocket Lawyer knows,
14 or by exercise of reasonable care should know, are not in fact “free.” For example,
15 Rocket Lawyer’s advertisements represent that customers can “incorporate for
16 free... pay no fees (\$0)” and “free incorporation,” when, in fact, customers seeking
17 to “incorporate for free” through Rocket Lawyer’s services are nonetheless required
18 to pay the state fees associated with incorporation – a fact which customers do not
19 discovery until after they have accessed the Rocket Lawyer website, completed a
20 “company setup” and filled out information relating to the “company details.”
21 Rocket Lawyer’s advertisements also represent that customers can get “free help
22 from local attorneys” and “free legal review” when, in fact, access to the “free help
23 from local attorneys” and access to the “free legal review” are available only after
24 customers become **paid** members of RocketLawyer’s “Basic Legal Plan” or “Pro
25 Legal Plan.” This membership requirement for the “free help from local attorneys”
26 and “free legal review” is **not** disclosed in close proximity to the advertisements on
27 the RocketLawyer website. While after the filing of LegalZoom’s original
28 Complaint, RocketLawyer changed the language of its “On Call Terms of Service”

1 to provide that “Customers who enter into a one week (seven (7) calendar days) free
2 trial are eligible to receive one (1) free legal matter consultation,” access to the
3 advertised “free help from local attorneys” and the “free legal review” is still
4 conditioned upon customers actively enrolling in RocketLawyer’s trial membership
5 and providing RocketLawyer with their credit card information. Rocket Lawyer’s
6 advertisements also represent that customers can get “free” trials of RocketLawyer’s
7 “Pro Legal Plan,” when, in fact, customers who sign up for a trial membership under
8 the “Pro Legal Plan” are directed to enroll in a one-week trial of RocketLawyer’s
9 “Basic Legal Plan” and thereafter find themselves enrolled unwittingly in
10 RocketLawyer’s “negative option” program without conspicuous notice of the terms
11 at the outset of the offer. Not only does Rocket Lawyer engage in false and
12 misleading advertisement practices, Rocket Lawyer purchases search terms,
13 including, but not limited to, “LegalZoom,” “Legal Zoom” and “LegalZoom.com,”
14 from Internet search engines such as Google.com, Yahoo.com and Bing.com, to
15 trigger sponsored links to Rocket Lawyer’s false and misleading advertisements,
16 which improperly diverts potential LegalZoom customers to Rocket Lawyer’s
17 website. Further, LegalZoom asserts that Rocket Lawyer has registered, in bad
18 faith, the internet domain names, “www.legalzoomgadget.com” and
19 “www.legalzoomer.com.” These domain names are confusingly similar to
20 LegalZoom’s trademarks and Rocket Lawyer is not licensed or authorized in any
21 way to use LegalZoom’s trademarks, or any confusingly similar imitations thereon
22 in connection with its advertisements for its products or services.

23 **B. Defendant**

24 Plaintiff’s First Amended Complaint, ECF No. 14, asserts claims for: (1)
25 Federal False & Misleading Advertising and Unfair Competition under the Lanham
26 Act, 15 U.S.C. § 1125(a); (2) California False and Misleading Advertising; and (3)
27 California Unfair Competition Law violations.

28 Plaintiff’s first two claims allege that Rocket Lawyer has advertised a variety

1 of free services without disclosing related fees and/or limitations. Rocket Lawyer
2 asserts two main affirmative defenses:

3 (1) Unclean Hands: Plaintiff engages in the same conduct alleged in its
4 complaint, in particular in its use of “free” for its own products and services, and
5 engages in misleading and anticompetitive conduct by operating through an agent
6 the review website www.legalspring.com, which represents itself as a neutral third
7 party while actually promoting Plaintiff’s website to the detriment of consumers and
8 competitors, including Rocket Lawyer.

9 (2) Laches, Waiver, and/or Estoppel: Plaintiff raised the alleged misconduct
10 with Rocket Lawyer over a year before filing its complaint, delaying filing to
11 coincide with Rocket Lawyer’s much-publicized international launch after
12 conveying by inaction its lack of interest in prosecuting the alleged claims. Rocket
13 Lawyer relied on Plaintiff’s silence after initially raising these allegations to Rocket
14 Lawyer’s detriment.

15 Rocket Lawyer asserts counterclaims based on LegalZoom’s operation or
16 direction of LegalSpring.com (“LegalSpring”). LegalSpring purports to be a
17 neutral, third-party reviewer of legal services providers. In fact, LegalSpring was
18 created by a LegalZoom employee, likely at LegalZoom’s direction, and it acts to
19 promote LegalZoom while failing to mention several of its top competitors at all,
20 and it receives payments from LegalZoom in exchange for the click-throughs it
21 provides. LegalZoom has not adequately disclosed its relationship and/or direction
22 of LegalSpring, thus causing a likelihood of consumer confusion or deception,
23 harming Rocket Lawyer through the direct diversion of sales from Rocket Lawyer to
24 LegalZoom.

25 Rocket Lawyer seeks declaratory judgment that it has properly advertised its
26 free products and services. Rocket Lawyer has also alleged that LegalZoom has
27 engaged in misleading and/or false business practices, in violation of the Lanham
28 Act, 15 U.S.C. § 1125(a) and the California Business and Professions Code,

1 §§ 17500 and 17200 *et seq.*

2 **II. KEY LEGAL ISSUES**

3 **A. Plaintiff**

4 LegalZoom asserts that the issues in dispute are whether Rocket Lawyer’s
5 conduct constitutes violation of the Lanham Act, 15 U.S.C. § 1125(a) and California
6 Business & Professions Code §§ 17500 and 17200 *et seq.* and whether Rocket
7 Lawyer’s claims against LegalZoom are valid.

8 **B. Defendant**

9 The key legal issues from Defendant’s perspective include:

- 10 • Whether Rocket Lawyer has adequately disclosed in its advertisements
11 the terms and conditions related to its free products and services;
- 12 • The nature of the relationship between Plaintiff and Travis Giggy
13 and/or LegalSpring.com;
- 14 • Whether LegalSpring.com constitutes advertising for Plaintiff;
- 15 • Whether Plaintiff’s operation and/or direction of LegalSpring.com
16 constitutes advertising and, if so, whether such advertising is
17 misleading and or deceptive;
- 18 • Whether Plaintiff’s claims are barred in whole or in part by the doctrine
19 of unclean hands; and
- 20 • Whether Plaintiff’s claims are barred in whole or in party by the
21 doctrine of laches and/or estoppel.

22 **III. PERCIPIENT WITNESSES AND KEY DOCUMENTS**

23 **A. Percipient Witnesses**

24 **1. Plaintiff**

25 Based on information reasonably available to LegalZoom at this time,
26 LegalZoom hereby identifies the following percipient witnesses:

- 27 (a) Brian Liu;
- 28 (b) Dorian Quispe;

1 (c) Scott MacDonnell; and

2 (d) Eddie Hartman

3 **2. Defendant**

4 Defendant's expected witnesses include:

5 (a) Charles Moore, Founder and Executive Chairman, Rocket Lawyer;

6 (b) David Bega, Senior Vice President, Sales and Business Development,
7 Rocket Lawyer; and

8 (c) Alisa Weiner, Vice President, Marketing, Rocket Lawyer.

9 **B. Key Documents**

10 **1. Plaintiff**

11 Based upon information reasonably available to LegalZoom at this time,
12 LegalZoom hereby describes the key documents:

13 (a) LegalZoom's trademarks and file history;

14 (b) Communications and other documents related to RocketLawyer's use
15 of LegalZoom's trademarks as search terms to trigger RocketLawyer's
16 advertisements;

17 (c) Communications and other documents related to RocketLawyer's
18 advertisements using the term "free";

19 (d) Communications and other documents related to RocketLawyer's
20 negative option program;

21 (e) RocketLawyer's registration of the domain names
22 www.legalzoomer.com and www.legalzoomgadget.com; and

23 (f) Non-party Legalspring.com's disclosure related to its affiliate
24 relationships with third party sites reviewed on its site.

25 **2. Defendant**

26 Based on information reasonably available at this time, Rocket Lawyer
27 expects to rely on:

28 (a) Advertising by Plaintiff in various formats and locations;

- 1 (b) Screenshots of advertising by Rocket Lawyer in various formats and
2 locations;
- 3 (c) Screenshots of LegalSpring.com;
- 4 (d) Documents and communications establishing the relationship between
5 Plaintiff and LegalSpring.com, as well as its creator, Travis Giggy;
- 6 (e) Documents showing the volume business driven to Plaintiff through its
7 affiliation with and/or direction of LegalSpring.com;
- 8 (f) Documents showing Plaintiff's history of duplicating Rocket Lawyer's
9 products, services, and web layouts;
- 10 (g) Documents and communications related to LegalZoom's advertising
11 use of the word "free".

12 The above documents reflect what was attached as part of Rocket Lawyer's
13 answer and counterclaims and the documents currently available to Rocket Lawyer.
14 Both parties have served written discovery and Rocket Lawyer anticipates that
15 additional evidence in support of Rocket Lawyer's counterclaims and defenses will
16 be produced in discovery.

17 **IV. DAMAGES**

18 **A. Plaintiff**

19 LegalZoom is currently unaware of the total amount of damages as it has not
20 yet received any discovery in this case. LegalZoom seeks damages adequate to
21 compensate it for Rocket Lawyer's misconduct, including its actual damages,
22 Rocket Lawyer's profits, treble and punitive damages, as well as its attorneys' fees
23 and costs, in an amount to be ascertained pursuant to applicable laws, including
24 without limitation, 15 U.S.C. §1117 and California law. LegalZoom further seeks
25 the transfer of the domains, www.legalzoomer.com and
26 www.legalzoomgadget.com, to LegalZoom. LegalZoom further seeks a temporary,
27 preliminary and permanent injunction against Rocket Lawyer from further
28 registration of domain names that are identical or confusingly similar to

1 LegalZoom's trademarks, or any infringing or dilutive variations thereto, from
2 further use of LegalZoom's trademarks as search terms to trigger sponsored links to
3 Rocket Lawyer's false and misleading advertisements, from further use of false and
4 misleading advertisements as alleged in LegalZoom's First Amended Complaint,
5 and from any further acts of false and misleading advertising and unfair competition
6 that would damage or injure LegalZoom.

7 **B. Defendant**

8 Rocket Lawyer has no knowledge of the total amount of damages as no
9 discovery has not yet occurred. Rocket Lawyer seeks damages resulting from
10 LegalZoom's improper conduct, including statutory damages, restitution for
11 LegalZoom's violation of Cal. Bus. & Prof. Code § 17200, punitive and exemplary
12 damages, and its reasonable attorneys' fees and costs. Rocket Lawyer expects that
13 the total amount of damages will be determined in part by the nature of
14 LegalZoom's relationship with LegalSpring, the volume of customers channeled to
15 LegalZoom by LegalSpring, the revenue received as a result and any payments
16 made by LegalZoom to LegalSpring in exchange.

17 **V. INSURANCE**

18 There does not currently appear to be insurance coverage for the claims being
19 alleged in this action.

20 **VI. LIKELIHOOD OF MOTIONS**

21 **A. Motions to Add Parties**

22 The Parties believe that the likelihood is low that either party will file a
23 motion to add additional parties.

24 **B. Motions to Amend Pleadings**

25 The Parties believe that the likelihood is low that either party will file a
26 motion to amend the pleadings and as such have agreed that the pleadings may be
27 amended only upon a showing of good cause.

28

1 **C. Motions to Transfer Venue**

2 The parties do not anticipate any motions to transfer venue.

3 **VII. DISCOVERY**

4 **A. Completed Discovery**

5 The Parties agreed to allow discovery to commence on March 8, 2013. Each
6 Party has served written discovery as of March 13, 2013.

7 **B. Contemplated Future Discovery**

8 The Parties' contemplated future discovery will be addressed *supra* in Section
9 VIII regarding the Discovery Plan. LegalZoom proposes a discovery cut-off of
10 December 3, 2013. Rocket Lawyer proposes a discovery cut-off of December 6,
11 2013.

12 **VIII. DISCOVERY PLAN**

13 **A. Anticipated Depositions**

14 **1. By Plaintiff**

15 At this time, LegalZoom anticipates taking approximately five depositions,
16 including, the depositions of: (1) Charley Moore, founder of Executive Chairman of
17 Rocket Lawyer; (2) David Baga, Senior Vice President of Sales and Business
18 Development of Rocket Lawyer; and (3) Alisa Weiner, Vice President of Marketing
19 of Rocket Lawyer.

20 **2. By Defendant**

21 Currently, Rocket Lawyer anticipates taking approximately seven (7)
22 depositions, including those of: (1) Travis Giggy; (2) LegalSpring; (3) LegalZoom,
23 Inc.; (4) Brian Liu; (5) Dorian Quispe; and (6) Scott MacDonnell; and (7) Eddie
24 Hartman. Rocket Lawyer is considering deposing third parties including Alexander
25 Rozman and Google, Inc.

26 **B. Contemplated Written Discovery Requests**

27 Written discovery has been served by both Parties as of March 12, 2013.
28 However, the Parties anticipate that each may serve additional written discovery in

1 the form of interrogatories, requests for admission, and requests for production of
2 documents.

3 **C. Schedule for Completion of Discovery**

4 LegalZoom proposes a discovery cut-off of December 3, 2013. Rocket
5 Lawyer proposes a discovery cut-off of December 6, 2013. LegalZoom proposes an
6 expert disclosure deadline of September 24, 2013, and rebuttal report deadline of
7 October 29, 2013. Rocket Lawyer proposes an expert disclosure deadline of
8 September 27, 2013, and rebuttal report deadline of November 1, 2013. The Parties
9 agree that expert depositions shall be held in October or November 2013 prior to the
10 cut-off of discovery.

11 **IX. PROPOSED DISCOVERY CUT-OFF DATE**

12 LegalZoom proposes a discovery cut-off of December 3, 2013. Rocket
13 Lawyer proposes a discovery cut-off of December 6, 2013.

14 **X. ISSUES/CLAIMS RESOLVABLE UPON MOTION**

15 **A. Plaintiff**

16 While LegalZoom believes a dispositive motion could be filed on one or more
17 of its claims at this time, LegalZoom will defer the filing of any such motion until it
18 obtains discovery from Rocket Lawyer.

19 **B. Defendant**

20 Rocket Lawyer anticipates that it may seek to resolve certain issues, claims
21 and/or counterclaims through motion for summary judgment, depending upon the
22 documents produced and information exchanged in discovery.

23 **XI. SCHEDULE OF CONTEMPLATED LAW AND MOTION MATTERS**

24 **A. Plaintiff**

25 LegalZoom anticipates that it will file a motion for partial summary judgment
26 concerning one or more issues pursuant to Federal Rule of Civil Procedure 56.

27 **B. Defendant**

28 Rocket Lawyer anticipates that it will file a motion for summary judgment or

1 partial summary judgment pursuant to Federal Rule of Civil Procedure 56.

2 **XII. SETTLEMENT DISCUSSIONS**

3 The Parties have agreed to an early settlement conference with Magistrate
4 Gandhi to determine whether the Parties may be able to resolve this case. The
5 Parties are continuing to discuss the process for mediation.

6 **XIII. ESTIMATED TRIAL LENGTH**

7 The Parties anticipate a 4-5 day jury trial.

8 **XIV. PROPOSED DATES**

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial (jury) (court) Estimated length: 4-5 days	8:30 am		February 14, 2014	March 7, 2014	
[Jury trial] Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	9:30 am	-1	February 7, 2014	February 28, 2014	
[Court trial] File Findings of Fact and Conclusions of Law; Hearing on Motions in Limine		-1	N/A	N/A	
Pretrial Conference; Motions in Limine to be filed; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case	3:30 pm	-4	January 17, 2014	January 31, 2014	
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit & Witness Lists; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.		-6	January 3, 2014	January 17, 2014	

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Last date to conduct Settlement Conference		-8	2 weeks after ruling on dispositive motion	December 20, 2013	
Last day for hearing motions	9:30 am	-9	December 10, 2013	December 13, 2013	
Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]		-10	December 3, 2013 (expert disclosures September 24, 2013)	December 6, 2013 (expert disclosures September 27, 2013)	
Last to Amend Pleadings or Add Parties			Good cause	Good cause	

xv. OTHER ISSUES

Confidential information will be exchanged in this matter; therefore, the parties agree that a protective order will be necessary and will attempt to agree on the form of the protective order. The parties also agree that service by e-mail will be regarded as personal service under Federal Rule of Civil Procedure 5(b) for purposes of serving any document or pleading. For any pleading that are non-confidential and that are served using the ECF system, the parties agree to accept service via the NEF from the ECF system. For any portion of any pleading that is confidential and that is filed with the Court under seal, the parties agree to accept service by e-mail, which service shall be regarded as personal service under Federal Rule of Civil Procedure 5(b).

The parties have also agreed to discuss a format for productions and a privilege log. They are also considering exchanging search terms for the search and review of documents responsive to each parties' respective requests for production.

1 **XVI. CORPORATE DISCLOSURES**

2 **A. Plaintiff**

3 LegalZoom has lodged a Certification and Notice of Interested Parties with
4 the Court identifying Institutional Venture Partners XIII, L.P. and Polaris Venture
5 Partners V, L.P. as shareholders of LegalZoom. *See* ECF No. 2. Other than the
6 entities listed on LegalZoom’s Certification and Notice of Interested Parties and the
7 named parties, there are no entities known by LegalZoom to have either: (a) a
8 financial interest in the subject matter in controversy or in a party to the proceeding;
9 or (2) any other kind of interest that could be substantially affected by the outcome
10 of the proceeding.

11 **B. Defendant**

12 Defendant has lodged a Corporate Disclosure Statement with the Court
13 identifying that Rocket Lawyer has no parents or subsidiaries. *See* ECF No. 8.
14 Other than the entities listed on Rocket Lawyer’s Corporate Disclosure Statement
15 and the named Parties, there are no entities known by Rocket Lawyer to have either:
16 (a) a financial interest in the subject matter in controversy or in a party to the
17 proceeding; or (2) any other kind of interest that could be substantially affected by
18 the outcome of the proceeding.

19 Dated: April 8, 2013

Respectfully submitted,

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1 **PROOF OF SERVICE**

2 I, the undersigned, certify and declare that I am over the age of 18 years,
3 employed in Suffolk County Commonwealth of Massachusetts, and not a party to
4 the above-entitled cause. On April 8, 2013, I electronically filed the following
5 document(s) using the CM/ECF system.

6 **JOINT SCHEDULING CONFERENCE REPORT PURSUANT TO**
7 **RULE 26(f)**

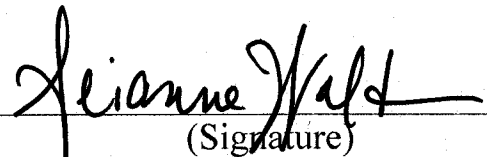
8 Participants in the case who are registered CM/ECF users will be served by
9 the CM/ECF system. I further certify that some of the participants in the case are not
10 registered CM/ECF users. I have mailed the foregoing document by First Class
11 Mail, Federal Express, postage prepaid, or have dispatched it to a third party
12 commercial carrier for delivery within 3 calendar days, to the following non-
13 CM/ECF participants:

14
15 **Mary Ann Thi Nguyen**
16 Glaser Weil Fink Jacobs Howard Avchen
17 and Shapiro LLP
18 10250 Constellation Boulevard
19 19th Floor
20 Los Angeles, CA 90067

21 I declare under penalty of perjury that I am employed in the office of a
22 member of the bar of this Court at whose direction this service was made and that
23 the foregoing is true and correct.

24 Executed on April 8, 2013, at Boston, Massachusetts.

25 Arianne M. Waldron
26 (Type or print name)

27 
28 (Signature)