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15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

Glaser Weil Fink Jacobs  
 Howard Avchen & Shapiro LLP

18 LEGALZOOM.COM, INC., a Delaware  
 19 corporation,  
 20  
 21 Plaintiff,  
 22  
 23 v.  
 24 ROCKET LAWYER INCORPORATED,  
 25 a Delaware corporation,  
 26  
 27 Defendants.

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

Hon. Gary A. Feess  
 Courtroom: 740

**PLAINTIFF LEGALZOOM.COM,  
 INC.'S NOTICE OF MOTION AND  
 MOTION FOR SUMMARY  
 JUDGMENT; MEMORANDUM OF  
 POINTS AND AUTHORITIES;  
 DECLARATION OF MARY ANN T.  
 NGUYEN**

Date: September 30, 2013  
 Time: 9:30 a.m.  
 Courtroom: 740

[SEPARATE STATEMENT OF  
 UNDISPUTED MATERIAL FACTS;  
 [PROPOSED] ORDER FILED  
 CONCURRENTLY HEREWITH]

Complaint Filed: November 20, 2012

1 **TO THE DEFENDANT AND ITS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 30, 2013 at 9:30 a.m. in  
3 Courtroom 740 of the above-referenced Court, located at 312 North Spring Street,  
4 Los Angeles, California 90012, Plaintiff LegalZoom.com, Inc. (“LegalZoom”) will  
5 and hereby does move for summary judgment on its claims. Specifically, LegalZoom  
6 moves this Court to enter summary judgment declaring that Defendant Rocket  
7 Lawyer Incorporated (“Rocket Lawyer”) is liable for False Advertising pursuant to  
8 the Lanham Act, 15 U.S.C. § 1125(a), False Advertising pursuant to California  
9 Business and Professions Code section 17500, and Unfair Competition pursuant to  
10 California Business and Professions Code section 17200 *et seq.* as a matter of law,  
11 leaving only the amount of LegalZoom’s damages to be determined at trial.

12 This Motion is made pursuant to Rule 56 of the Federal Rules of Civil  
13 Procedure and is based upon this Notice of Motion, the accompanying Memorandum  
14 of Points and Authorities, the Declaration of Mary Ann T. Nguyen, the Separate  
15 Statement of Undisputed Material Facts, all papers and pleadings in the Court’s file,  
16 and upon such oral argument as may be made at the hearing on this Motion.

17  
18 DATED: August 23, 2013

Respectfully submitted,

19 GLASER WEIL FINK JACOBS  
20 HOWARD AVCHEN & SHAPIRO LLP

21 By:  /s/ Fred Heather  
22 PATRICIA L. GLASER  
23 FRED D. HEATHER  
24 MARY ANN T. NGUYEN  
25 Attorneys for Plaintiff  
26 LegalZoom.com, Inc.  
27  
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a straightforward case about false advertising by an online company that  
4 purports to provide “free” online legal products. Defendant Rocket Lawyer  
5 Incorporated (“Rocket Lawyer”) tells consumers that they can “incorporate for free...  
6 pay no fees (\$0),” and get “free... LLCs,” “free help from local attorneys,” “free legal  
7 review,” and “free” trials of Rocket Lawyer’s “Basic Legal Plan” and “Pro Legal  
8 Plan.” However, as demonstrated below, each of these online advertising claims is  
9 literally false.

10 Given Rocket Lawyer’s use of false factual statements in its online  
11 advertisements, Rocket Lawyer has engaged in false advertising and unfair  
12 competition in violation of the Lanham Act and California Professions and Business  
13 Code, and an award of summary judgment on these claims for LegalZoom is  
14 appropriate.

15 **II. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

16 **A. The Parties And The Products**

17 LegalZoom and Rocket Lawyer are both providers of online legal products.  
18 (LegalZoom’s Separate Statement of Undisputed Material Facts “SS,” ¶ 1, Rocket  
19 Lawyer’s Answer to Amended Complaint and Amended Counterclaims (“Rocket  
20 Lawyer’s Answer and Amended Counterclaims”), ECF No. 17, 12:2-3 (“Rocket  
21 Lawyer and LegalZoom compete with one another... in the legal services  
22 industry....”).) LegalZoom and Rocket Lawyer compete with one another in the  
23 online legal products industry. (SS, ¶ 2, *id.*) LegalZoom and Rocket Lawyer both  
24 offer incorporation and formation services and other online legal products. (SS, ¶ 3,  
25 *id.* at 13:1-2.) On its website, Rocket Lawyer touts to provide affordable legal  
26 services to individuals, families and business owners. (SS, ¶ 4, Declaration of Mary  
27 Ann T. Nguyen (“Nguyen Decl.”), ¶ 3, **Exhibit A**, a true and correct copy of Rocket  
28 Lawyer’s “About Us” webpage.)

1           **B.     Rocket Lawyer’s Online Advertisements**

2                   **1.     “Free” corporations and LLCs**

3           At least in 2011, 2012 and 2013, Rocket Lawyer advertised “free”  
4 incorporation and “free” limited liability companies (LLCs). (SS, ¶ 5, Nguyen Decl.,  
5 ¶ 4, **Exhibit B**, true and correct copies of screen grabs of Rocket Lawyer’s  
6 advertisements.) For example, Rocket Lawyer has advertised “Incorporate for Free...  
7 Pay No Fees \$0,” “Incorporate Your Business at Rocket Lawyer Free,” “Form Your  
8 LLC Free at Rocket Lawyer” and “Free... LLCs.” (SS, ¶ 6, Nguyen Decl., ¶ 4,  
9 **Exhibit B**, true and correct copies of screen grabs of Rocket Lawyer’s  
10 advertisements.) However, Rocket Lawyer’s customers cannot incorporate or form  
11 an LLC for “free” through Rocket Lawyer’s services. Indeed, customers seeking to  
12 incorporate or form an LLC through Rocket Lawyer’s services are nonetheless  
13 required to pay the state fees associated with incorporation and formation. (SS, ¶ 7,  
14 Nguyen Decl., ¶¶ 2, 5, **Exhibit C**, true and correct copies of screen grabs of state  
15 filing options through Rocket Lawyer’s services on Rocket Lawyer’s website.) Even  
16 more, customers who access the Rocket Lawyer link to the “Incorporate for Free...  
17 Pay No Fees \$0,” “Incorporate Your Business at Rocket Lawyer Free,” “Form Your  
18 LLC Free at Rocket Lawyer” or “Free... LLCs” do not discover that they must  
19 actually pay the state filing fees until after they have accessed the Rocket Lawyer  
20 website, completed a “company setup” and filled out information relating to the  
21 “company details.” (SS, ¶ 8, Nguyen Decl., ¶ 6, **Exhibit D**, true and correct copies of  
22 screen grabs of Rocket Lawyer’s “interview” for “company set up” and “company  
23 details” prior to “state filing option.”) Rocket Lawyer subsequently changed the  
24 language of these advertisements after LegalZoom filed its original Complaint.<sup>1</sup> (SS,  
25

26 <sup>1</sup> Nonetheless, liability for false advertising under the Lanham Act may not be avoided by removing  
27 false statements from later advertising. *Skydrive Arizona, Inc. v. Quattrocchi*, 2009 WL 6597892,  
28 25 (D. Ariz. Feb. 2, 2009). In *Skydrive Arizona v. Quattrocchi*, the defendants argued that they had  
removed the claimed objectionable language from their websites, but the court nevertheless held that  
“those statements are indeed relevant to establish false advertising,” and reasoned that the court had  
come across no authority providing that removal of false statements from later advertising could



1 ¶ 9, Rocket Lawyer’s Answer and Amended Counterclaims, ECF No. 17, 2:26-3:1  
2 (“Rocket Lawyer admits that it has produced new advertisements regarding its  
3 business and a variety of services it offers since the service of the original  
4 complaint....”).)

5 **2. “Free help from local attorneys” and “Free legal review”**

6 At least in 2012, Rocket Lawyer advertised “Free help from local attorneys”  
7 and “Free legal review.” (SS, ¶ 10, Nguyen Decl., ¶ 7, **Exhibit E**, true and correct  
8 copies of screen grabs of Rocket Lawyer’s advertisements.) However, Rocket  
9 Lawyer’s customers could not access “help from local attorneys” or “legal review”  
10 for free. Customers could access the “free help from local attorneys” and the “free  
11 legal review” *only* if they were “Eligible Members” who had either (a) purchased  
12 three consecutive months of Rocket Lawyer’s monthly Legal Plan, or (b) purchased a  
13 Rocket Lawyer annual Legal Plan. (SS, ¶ 11, Nguyen Decl., ¶ 8, **Exhibit F**, a true  
14 and correct copy Rocket Lawyer’s On Call Terms of Services, dated July 2012, as  
15 printed on November 27, 2012). This paid membership requirement for access to the  
16 purported “free help from local attorneys” and “free legal review” was not disclosed  
17 in close proximity to the advertisements on Rocket Lawyer’s website. (SS, ¶ 12,  
18 Nguyen Decl., ¶ 9, *see* [http://www.rocketlawyer.com/on-call-terms-of -service.rl](http://www.rocketlawyer.com/on-call-terms-of-service.rl).)  
19 Indeed, this requirement was only disclosed in Rocket Lawyer’s “On Call Terms of  
20 Service,” which was accessible to customers on a separate link found at  
21 <http://www.rocketlawyer.com/on-call-terms-of -service.rl>. (SS, ¶ 13, Nguyen Decl., ¶  
22 9, *see* <http://www.rocketlawyer.com/on-call-terms-of -service.rl>.) Rocket Lawyer  
23 subsequently changed the language of its “On Call Terms of Service,” to provide that  
24 “Customers who enter into a one week (seven (7) calendar days) free trial are eligible  
25 to receive one (1) free legal matter consultation...” after LegalZoom filed its original  
26 Complaint. (SS, ¶ 14, Nguyen Decl., ¶ 10, **Exhibit G**, a true and correct copy of

27  
28 shield a party from liability. *Id.*

1 Rocket Lawyer’s On Call Terms of Service, dated November 2012, as printed on  
2 November 27, 2012.) This access during a “free trial” was not available before  
3 LegalZoom’s filing of the original Complaint. (SS, ¶ 15, Nguyen Decl., ¶ 10,  
4 **Exhibits F and G.**) In any event, even with Rocket Lawyer’s recent change, access  
5 to the advertised “free help from local attorneys” and the “free legal review” was still  
6 conditioned upon customers actively enrolling in Rocket Lawyer’s trial membership  
7 and negative option program and providing Rocket Lawyer with their credit card  
8 information. (SS, ¶ 16, Nguyen Decl., ¶ 11, **Exhibit G.**) As provided in *Federal*  
9 *Trade Commission v. Willms*, 2011 WL 4103542, \*4 (W.D. Wash. Sept. 13, 2011), a  
10 “free” offer subject to enrollment in a negative option program is not “free” and  
11 violates the Federal Trade Commission Act.

### 12 3. “Free trial”

13 At least in 2012 and 2013, Rocket Lawyer advertised on its website “free”  
14 trials of its “Basic Legal Plan” and “Pro Legal Plan.” (SS, ¶ 17, Nguyen Decl., ¶ 12,  
15 **Exhibit H**, a true and correct copy of Rocket Lawyer advertisement (“Try it Free”).)  
16 However, Rocket Lawyer’s customers cannot “try” Rocket Lawyer’s “Basic Legal  
17 Plan” or “Pro Legal Plan” for “free.” Customers who sign up for a one-week free  
18 trial membership under the “Basic Legal Plan” or “Pro Legal Plan” must first provide  
19 Rocket Lawyer with their credit card information and enroll in Rocket Lawyer’s  
20 “negative option” program – *i.e.*, a program in which customers are automatically  
21 enrolled and billed and must contact Rocket Lawyer to opt out of. (SS, ¶ 18, Nguyen  
22 Decl., ¶ 13, **Exhibit I**, a true and correct copy of Rocket Lawyer’s “free” trial  
23 enrollment page after the outset of the offer.) As stated above, a “free” offer subject  
24 to enrollment in a negative option program is not “free.” See *FTC v. Willms*, 2011  
25 WL 4103542, \*4. A disclosure of Rocket Lawyer’s negative option is found in  
26 standard font only upon the customer being directed to enroll in the “free trial.” (SS,  
27 ¶ 19, Nguyen Decl., ¶ 13, *see* **Exhibit I.**) However, no further acknowledgement  
28 regarding the negative option is provided. (SS, ¶ 20, Nguyen Decl., ¶ 13, *see* **Exhibit**

1 I.)

2 C. LegalZoom's Prior Efforts To Resolve Matters Outside Of Court

3 In an attempt to resolve this matter amicably outside the courts, on October 13,  
4 2011, LegalZoom's Chairman, Brian Liu, contacted Rocket Lawyer's CEO, Dan Nye,  
5 stating that there were "important issues that [LegalZoom's] legal department has  
6 brought up regarding [Rocket Lawyer's] advertising." (SS, ¶ 21, Nguyen Decl., ¶ 14,  
7 **Exhibit J**, a true and correct copy of the email exchange between Brian Liu and Dan  
8 Nye, dated October 13, 2011.) Mr. Nye responded by stating that Mr. Liu should  
9 discuss this issue with Charley Moore, Rocket Lawyer's founder and Chairman, and  
10 copied Mr. Moore on the email exchange. (SS, ¶ 22, Nguyen Decl., ¶ 14, **Exhibit J**.)

11 On October 14, 2011, Mr. Liu had a telephone conversation with Mr. Moore,  
12 stating that LegalZoom took issue with Rocket Lawyer's ads, which promised "Set up  
13 a Free LLC... Totally Free," and "100% Free," since state filing fees must *always* be  
14 paid when setting up an LLC through Rocket Lawyer. (SS, ¶ 23, Nguyen Decl., ¶ 15,  
15 **Exhibit K**, a true and correct copy of the email from Brian Liu to Charley Moore,  
16 dated October 14, 2011.) Mr. Liu also implored Mr. Moore to read and follow the  
17 Federal Trade Commission's guidelines regarding the use of the word "free" in  
18 advertising, which requires, among other things, that "all terms, conditions and  
19 obligations upon which receipt and retention of the "Free" item are contingent should  
20 be set forth clearly and conspicuously *at the outset of the offer* so as to leave no  
21 reasonable probability that the terms of the offer might be misunderstood." (SS, ¶ 24,  
22 Nguyen Decl., ¶ 15, **Exhibit K** (*emphasis added*)). Mr. Liu requested that Rocket  
23 Lawyer immediately take down these and other misleading advertisements. (SS, ¶ 25,  
24 Nguyen Decl., ¶ 15, **Exhibit K**.)

25 One month later, the misleading Rocket Lawyer advertising still had not been  
26 changed or removed. (SS, ¶ 26, Nguyen Decl., ¶ 16, **Exhibit L**.) Beginning  
27 November 15, 2011, in a series of emails, Mr. Liu repeatedly requested that Rocket  
28 Lawyer discontinue its false advertising and unfair competition practices to no avail.

1 (SS, ¶ 27, Nguyen Decl., ¶ 16, Exhibit L.)

2 Thus, LegalZoom respectfully requests that this Court hold that Rocket  
3 Lawyer’s advertisements constitute false advertising under the Lanham Act and false  
4 advertng and unfair competition under California law as a matter of law.

5 **III. ARGUMENT**

6 **A. Legal Standard For Summary Judgment**

7 Summary judgment shall be granted “if the movant shows that there is no  
8 genuine dispute as to any material fact and the movant is entitled to judgment as a  
9 matter of law.” Fed. R. Civ. P. 56(a); see also *Green v. Sun Life Assur. Co.*, 383 F.  
10 Sup. 2d 1224, 1226 (C.D. Cal. 2005). A “genuine issue” exists if “a reasonable jury  
11 could return a verdict for the nonmoving party” and a fact is material if it “might  
12 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby,*  
13 *Inc.*, 477 U.S. 242, 248 (1986). The Court shall determine, if practicable, what  
14 material facts exist without substantial controversy. *Fleener v. Trinity Broadcasting*  
15 *Network*, 203 F. Sup. 2d 1142, 1147 (C.D. Cal. 2001).

16 The initial burden is on the moving party to establish the absence of any  
17 genuine issues of material fact and, thereby, establishing entitlement to judgment as a  
18 matter of law. Fed. R. Civ. P. 56(c); see also *Celotex Corp. v. Catrett*, 477 U.S. 317,  
19 323 (1986); *Anderson*, 477 U.S. at 250. After the moving party has sustained its  
20 initial burden, the nonmoving party must come forth with enough evidence to  
21 demonstrate the existence of a “genuine issue” of material fact for trial. *Anderson*,  
22 477 U.S. at 256; Fed. R. Civ. P. 56(e). The nonmoving party’s burden is such that it  
23 must do more than simply show there is some metaphysical doubt as to the material  
24 facts. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986);  
25 see also *Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995)  
26 (providing that “[t]he mere existence of a scintilla of evidence in support of the  
27 nonmoving party’s position is not sufficient” to prevent summary judgment).

28

1           **B. Rocket Lawyer’s Advertisements Constitute False Advertising**  
2           **Under The Lanham Act**

3           “The purpose of the [Lanham] Act is to insure truthfulness in advertising and to  
4 eliminate misrepresentations with reference to the inherent quality or characteristics  
5 of another’s product.” *Coca-Cola Co. v. Tropicana Products, Inc.*, 690 F.2d 312, 318  
6 (2d Cir. 1982). The Lanham Act is designed and should be enforced to protect the  
7 public from deception by deterring deceivers. *Monsanto Chemical Co. v. Perfect Fit*  
8 *Products Mfg. Co.*, 349 F.2d 389, 395-96 (2d Cir. 1965), *cert. denied*, 383 U.S. 942  
9 (1966). The Ninth Circuit too has stressed that the trial court’s primary function  
10 should center on making violations of the Lanham Act unprofitable. *Maier Brewing*  
11 *Co. v. Fleischmann Distilling Corp.*, 390 F.2d 117 (9th Cir. 1968); *Playboy*  
12 *Enterprises, Inc. v. Baccarat Clothing Co.*, 692 F.2d 1272, 1274 (9th Cir. 1982).

13           To establish a false advertising claim under the Lanham Act<sup>2</sup>, a plaintiff must  
14 show: (1) false statement of fact by the defendant in a commercial advertisement  
15 about its own or another’s product; (2) the statement actually deceived or has the  
16 tendency to deceive a substantial segment of its audience; (3) the deception is  
17 material, in that it is likely to influence the purchasing decision; (4) the defendant  
18 caused its false statement to enter interstate commerce; and (5) the plaintiff has been  
19 or is likely to be injured as a result of the false statement, either by direct diversion of  
20 sales from itself to defendant or by a lessening of the goodwill associated with its  
21 products. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir.  
22 1997).

23 \_\_\_\_\_  
24 <sup>2</sup> Section 43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a) provides in pertinent part:

25 (a) Any person who, on or in connection with any goods or services, or any container for goods,  
26 uses in commerce any... false or misleading representation of fact, which—

26 (A) ...

27 (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities,  
28 or geographic origin of his or her or another person’s goods, services, or commercial activities,  
shall be liable in a civil action by any person who believes that he or she is or is likely to be  
damaged by such act. 15 U.S.C. § 1125(a) (1988).

1 LegalZoom can show by undisputed facts that Rocket Lawyer has engaged in  
2 each element of a Lanham Act false advertising claim, and therefore is entitled to  
3 summary judgment on this claim, as a matter of law.

4 **1. Rocket Lawyer’s Advertisements are False Commercial**  
5 **Advertisements**

6 **a. Rocket Lawyers advertisements are literally false.**

7 Whether a statement is literally false is a determination to be made as a matter  
8 of law. *Allsup, Inc. v. Advantage 2000 Consultants Inc.*, 428 F.3d 1135, 1138 (8th  
9 Cir. 2005). Therefore this determination is appropriate for summary judgment.

10 To demonstrate falsity within the meaning of the Lanham Act, a plaintiff may  
11 show that the statement was literally false, either on its face or by necessary  
12 implication, or that the statement was literally true, but likely to mislead or confuse  
13 consumers. *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d at 1139. The test for  
14 literal falsity is simple: “if a defendant’s claim is untrue, it must be deemed literally  
15 false.” *Castrol Inc. v. Pennzoil Co.*, 987 F.2d 939, 944 (3d Cir. 1993); *see also* 16  
16 C.F.R. § 251.1 (2009) (“FTC Guide Concerning The Use of the Word ‘Free’ And  
17 Similar Representations”) (false advertising occurs where the “free” offer is not  
18 accompanied by a sufficient disclaimer making clear that the offer is not actually  
19 free).

20 As stated above, Rocket Lawyer’s advertisements – “incorporate for free... pay  
21 no fees (\$0),” “form your LLC free at Rocket Lawyer,” “free help from local  
22 attorneys,” “free legal review,” and “free” trials of Rocket Lawyer’s “Basic Legal  
23 Plan” and “Pro Legal Plan” – are literally false. Rocket Lawyer customers cannot  
24 incorporate, form an LLC, get help from local attorneys, get legal review or get trials  
25 of Rocket Lawyer’s plans for “free.” Rather, Rocket Lawyer customers seeking to  
26 incorporate or form an LLC for “free” through Rocket Lawyer’s services are  
27 nonetheless required to pay the state fees associated with incorporation or formation,  
28 customers could access Rocket Lawyer’s “free help from local attorneys” and the

1 “free legal review” only if they were **paid** members of Rocket Lawyer’s “Basic Legal  
2 Plan” or “Pro Legal Plan,” and customers who signed up for a one-week free trial  
3 membership under Rocket Lawyer’s “Basic Legal Plan” or “Pro Legal Plan” were  
4 required to enroll in Rocket Lawyer’s “negative option” program. See *Spiegel, Inc. v.*  
5 *Fed. Trade Comm’n*, 494 F.2d 59 (7th Cir. 1974) (“free trial” offers conditioned on  
6 customer’s meeting retailer’s credit criteria were not truly free). Accordingly, Rocket  
7 Lawyer’s advertisements are literally false as a matter of law.

8 **b. Rocket Lawyers advertisements are commercial**  
9 **advertisements.**

10 Commercial advertisements, for purposes of the Lanham Act are: (i)  
11 commercial speech; (ii) by a defendant who is in commercial competition with  
12 plaintiff; (iii) for the purpose of influencing consumers to buy defendant's goods or  
13 services; and (iv) must be disseminated sufficiently to the relevant purchasing public  
14 to constitute "advertising" or "promotion" within that industry. *Coastal Abstract Serv.*  
15 *Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 735 (9th Cir. 1999), citing 15 U.S.C. §  
16 1125(a)(1)(B).

17 **(i) Commercial speech.**

18 The Supreme Court has recognized that “expression related solely to the  
19 economic interests of the speaker and its audience” will be considered commercial  
20 speech. *Oxycal Lab. v. Jeffers*, 909 F. Supp. 719, 724 (S.D. Cal. 1995) (citing  
21 *Cincinnati v. Discovery Network*, 507 U.S. 410, 422 (1993)). Rocket Lawyer’s  
22 advertisements to customers and potential customers regarding the cost of Rocket  
23 Lawyer’s products are purely economic in nature and therefore constitute commercial  
24 speech.

25 **(ii) Parties in commercial competition.**

26 Commercial competitors, for purposes of the Lanham Act, are “persons  
27 endeavoring to do the same thing and each offering to perform the act, furnish the  
28 merchandise, or render the service better or cheaper than his rival.” *Summit Tech. v.*

1 *High-line Med. Instruments. Co.*, 933 F. Supp. 918, 939 (C.D. Cal. 1996). Since both  
2 LegalZoom and Rocket Lawyer are providers of online legal products, they are in  
3 commercial competition with each other.

4 **(iii) Purpose of influencing customers.**

5 To be considered a statement made “for the purpose of influencing consumers  
6 to buy the defendant's goods and services,” the statement must propose a commercial  
7 transaction. If it does not, it is not advertising and cannot be the subject of a Lanham  
8 Act “false advertising” claim. *See, e.g., Rice v. Fox Broadcasting Co.*, 330 F.3d 1170,  
9 1180-81 (9th Cir. 2003). Because Rocket Lawyer directs its advertisements to  
10 individuals, families and business owners looking for affordable legal services and  
11 products, the purpose of its false advertisements concerning the costs of Rocket  
12 Lawyer’s products is to influence customers to purchase Rocket Lawyer’s products.

13 **(iv) Dissemination sufficiently to the relevant**  
14 **purchasing public.**

15 Advertisements on the internet have been found to be disseminated sufficiently  
16 to the relevant purchasing public for purposes of the Lanham Act. *See Healthport*,  
17 563 F. Supp. 2d at 1179; *see also Certain Teed Corp. v. Seattle Roof Brokers*, 2010  
18 WL 2640083, \*5 (W.D. Wash. June 28, 2010) (providing that statements on websites  
19 draw interstate audience and come within the ambit of the Lanham Act); *Thermal*  
20 *Design, Inc. v. Guardian Bldg. Products, Inc.*, 2009 WL 1181327, \*2 (E.D. Wis. Apr.  
21 29, 2009) (marketing materials, including those on the internet, meet the commercial  
22 advertising requirement because they are “disseminated sufficiently to the relevant  
23 purchasing public.”) Since Rocket Lawyer’s advertisements were on the internet, the  
24 advertisements are disseminated sufficiently to the relevant purchasing public.

25 **2. Rocket Lawyer’s Advertisements Are Presumed to Have**  
26 **Deceived and Have the Tendency to Deceive a Substantial**  
27 **Segment of its Audience**

28 Rocket Lawyer’s advertisements are likely to deceive their intended audience,



1 the users of online legal help, because they are likely to cause confusion or mistake as  
2 to the actual cost of the purportedly “free” Rocket Lawyer services. In any event, if  
3 an advertisement is literally false, or if a defendant intentionally misleads customers,  
4 a presumption arises that customers were in fact deceived and the burden shifts to the  
5 defendant to prove otherwise. *Pom Wonderful LLC v. Coca Cola Co.*, 727 F. Supp.  
6 2d 849, 869 (C.D. Cal. 2010) (aff’d in part, vacated in part, remanded sub nom. *Pom*  
7 *Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170 (9th Cir. 2012)) (“if [the defendant  
8 has] intentionally misled consumers, [the court will presume that] consumers were in  
9 fact deceived and [the defendant] would have the burden of demonstrating  
10 otherwise”); *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d at 1146; see also *The*  
11 *William H. Morris Co. v. Group W, Inc.*, 66 F.3d 255, 258 (9th Cir.1995); *United*  
12 *Indus. Corp. v. Clorox Co.*, 140 F.3d 1175, 1180 (8th Cir. 1998) (“If a plaintiff proves  
13 that a challenged claim is literally false, a court may grant relief without considering  
14 whether the buying public was actually misled; actual consumer confusion need not  
15 be proved”); *Western States Wholesale, Inc. v. Synthetic Inds., Inc.*, 206 F.R. D. 271,  
16 275 (C.D. Cal. 2002) (“When a plaintiff shows that the defendant's false advertising  
17 was intentional, the plaintiff is entitled to a presumption that customers were  
18 deceived.”). Since Rocket Lawyer’s advertisements are literally false and Rocket  
19 Lawyer was made aware of the literal falsity of its advertisements, but nonetheless  
20 intentionally continued to use such false advertisements to confuse and deceive  
21 customers into believing that its products and services were somehow “free,” it can be  
22 presumed that customers were in fact confused and deceived. Given such legal  
23 presumption in LegalZoom’s favor, LegalZoom is entitled to summary judgment on  
24 this element.

25 **3. Rocket Lawyer’s Advertisements are Materially Deceptive in**  
26 **that it They Are Likely to Influence Purchasing Decisions**

27 Whether for online legal products or other consumer products, use of the word  
28 “free” is a highly effective tactic used by retailers to lure customers to their stores and

1 websites. *In re Samuel Stores*, 27 F.T.C. 882 (1938). Rocket Lawyer’s use of the  
2 term “free” in its advertising is no different. Rocket Lawyer’s advertisements are  
3 likely to cause confusion or mistake as to the true costs of Rocket Lawyer products  
4 and services. Given that Rocket Lawyer’s products and services are directed towards  
5 economical individuals and small to medium sized businesses, cost is a key factor in  
6 such customers’ purchasing decisions. In any event, where defendant’s advertising  
7 claims are literally false, such false statements are presumed to be material. See *POM*  
8 *Wonderful LLC v. Purely Juice, Inc.*, 2008 WL 4222045, \*11 (C.D. Cal. July 17,  
9 2008) aff’d, 362 F. App’x 577 (9th Cir. 2009) (actually false claims are presumed  
10 material). Accordingly, Rocket Lawyer’s advertisements are materially deceptive.

11 **4. Rocket Lawyer Caused its False Advertisements to Enter**  
12 **Interstate Commerce**

13 An advertisement enters into interstate commerce for purposes of the Lanham  
14 Act where the advertisement is widely disseminated to the purchasing public. See  
15 *Gordon & Breach Science Publishers, Ltd. v. American Institute of Physics*, 859 F.  
16 Supp. 1521, 1535-36 (S.D.N.Y. 1994) (“[w]hile the advertising need not be made in a  
17 ‘classic advertising campaign,’ but may consist instead of more informal types of  
18 ‘promotion,’ the representations... *must be disseminated sufficiently to the relevant*  
19 *purchasing public....*”) (emphasis added).

20 “As both a means to engage in commerce and the method by which  
21 transactions occur, ‘the Internet is an instrumentality and channel of interstate  
22 commerce.’ *United States Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007) (quoting  
23 *United States v. Trotter*, 478 F.3d 918, 921 (8th Cir. 2007)); see also *Healthport*  
24 *Corp. v. Tanita Corp. of America*, 563 F. Supp. 2d at 1179, 1180-81 (providing that  
25 statements on the internet constitute advertisements in interstate commerce for  
26 purposes of the Lanham Act). Therefore, to prove that a defendant promoted false  
27 statements in interstate commerce, the plaintiff can show that a defendant made false  
28 statements on the internet. *Del Webb Cmtys., Inc. v. Partington*, 2009 WL 3053709,

1 \*11, \*16 (D. Nev. Sept. 18, 2009).

2 By placing its false advertisements on the Internet (via search engines such as  
3 Google, Yahoo and Bing as well as on its own and other websites), Rocket Lawyer  
4 clearly caused its false advertisements to enter interstate commerce.

5 **5. Rocket Lawyer's False Advertising Caused Actual Injury to**  
6 **LegalZoom**

7 It is well established that "a competitor need not prove injury when suing to  
8 enjoin conduct that violates section 43(a)" of the Lanham Act. *Harper House, Inc. v.*  
9 *Thomas Nelson, Inc.*, 889 F.2d 197, 210 (9th Cir. 1989); *see also Southland Sod*  
10 *Farms v. Stover Seed Co.*, 108 F.3d at 1146. Indeed, "an inability to show actual  
11 damages does not alone preclude recovery" and the district court may "award the  
12 plaintiff any just 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 'penalty for  
14 the defendant's conduct.'" *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d at  
15 1146 (citations omitted).

16 Given that LegalZoom and Rocket Lawyer are direct competitors for online  
17 legal products and Rocket Lawyer's advertisements are literally false, injury to  
18 LegalZoom is presumed and LegalZoom is injured by Rocket Lawyer's false  
19 advertising as a matter of law.<sup>3</sup>

20 **C. Rocket Lawyer's Advertising Constitutes False Advertising Under**  
21 **Cal. Bus. & Prof. Code § 17500**

22 Because the evidence shows that LegalZoom is entitled to summary judgment  
23

24  
25 <sup>3</sup> In any event, direct diversion of sales from a plaintiff to a defendant constitutes actual injury under  
26 the Lanham Act. *Southland Sod*, 108 F.3d at 1139. LegalZoom has lost business and continues to  
27 lose business caused by Rocket Lawyer's false and misleading advertisements and unfair  
28 competition practices as a result of at least one customer being diverted to the Rocket Lawyer  
website and/or refusing to do business with LegalZoom due to the fact that the Rocket Lawyer  
advertisements falsely state that Rocket Lawyer offers "free" incorporation," "free" LLCs, "free  
help from local attorneys," "free legal review," and "free" trials of Rocket Lawyer's "Basic Legal  
Plan" and "Pro Legal Plan," in an amount to be determined at trial.

1 on its false advertising claim under the Lanham Act, summary judgment should  
2 likewise be granted on LegalZoom’s false advertising claim under California’s false  
3 advertising law, Cal. Bus. & Prof. Code § 17500 *et seq.* See, e.g., *J.K. Harris & Co.,*  
4 *LLC v. Kassel*, 253 F. Supp. 2d 1120, 1130, n.9 (N.D. Cal. 2003). California’s false  
5 advertising law, Cal. Bus. & Prof. Code § 17500 *et seq.*, makes advertising products  
6 or services by “untrue or misleading” statements unlawful. See *Brockey v. Moore*, 107  
7 Cal. App. 4th 86, 98 (2003), *citing* Cal. Bus. & Prof. Code § 17500. “Section 17500  
8 has been broadly construed to proscribe ‘not only advertising which is false, but also  
9 advertising which[,] although true, is either actually misleading or which has a  
10 capacity, likelihood or tendency to deceive or confuse the public.’” *Colgan v.*  
11 *Leatherman Tool Group, Inc.*, 135 Cal.App.4th 663, 679 (2006), *quoting Kasky v.*  
12 *Nike, Inc.*, 27 Cal.4th 939, 951 (2002). A claim for false or misleading advertising in  
13 violation of Cal. Bus. & Prof. Code Section 17500 requires proof that: (a) defendant  
14 intentionally or negligently disseminated an untrue or misleading statement with an  
15 intent to dispose of goods or services; (b) the statement was made in California and  
16 disseminated to the public in any state; and (3) the statement deceived and harmed the  
17 plaintiff.

18 Rocket Lawyer, acting directly or indirectly with the intent to induce members  
19 of the public to engage Rocket Lawyer’s services and purchase Rocket Lawyer’s  
20 products, made or caused to be made, false and misleading statements in the state of  
21 California via the internet that Rocket Lawyer offered “free” incorporation, “free”  
22 LLCs, “free help from local attorneys,” “free legal review” and “free” trials of Rocket  
23 Lawyer’s Basic Legal Plan” and “Pro Legal Plan.” As stated above, these  
24 advertisements are false because customers seeking to “incorporate for free” for form  
25 an LLC for “free” through Rocket Lawyer’s services are nonetheless required to pay  
26 the state fees associated with incorporation or formation, customers can access Rocket  
27 Lawyer’s “free help from local attorneys” and the “free legal review” only if they are  
28 **paid** members of Rocket Lawyer’s “Basic Legal Plan” or “Pro Legal Plan,” and

1 customers who sign up for a one-week free trial membership under Rocket Lawyer’s  
2 “Basic Legal Plan” or “Pro Legal Plan” must nonetheless enroll in Rocket Lawyer’s  
3 negative option program. Rocket Lawyer was made fully aware that its  
4 advertisements were false and misleading and so acted in violation of Section 17500  
5 of the California Business & Professions Code. Rocket Lawyer’s advertising further  
6 violates Section 17509 and Section 17600 *et seq.*<sup>4</sup> in that the advertisements require,  
7 as a condition of the “free” services, the payment of state fees, the purchase of paid  
8 membership and/or the enrollment in a trial membership plan subject to a negative  
9 option without adequate disclosure to customers. For these reasons, Rocket Lawyer’s  
10 advertising constitutes false advertising under California Business & Professions  
11 Code Section 17500, *et seq.*

12 **D. Rocket Lawyer’s False Advertising Constitutes Unfair Competition**  
13 **Under Cal. Bus. & Prof. Code § 17200**

14 California’s unfair competition law prohibits “any unlawful, unfair or  
15 fraudulent business practice and unfair, deceptive, untrue or misleading advertising.  
16 Cal. Bus. & Prof. § 17200. “An unlawful business practice within the meaning of  
17 [California’s unfair competition law] is one that is forbidden by law, whether civil or  
18 criminal, federal, state, or municipal, statutory, regulatory, or court-made.” *People v.*  
19

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20 <sup>4</sup>Under California’s Negative Option Law (the “California Negative Option Rule”). Cal. Bus. &  
21 Prof. Code § 17600 *et seq.*, an offer which includes an automatic renewal provision must include a  
22 **clear and conspicuous** disclosure that: (1) the subscription will continue until the customer  
23 terminates the contract; (2) the cancellation policy of the offer; (3) the amount of the recurring  
24 charges that the customer’s credit card will be charged, and if the amount will change, and if so, the  
25 amount that the charge will be changed by, if known; (4) the duration of the automatic renewal term  
26 or that the subscription is continuous; and (5) if there is any minimum purchase requirement. The  
27 statute spells out the requirements of “clear and conspicuous” and provides that to qualify as “clear  
28 and conspicuous, a disclosure must be in larger type than the surrounding text, or in contrasting  
type, font or color to the surrounding text of the same size, or set off from the surrounding text of  
the same size by symbols or other marks, in a manner that clearly calls attention to the language.”  
In addition, the statute requires that the customer be provided with an acknowledgement that  
includes the automatic renewal or continuous service offer terms, cancellation policy and  
information regarding how to cancel in a manner that is capable of being retained by the customer.  
As discussed above, Rocket Lawyer’s negative option disclosure appears in standard font only upon  
the customer being directed to enroll in the “free trial.” Accordingly, the disclosure is not clearly  
and conspicuously disclosed.

1 *Servantes*, 86 Cal.App.4th 1081, 1087 (2001). Rocket Lawyer’s false and misleading  
2 advertising practices have violated numerous aspects of California’s unfair  
3 competition law.

4 First, an “unlawful” business act or practice is an act or practice that is  
5 undertaken pursuant to business activity and also forbidden by law. *See People v.*  
6 *E.W.A.P., Inc.*, 106 Cal.App.3d 315, 319 (1980). The “unlawful” act can be any act  
7 or practice forbidden by civil, criminal, federal, state, municipal, statutory, regulatory  
8 or court-made law. *Id.* As explained above, Rocket Lawyer’s false and misleading  
9 advertising violates the Lanham Act and the California false and misleading  
10 advertising law and, thus, constitutes “unlawful” conduct under California’s unfair  
11 competition law.

12 Rocket Lawyer’s use of the term “free” in the aforementioned advertisements  
13 not only violates the Lanham Act, but also violates Section 251.1 of the Federal Trade  
14 Commission (the “FTC”) Guide<sup>5</sup> concerning the use of the word “free,” which  
15 requires, among other things, that “all terms, conditions and obligations upon which  
16 receipt and retention of the “free” item are contingent should be set forth clearly and  
17 conspicuously *at the outset of the offer* so as to leave no reasonable probability that  
18 the terms of the offer might be misunderstood.” (*Emphasis added*). Consistent with  
19 the clear language of the “Free” Guide, the FTC has repeatedly taken enforcement  
20 actions against false “free” claims with automatic renewals that are not adequately  
21 disclosed at the outset of an advertisement, but are hidden in footnotes and fine print.  
22 *See, e.g., In the Matter of Prodigy Servs. Corp.*, 125 F.T.C. 430, 434 (Mar. 16, 1998)  
23 (Prodigy liable for advertising “free” Internet service but failing to disclose at the  
24 outset that customers would be charged if they did not cancel during the trial period);

25  
26  
27 <sup>5</sup> See *Waul v. Circuit City Stores, Inc.*, WL 1535825, \*7 (Cal. App. July 9, 2004)  
28 (providing that the guide is an advisory guide suggesting a procedure that will prevent  
the use of the term “free” from being misleading when there are terms and conditions  
that must be fulfilled before a customer can receive the “free” product or service.)

1 *In the Matter of America Online, Inc.*, 125 F.T.C. 403, 406 (Mar. 16, 1998) (same re.  
2 AOL). Stated differently, all of the terms, conditions and obligations should appear in  
3 close proximity with the offer of “free” merchandise or service. 16 C.F.R. § 251.1  
4 (1998). For example, disclosure of the terms of the offer set forth in a footnote of an  
5 advertisement to which reference is made by an asterisk or other symbol placed next  
6 to the offer, is not regarded as making disclosure at the outset. *Id.* As indicated  
7 above, the terms, conditions and obligations upon which receipt of Rocket Lawyer’s  
8 purportedly “free” services and products are contingent are **not** conspicuously and  
9 clearly set forth *at the outset of the offer*.

10         Second, in cases between competitors, an act or practice is “unfair” when it  
11 “threatens an incipient violation of an antitrust law, or violates the policy or spirit of  
12 one of those laws because its effects are comparable to or the same as a violation of  
13 the law or otherwise significantly threatens or harms competition. *Cel-Tech*  
14 *Communications, Inc. v. Los Angeles Cellular, Tel. Co.*, 20 Cal.4th 163, 187 (1999).  
15 As explained above, Rocket Lawyer’s false and misleading advertising has met this  
16 standard – Rocket Lawyer’s false and misleading advertisements aim to deceive  
17 customers in an attempt to gain a competitive advantage for Rocket Lawyer over  
18 LegalZoom.

19         Third, a business act or practice is “fraudulent” if members of the public are  
20 likely to be deceived.” *See Committee on Children’s Television v. General Foods*  
21 *Corp.*, 35 Cal.3d 197, 211 (1983). Rocket Lawyer’s advertisements deceive and/or  
22 attempt to deceive customers as to the cost of Rocket Lawyer’s services and products.  
23 As explained above, such advertisements are false and misleading, and the public  
24 likely will be deceived by such advertisements.

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 Rocket Lawyer's false advertising constitutes false advertising under the  
3 Lanham Act and false advertising and unfair competition under California law.  
4 LegalZoom, as Rocket Lawyer's direct competitor, has suffered damages as a result  
5 of Rocket Lawyer's false advertising. Therefore, LegalZoom respectfully requests  
6 that this Court grant LegalZoom summary judgment on the liability element of its  
7 false advertising and unfair competition claims, leaving only computation of damages  
8 to be determined at trial.

9  
10 DATED: August 23, 2013

Respectfully submitted,

11 GLASER WEIL FINK JACOBS  
12 HOWARD AVCHEN & SHAPIRO LLP

13 By: /s/ Fred Heather  
14 PATRICIA L. GLASER  
15 FRED D. HEATHER  
16 MARY ANN T. NGUYEN  
17 Attorneys for Plaintiff  
18 LegalZoom.com, Inc.  
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**DECLARATION OF MARY ANN T. NGUYEN**

I, MARY ANN T. NGUYEN, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and am an Associate of the law firm of Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, attorneys of record herein for Plaintiff LegalZoom.com, Inc. (“LegalZoom”). I make this declaration in support of Plaintiff LegalZoom’s Motion for Summary Judgment. The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. The following is a list of corporation and limited liability company (LLC) filing fees by state. As shown below, every state has a filing fee for corporation and LLC filings. Accordingly, Rocket Lawyer’s advertisements regarding “free” incorporation or LLC formation are false since state filing fees must *always* be paid when setting up a corporation or LLC.

<b>State Name</b>	<b>Corp Filing Fee</b>	<b>LLC Filing Fee</b>
Alabama	\$100	\$100
Alaska	\$250	\$250
Arkansas	\$45	\$45
Arizona	\$60	\$50
California	\$100	\$70
Colorado	\$50	\$50
Connecticut	\$250	\$120
Delaware	\$89	\$90

1	Florida	\$35	\$100
2	Georgia	\$100	\$100
3	Hawaii	\$75	\$75
4	Idaho	\$100	\$100
5	Illinois	\$175	\$500
6	Indiana	\$90	\$90
7	Iowa	\$20	\$50
8	Kansas	\$90	\$165
9	Kentucky	\$50 <sup>6</sup>	\$40
10	Louisiana	\$75	\$100
11	Maine	\$145	\$175
12	Maryland	\$120 <sup>7</sup>	\$100
13	Massachusetts	\$275	\$500
14	Michigan	\$60	\$50
15	Minnesota	\$135	\$135
16	Missouri	\$50	\$50
17	Mississippi	\$50	\$50
18	Montana	\$70	\$70
19	Nebraska	\$60	\$100
20	Nevada	\$75	\$75
21	New Hampshire	\$100	\$100
22	New Jersey	\$125	\$125
23	New Mexico	\$100	\$50
24	New York	\$125	\$200
25	North Carolina	\$125	\$125

27 <sup>6</sup> Includes \$10.00 organization tax fee for 1,000 shares or less.

28 <sup>7</sup> Includes \$20.00 organization and capitalization fee.

1	North Dakota	\$100	\$125
2	Ohio	\$125	\$125
3	Oklahoma	\$50	\$100
4	Oregon	\$100	\$100
5	Pennsylvania	\$125	\$125
6	Rhode Island	\$230	\$150
7	South Carolina	\$110	\$110
8	South Dakota	\$150	\$150
9	Tennessee	\$100	\$300
10	Texas	\$300	\$300
11	Utah	\$70	\$70
12	Vermont	\$125	\$120
13	Virginia	\$75	\$100
14	Washington	\$180	\$180
15	Washington D.C.	\$220	\$220
16	West Virginia	\$50	\$100
17	Wisconsin	\$100	\$130
18	Wyoming	\$100	\$100

19       3.     On Rocket Lawyer’s “About Us” webpage, Rocket Lawyer touts to  
20 provide affordable legal services to individuals, families and business owners. A true  
21 and correct copy of Rocket Lawyer’s “About Us” webpage is attached thereto as  
22 **Exhibit A.**

23       4.     At least in 2011, 2012 and 2013, Rocket Lawyer advertised “free”  
24 incorporation and “free” limited liability companies (LLCs). For example, Rocket  
25 Lawyer has advertised “Incorporate for Free... Pay No Fees \$0,” “Incorporate Your  
26 Business at Rocket Lawyer Free,” “Form Your LLC Free at Rocket Lawyer” and  
27 “Free... LLCs.” A true and correct copy of Rocket Lawyer’s advertisements  
28 containing these claims is attached hereto as **Exhibit B.**

1           5.     Rocket Lawyer’s customers are required to pay the state fees associated  
2 with incorporation and formation. A true and correct copy of Rocket Lawyer’s state  
3 filing options showing the state fee requirement through Rocket Lawyer’s services is  
4 attached hereto as **Exhibit C**.

5           6.     Rocket Lawyer customers who access the Rocket Lawyer link to the  
6 “Incorporate for Free... Pay No Fees \$0,” “Incorporate Your Business at Rocket  
7 Lawyer Free,” “Form Your LLC Free at Rocket Lawyer” or “Free... LLCs” do not  
8 discover that they must actually pay the state filing fees until after they have accessed  
9 the Rocket Lawyer website, completed a “company setup” and filled out information  
10 relating to the “company details.” Indeed, the state filing fees do not appear until  
11 after a customer has accessed the Rocket Lawyer website, completed a “company  
12 setup” and filled out information relating to the “company details.” A true and  
13 correct copy of Rocket Lawyer’s “Interview” for “Company Set-Up” and “Company  
14 Details” is attached hereto as **Exhibit D**.

15           7.     At least in 2012, Rocket Lawyer advertised “Free help from local  
16 attorneys” and “Free legal review.” A true and correct copy of Rocket Lawyer’s  
17 advertisements containing these claims is attached hereto as **Exhibit E**.

18           8.     As provided by Rocket Lawyer’s On Call Terms of Service, Rocket  
19 Lawyer’s customers could access “help from local attorneys” or “legal review” for  
20 free only if they were “Eligible Members” who had either (a) purchased three  
21 consecutive months of Rocket Lawyer’s monthly Legal Plan, or (b) purchased a  
22 Rocket Lawyer annual Legal Plan. A true and correct copy of Rocket Lawyer’s On  
23 Call Terms of Service, dated July 2012, as printed on November 27, 2012, stating this  
24 requirement, is attached hereto as **Exhibit F**.

25           9.     The paid-membership requirement for access to Rocket Lawyer’s  
26 purported “free help from local attorneys” and “free legal review” was not disclosed  
27 in close proximity to the advertisements on Rocket Lawyer’s website. Indeed, the  
28 paid-membership requirement was only disclosed in Rocket Lawyer’s “On Call

1 Terms of Service,” which was accessible to customers on a separate link. *See*  
2 [http://www.rocketlawyer.com/on-call-terms-of -service.rl](http://www.rocketlawyer.com/on-call-terms-of-service.rl).

3 10. Rocket Lawyer subsequently changed the language of its “On Call  
4 Terms of Service” to provide that “Customers who enter into a one week (seven (7)  
5 calendar days) free trial are eligible to receive one (1) free legal matter  
6 consultation...” after LegalZoom filed its original Complaint. The access to “free  
7 help from local attorneys” and “free legal review” during a “free trial” was not  
8 available before LegalZoom’s filing of the original Complaint. True and correct  
9 copies of Rocket Lawyer’s On Call Terms of Service, dated July 2012, as printed on  
10 November 27, 2012 and Rocket Lawyer’s On Call Terms of Service, dated November  
11 2012, as printed on November 29, 2012, showing Rocket Lawyer’s On Call Terms of  
12 Service before service of the Complaint and Rocket Lawyer’s On Call Terms of  
13 Service after service of the Complaint, are attached hereto as **Exhibits F and G**,  
14 respectively.

15 11. As shown in Rocket Lawyer’s On Call Terms of Service, dated  
16 November 2012, as printed on November 29, 2012, access to the advertised “free help  
17 from local attorneys” and the “free legal review” was still conditioned upon  
18 customers actively enrolling in Rocket Lawyer’s trial membership and providing  
19 Rocket Lawyer with their credit card information. *See Exhibit G*.

20 12. At least in 2012 and 2013, Rocket Lawyer advertised on its website  
21 “free” trials of its “Basic Legal Plan” and “Pro Legal Plan.” A true and correct copy  
22 of Rocket Lawyer’s advertisements containing these claims is attached hereto as  
23 **Exhibit H**.

24 13. However, as shown in Rocket Lawyer’s “Free” Trial Enrollment Page,  
25 customers who sign up for a one-week free trial membership under the “Basic Legal  
26 Plan” or “Pro Legal Plan” must first provide Rocket Lawyer with their credit card  
27 information and enroll in Rocket Lawyer’s “negative option” program – *i.e.*, a  
28 program in which customers are automatically enrolled and billed and must contact

1 Rocket Lawyer to opt out of. No further acknowledgement regarding the negative  
2 option is provided. A true and correct copy of Rocket Lawyer’s “Free” Trial  
3 Enrollment Page is attached hereto as **Exhibit I**.

4 14. On October 13, 2011, LegalZoom’s Chairman, Brian Liu, contacted  
5 Rocket Lawyer’s CEO, Dan Nye, stating that there were “important issues that  
6 [LegalZoom’s] legal department has brought up regarding [Rocket Lawyer’s]  
7 advertising.” Dan Nye responded by stating that Liu should discuss this issue with  
8 Charley Moore, Rocket Lawyer’s founder and Chairman, and copied Moore on the  
9 email exchange. A true and correct copy of this email exchange is attached hereto as  
10 **Exhibit J**.

11 15. On October 14, Brian Liu had a telephone conversation with Charley  
12 Moore, stating that LegalZoom took issue with Rocket Lawyer’s ads, which promised  
13 “Set up a Free LLC... Totally Free,” and “100% Free,” since state filing fees must  
14 always be paid when setting up an LLC through Rocket Lawyer. Brian Liu also  
15 asked Charley Moore to read and follow the Federal Trade Commission’s guidelines  
16 regarding the use of the word “free” in advertising, which requires, among other  
17 things, that “all terms, conditions and obligations upon which receipt and retention of  
18 the “Free” item are contingent should be set forth clearly and conspicuously *at the*  
19 *outset of the offer* so as to leave no reasonable probability that the terms of the offer  
20 might be misunderstood.” This conversation was memorialized in an email from  
21 Brian Liu to Charley Moore, dated October 14, 2011. A true and correct copy of this  
22 email is attached hereto as **Exhibit K**.

23 16. In November 2011, Rocket Lawyer’s advertising regarding “free” trials  
24 and services still had not been changed or removed; as a result, beginning November  
25 15, 2011, in a series of emails, Brian Liu repeatedly requested that Rocket Lawyer  
26 discontinue its false advertising and unfair competition practices. A true and correct  
27 copy of this email is attached hereto as **Exhibit L**.

28 I declare under penalty of perjury pursuant to the laws of the State of California

1 that the foregoing facts are true and correct.

2 Executed on August 23, 2013 at Los Angeles, California.

3  
4 /s/ Mary Ann T. Nguyen  
5 MARY ANN T. NGUYEN  
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Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

1 **CERTIFICATE OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

6 On August 23, 2013, I electronically filed the following document(s) using the  
7 CM/ECF system.

8 **PLAINTIFF LEGALZOOM.COM, INC.’S NOTICE OF MOTION AND**  
9 **MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF**  
10 **POINTS AND AUTHORITIES; DECLARATION OF MARY ANN T.**  
11 **NGUYEN**

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

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

17 Executed on August 23, 2013 at Los Angeles, California.

18  
19 /s/ Fred Heather  
20 Fred Heather

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

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