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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15
16 LEGALZOOM.COM, INC., a Delaware
corporation,

17 Plaintiff,

18 v.

19 ROCKET LAWYER
20 INCORPORATED, a Delaware
corporation,

21 Defendant.

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

**DEFENDANT ROCKET LAWYER
INCORPORATED'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date: 9:30 a.m.
Time: October 21, 2013
Judge: Judge Gary A. Feess
Courtroom: 740
255 East Temple Street
Los Angeles, CA 90012
Action Filed: November 20, 2012

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1 **I. INTRODUCTION**

2 LegalZoom chose to battle in court and not the free market in an attempt to
3 limit consumer choice and consumer access to lower-priced and more innovative
4 legal services that are now used by millions of Americans. Rather than investing to
5 improve its own services, LegalZoom seeks to impair the free market, by making
6 damaging, false allegations against its most successful and well-known competitor,
7 Rocket Lawyer.¹ Even though the parties have yet to respond to discovery requests
8 or schedule any depositions, LegalZoom prematurely demands judgment on all of its
9 claims and asks this Court to measure Rocket Lawyer’s advertisements against a
10 standard that LegalZoom does not apply to itself or other competitors. Given the
11 spurious nature of its claims and the status of this case, it is not surprising that
12 LegalZoom has failed to proffer any actual evidence in support of its Motion, much
13 less, undisputed material facts sufficient to meet its burden of proving each element
14 of each cause of action. The Court should deny LegalZoom’s Motion because its
15 claims are not supported by law or undisputed facts and are barred by equity.

16 **II. STATEMENT OF FACTS**

17 **A. The Legal Services Industry and the Parties**

18 In 2000, LegalZoom developed a business model to sell legal documents to
19 consumers on the Internet, but only deliver final versions in hard copy by mail. SS
20 at 28. Since then, LegalZoom has attracted approximately two million customers to
21 its services. *Id.* at 29.

22 In 2007, Rocket Lawyer entered the market in a new way by providing
23 comprehensive online legal service, including legal information, electronic
24 signatures, access to advice from licensed attorneys, and cloud storage for legal
25 documents—many of which are free or included in a subscription plan. *Id.* at 30.

26 _____
27 ¹ As used herein, LegalZoom means plaintiff and counterdefendant
28 LegalZoom.com, Inc.; “Rocket Lawyer” means “Rocket Lawyer Incorporated,”
“Motion” means the summary judgment motion filed by LegalZoom, and “SS”
means the Separate Statement filed concurrently with this Opposition.

1 This “freemium” model also means that free to all users are a number of legal forms,
2 letter templates, and informative articles about many areas of law. *Id.* at 31. Rocket
3 Lawyer’s subscription plans provide access to all of Rocket Lawyer’s legal
4 software, enabling users to create, edit, store, e-sign, download, print, or share with
5 an attorney for review all legal documents created on Rocketlawyer.com. *Id.* at 32.
6 Unlike LegalZoom, the Rocket Lawyer service has always been built on a cloud-
7 computing platform that helps consumers to satisfy their legal needs without waiting
8 for delivery of a physical document by mail. *Id.* at 33.

9 Rocket Lawyer is an innovative startup helping to revolutionize the legal
10 services industry. Rocket Lawyer has served approximately nine million registered
11 users—building a customer base several times that of LegalZoom’s in a fraction of
12 the time. *Id.* at 34. Over 90% of these users have never paid anything to Rocket
13 Lawyer for use of its services. *Id.* Rocket Lawyer has surpassed LegalZoom by
14 offering a superior service and using technology as a bridge to greater access to
15 affordable legal help for everyone.

16 **B. Rocket Lawyer’s Plans**

17 Like the Internet itself, the Rocket Lawyer service is constantly progressing in
18 support of its mission to make legal help affordable to everyone. *Id.* at 35. If the
19 Court were to visit Rocketlawyer.com today, it would look substantially different
20 from LegalZoom’s exhibits. More importantly, LegalZoom was then and is still
21 wrong about Rocket Lawyer’s user experience. At the time the complaint was filed,
22 Rocket Lawyer offered two types of subscription plans—a Pro Legal Plan with
23 premium access to all Rocket Lawyer functionality, and a Basic Legal Plan, which
24 excluded only the functionality related to forming or running a business. *Id.* at 36.²
25 Similar to free trials offered by many consumer businesses, any consumer could try
26 a Basic or Pro Legal Plan and all services available under the selected plan, for

27 ² Rocket Lawyer also has a “free membership” available by downgrading from a
28 Plan, which includes limited access to Rocketlawyer.com free of charge.

1 seven days at no cost, provided that the consumer canceled the plan by the end of
2 the seventh day. *Id.* at 37. If the consumer did not cancel the free trial before the end
3 of the seventh day, the free trial would convert to a paid version of the selected plan
4 on the eighth day. *Id.* at 38. However, even if a consumer canceled the free trial, he
5 would continue to have full access to Rocketlawyer.com for the remainder of the
6 trial period, and have post-trial access to any documents created during the trial. *Id.*
7 at 39.

8 A typical user would enroll in a free trial by clicking on a search engine ad
9 such as an ad for a legal document. *Id.* at 40. The link would direct the user to an
10 interactive interview for the document. *Id.* At the end of the interview, the user had
11 the option to enroll in a free trial or a paying plan. *Id.* at 41. If the user elected to
12 enroll in a free trial, the user would be taken to a web page explaining the Pro or
13 Basic Legal Plan. *Id.* These explanatory web pages were also available through
14 Rocket Lawyer’s homepage and other channels. *Id.* at 42. By toggling between the
15 Pro and Basic plan options, a consumer could choose which type of plan he or she
16 would like to try. *Id.* at 43. Both explanatory pages contained the following
17 information:

18 Your free trial entitles you to the Pro [or Basic] Legal plan for one-week.
19 After your free trial ends, a Rocket Lawyer Monthly plan with unlimited free
20 documents, e-signatures, sharing and other premium features will start and
21 this credit card will be charged \$39.95 [or \$19.95 for Basic Legal
22 Plan]/month. . . If you decide that you don’t want to keep your membership,
simply downgrade the service to a free membership to discontinue the Legal
Plan and \$39.95 [or \$19.95 for basic Legal Plan]/month billing. The legal
documents created and saved during your trial are free, which means they
are yours to keep, and you can access them at any time. *Id.* at 44.

23 The toll free phone number to cancel the free trial plan at any time was, and
24 still is, at the top of the registration pages. *Id.* In addition, to ensure that customers
25 have answers to questions about the free trial, Rocket Lawyer has an FAQ section of
26 its website devoted to them. *Id.* at 45. This FAQ also details the different ways a
27 customer can cancel any plan—through the customer’s account page, via chat,
28 email, or telephone. *Id.*

Frequently Asked Questions

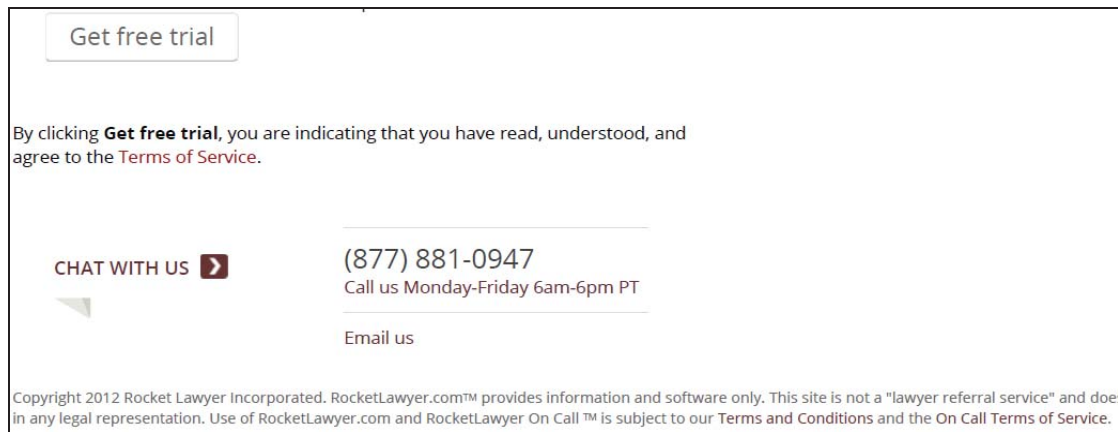
All FAQs

- Free Document and Trials
- Memberships
- Document Creation
- Technical Support

Free Document and Trials

- What does "read only" mean?
- How does the Free Trial work?
- How do I end my Free Trial?
- Why does the Free Trial require a credit card?
- How many documents can I make during a Free Trial?
- When will I be charged after the Free Trial ends?

Finally, customers can access Rocket Lawyer's terms and conditions on each page of Rocketlawyer.com, and must acknowledge the same terms and conditions before acting to enroll in any Rocket Lawyer subscription plan. *Id.* at 46.



C. Rocket Lawyer's Incorporation Services

As an extension of Rocket Lawyer's "freemium" model, all members enrolled in a free or paying Pro Legal Plan receive free incorporation services. *Id.* at 47.

Rocket Lawyer charges no fee for its services in assisting in the filing and processing of incorporation or entity formation papers submitted by free trial or paying Pro Legal Plan members. *Id.* These members only pay the state-mandated filing fees, which Rocket Lawyer discloses at various stages of the incorporation interview *prior to requiring any payment information*. *Id.* at 48. Customers may add services not required, though commonly preferred, related to incorporation or entity formation—such as a federal tax ID, a registered agent, etc.—which Rocket Lawyer provides at a discount over its competitors. *Id.* at 49.

D. Rocket Lawyer's Free Legal Help

Rocket Lawyer's subscription plans include access to Rocket Lawyer's On Call attorneys who can provide legal advice or live consultations, answer written

1 questions, and/or review legal documents. *Id.* at 50. Outside of the On Call program,
2 Rocket Lawyer registered users, whether on a free trial or a paid legal plan, can
3 contact an attorney for a free consultation at any time. *Id.* at 51.

4 Rocket Lawyer has been successful by offering these free services and by
5 continuing to improve and develop new services.

6 **E. LegalZoom’s Inability to Adapt to Increasingly Competitive Legal**
7 **Services Industry**

8 The online legal services industry has grown significantly in recent years.
9 Now, if consumers search for “legal documents” on Google.com over a dozen
10 companies appear on the first page of the search results alone. *Id.* at 52. Many of
11 these companies offer services similar to Rocket Lawyer’s and advertise such
12 services in a similar fashion. *Id.*

<p>Incorporate Online Now 1 (855) 801 2460 www.incorporate.com/Incorporate ▼ Fast, easy, accurate & affordable! Incorporate Now in Only 10 Minutes. Incorporate in Any State - Form an LLC in Any State - Get a Business License Online</p>	<p>Incorporate in California www.legalzoom.com/Incorporation ▼ 1 (855) 470 0805 It's Easier & Less Expensive With LegalZoom®. Total Customer Support!</p>
<p>Incorporate for Free 1 (866) 231 4452 www.rocketlawyer.com/CA-Incorporate ▼ Incorporate in CA in 5 Minutes. Only Pay California State Fees! Rocket Lawyer has 613 followers on Google+ Call our Specialists: 866-231-5787 - 5 Minute California LLC</p>	<p>Online Incorporation www.bizfilings.com/ ▼ Incorporate Online Today With BizFilings. It's Fast & Affordable!</p>
<p>\$49 Online Incorporation - Free Minutes and Bylaws - IncFile.com www.incfile.com/Easy_Corp_Today ▼ Free Registered Agent! Call Now: 888-462-3453 - Incorporate Now - Incorporation Packages</p>	<p>Incorporate for Free Now www.incorporatefree.com/ ▼ 1 (877) 975 2554 Form a Company in Minutes. 60,000+ companies formed since 1989</p>

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20 LegalZoom has tried to adapt to the changing landscape by, for example,
21 allowing customers to purchase a package of documents, such as real estate leases,
22 and edit and download these forms electronically. *Id.* at 53. But, LegalZoom charges
23 \$29 for the forms about one area of law and only allows customers to edit the forms
24 for one week, unless they pay an *additional* \$20 for unlimited revisions. *Id.*
25 LegalZoom has continued to enhance its incorporation services; however, unlike
26 Rocket Lawyer or other competitors such as Law Depot, Incforfree, and
27 Mycorporation, LegalZoom continues to charge a fee for its assistance with the
28 filing process. *Id.* at 54. LegalZoom also began offering subscription plans with

1 attorney consultation time in 2011—Rocket Lawyer’s model since 2007. *Id.* at 55.
2 However, LegalZoom still adheres to the postal mail business model and does not
3 appear to offer any single plan comparable to Rocket Lawyer’s Pro Plan (i.e. a plan
4 that combines business and personal support). *Id.* Legal Zoom only discounts
5 attorney services outside of the plan by 25%. *Id.* at 56. By contrast, Rocket
6 Lawyer’s On Call attorneys agree to discount services by 40% or charge an
7 affordable rate of \$125 an hour. *Id.* at 57.

8 **F. The Lawsuit and Motion for Summary Judgment**

9 LegalZoom slowly implemented changes that have been insufficient to
10 successfully compete in the marketplace, especially due to the company’s postal
11 mail model, its tardiness in adapting technology advancements, its higher prices, and
12 the limitations on the services offered. Thus, LegalZoom has now turned to the
13 courts to publicly disparage and deliver a surprise media attack on its competitor:
14 one week before Rocket Lawyer’s widely-anticipated international launch,
15 LegalZoom filed this lawsuit to generate media coverage and hinder Rocket
16 Lawyer’s growth. In fact, LegalZoom filed the complaint and issued a press release
17 before it even served Rocket Lawyer.

18 In spite of Rocket Lawyer’s well-known free services, available for several
19 years and enjoyed by millions of consumers, LegalZoom alleges that Rocket
20 Lawyer’s use of “free” relating to its services violates the Lanham Act and
21 California Business and Professions Code section 17500 and 17200. The alleged
22 advertisements at issue are:

- 23 • “Free trial”
- 24 • “Incorporate your business at Rocket Lawyer for free” and other
25 variations relating to Rocket Lawyer’s entity formation services
- 26 • “Free help from local attorneys” and “free legal review.” Motion at 1-4.

27 LegalZoom was early to sell its brand of online legal service, but inaccurately
28 believes that incumbency justifies bullying competitors and enlisting the courts to

1 eliminate consumer choice solely to protect its own profit margins. While
2 LegalZoom inaccurately alleges that Rocket Lawyer at some vaguely identified time
3 and place violated false advertising laws, Legal Zoom itself *currently* engages in
4 clear, unambiguous false advertising of its status with the Better Business Bureau.
5 SS at 63, 64. Such shameful conduct by LegalZoom is an act of deception that hurts
6 consumers and unjustly enriches the perpetrator, over and over again, day by day.

7 Perhaps seeking to avoid discovery, LegalZoom now brings this premature
8 motion for summary judgment on all of its claims to enforce this improper double
9 standard. However, LegalZoom fails to realize that summary judgment requires
10 actual evidence in support of its claims. LegalZoom's Motion must be denied for
11 failure to prove the elements of each cause of action with undisputed material facts.

12 **III. GENERAL STANDARDS**

13 **A. Summary Judgment Standard**

14 Summary judgment should not be granted unless the moving party
15 demonstrates the absence of a genuine issue of material fact. Fed. R. Civ. Proc.
16 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). "The evidence of
17 the non-movant is to be believed, and all justifiable inferences are to be drawn in his
18 favor." *Anderson*, 477 U.S. at 255. "The court must not weigh the evidence or
19 determine the truth of the matters asserted but only determine whether there is a
20 genuine issue for trial." *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134,
21 1138 (9th Cir. 1997). A moving party who fails to present evidence sufficient to
22 establish an essential element of its case is not entitled to summary judgment in its
23 favor; summary judgment is warranted *against* such party. *See Celotex Corp. v.*
24 *Catrett*, 477 U.S. 317, 322 (1986).

25 **B. Standard for Evaluating Advertisements**

26 LegalZoom's claims are based entirely on Rocket Lawyer's internet
27 advertisements and website. In evaluating allegedly false advertisements, the Court
28 should review each advertisement in context. *See, e.g., Freeman v. Time, Inc.*, 68

1 F.3d 285, 289 (9th Cir. 1995) (holding that no reasonable consumer would be misled
2 by advertisement when taken in context of whole document); *Southland*, 108 F.3d at
3 1139 (literal falsity of advertisement must be viewed in its “full context”). Here the
4 Court should review Rocket Lawyer’s advertisements in the context of its website,
5 Rocketlawyer.com. *See, e.g., Castagnola v. Hewlett-Packard Co.*, No. 11-07772
6 JSW, 2012 WL 2159385, at *9 (N.D. Cal. Jun. 13, 2012) (stating “[t]he Court . . .
7 cannot look at the statements on the webpage in isolation” and emphasizing
8 references to “offer details”); *Berry v. Webloyalty.com, Inc.*, No. 10-CV-1358-H,
9 2011 WL 1375665, at *6 (S.D. Cal. Apr. 11, 2011) (webpage disclosures “sufficient
10 to place the consumer on notice of the conditions and terms”), *vacated on other*
11 *grounds*, 517 F. App’x 581 (9th Cir. 2013).

12 **IV. ARGUMENT**

13 **A. LegalZoom Is Barred from Obtaining Relief by the Doctrine of 14 Unclean Hands**

15 LegalZoom’s Motion is premature as neither party has responded to
16 discovery. Still, material facts already exist that undermine LegalZoom’s Motion.
17 One of the most important is whether LegalZoom can prevail under any
18 circumstances. LegalZoom is not entitled to any relief because of the doctrine of
19 unclean hands. Application of the unclean hands doctrine primarily raises a factual
20 issue. *Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 173 (9th Cir.
21 1989). “As such it is not properly determined . . . on a summary judgment
22 motion[.]” *Mattco Forge, Inc. v. Arthur Young & Co.*, 5 Cal. App. 4th 392, 407-08
23 (1992). “The doctrine bars relief to a plaintiff who has violated conscience, good
24 faith or other equitable principles in his prior conduct, as well as to a plaintiff who
25 has dirtied his hands in acquiring the right presently asserted.” *Dollar Sys.*, 890 F.2d
26 at 173.

27 The facts demonstrate that LegalZoom has engaged in the complained of
28 conduct. LegalZoom has advertised its incorporation services without disclosing the
additional state-imposed fees in the same way Rocket Lawyer has. SS at 58.

1 [Incorporation Services - Incorporate a Business | LegalZoom.com](https://www.legalzoom.com/...incorporation/incorporation-overview-a.ht...)
2 <https://www.legalzoom.com/...incorporation/incorporation-overview-a.ht...>
3 Learn about incorporation for your business and find out how it can protect your ...
4 Sign in to our secure server to start your incorporation. ... Economy \$99

5 **Incorporate your business for Free - Rocket Lawyer**
6 www.rocketlawyer.com/incorporate-for-free.rl
7 **Free** Incorporation. Get a **Free** Incorporation in any State. How to **Incorporate** in Any State For **Free**.

8 In each of these advertisements, neither party references state fees, but provides a
9 link to the company's website where more information is disclosed. *Id.* at 59. Unlike
10 the Rocket Lawyer landing page, however, LegalZoom's ad leads consumers to a
11 webpage that displays incorporation pricing *with no reference to state fees. Id.*

12 What LegalZoom fails to acknowledge is the fact that in a direct comparison,
13 its prices are higher than Rocket Lawyer's even if state fees were listed because
14 LegalZoom always charges for the incorporation service it provides. *Id.* at 60. In
15 fact, at least one review website has found that Rocket Lawyer's disclosure of state
16 fees on its incorporation page is clearer than LegalZoom's. *See id.* at 61.

17 **Pricing Calculator**

18 California [v] LLC [v]

	ROCKETLAWYER.	Competitor
Processing and filing 5 to 6 weeks processing	Free [v]	\$99.00
State Fees	\$90.00	\$90.00
Package Options		
<input type="checkbox"/> Federal Tax ID	\$60.00	\$79.00
<input type="checkbox"/> Corporate Kit and Seal	\$99.00	\$100.00
<input type="checkbox"/> Registered Agent Service	\$129.00	\$159.00

19 e

20 Nice. Prices are right here, up front, so I know what to expect as I progress.

21

22

23 As can be seen above, Rocket Lawyer has provided customers with apples-to-apples
24 pricing comparisons and it is clear that the free versus \$99 distinction relates only to
25 "processing and servicing" fees and not the state fees that would, of course, remain
26 constant regardless of the provider the customer chooses.

27 In addition, if LegalZoom attempts to argue that disclosure of state fees is
28 required in all incorporation advertisements even though these fees are charged by a

1 third-party, it must explain why it does not disclose in its own advertisements the
2 third party costs associated with using LegalZoom.com identified in its
3 Supplemental Terms of Use. *See id.* at 62 (LegalZoom terms identifying necessary
4 third party charges, such as those for Internet and computer access, etc.).
5 Specifically, LegalZoom must explain why fees mandated by the state for
6 incorporation should be treated differently from other third party costs.

7 Finally, LegalZoom has published advertisements that are “literally false.”
8 LegalZoom has published and continues to publish on the Internet and on its website
9 advertisements claiming that it has an “A rating” with the Better Business Bureau.
10 *Id.* at 63. However, LegalZoom does not have, and has not had, an A rating with the
11 Better Business Bureau since March 2013. *Id.* at 64.



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18 The conduct described above constitutes unclean hands, which would completely
19 bar any relief sought by LegalZoom, and precludes summary judgment in favor of
20 LegalZoom at this time because unfavorable facts already exist against LegalZoom
21 and because discovery has not even begun.

22 **B. LegalZoom Cannot Prove the Elements of Each Cause of Action**

23 **1. Rocket Lawyer Has Not Violated the Lanham Act**

24 Even if relief were available, LegalZoom could not meet its summary
25 judgment burden. To prove false advertising under the Lanham Act, LegalZoom
26 must submit evidence that a material statement, with the power to influence
27 purchasing decisions, made by Rocket Lawyer in an advertisement deceived or has a
28 tendency to deceive a substantial segment of the audience and that LegalZoom has

1 been harmed or is likely to be harmed by the diversion of sales or lessening of
2 goodwill. *See Skydive Arizona, Inc. v. Quattrocchi*, 673 F.3d 1105, 1110 (9th Cir.
3 2012) (citing 15 U.S.C. § 1125(a)(1)(B) and *Southland*, 108 F.3d at 1139).

4 **a. Rocket Lawyer’s Advertisements Are True**

5 LegalZoom cannot prove as a matter of fact that Rocket Lawyer’s
6 advertisements are literally false.³ Contrary to LegalZoom’s non-binding authority,
7 in the Ninth Circuit, “[l]iteral falsity is a question of fact, and summary judgment
8 should not be granted where a reasonable jury could conclude a statement is not
9 false.” *See Southland*, 108 F.3d at 1144-45 (overturning grant of summary judgment
10 that found falsity as a matter of law); *K & N Eng’g, Inc. v. Spectre Performance*,
11 EDCV 09-01900-VAP, 2011 WL 4387094, at *9 (C.D. Cal. Sept. 20, 2011); *see*
12 *also eMove Inc. v. SMD Software Inc.*, CV-10-02052-PHX-JRG, 2012 WL
13 1379063, at *4 (D. Ariz. Apr. 20, 2012) (“Whether a statement is literally false is a
14 question of fact.”). LegalZoom cannot show literal falsity of either an explicit claim
15 or one conveyed by necessary implication. *See Southland*, 108 F.3d at 1139 (citing
16 *Castrol Inc. v. Pennzoil Co.*, 987 F.2d 939, 943 (3d Cir. 1993).

17 LegalZoom essentially alleges five purportedly false statements:

- 18 (1) “Zoom Charges \$99. Rocket Lawyer is Fast, Easy, &Free. Incorporate
19 Your Business Today”;
20 (2) “incorporate for free... pay no fees (\$0)”;
21 (3) “free... LLCs”;
22 (4) “free help from local attorneys” and “free legal review”; and
23 (5) “free” trials of Rocket Lawyer’s “Basic Legal Plan” and “Pro Legal Plan.”

24 Motion at 1. LegalZoom alleges that: statements (1)-(3) are false because customers

25 _____
26 ³ Although the Lanham Act allows for claims of false advertising based on true
27 advertising that may be misleading, LegalZoom has not invoked this prong and has
28 not submitted any evidence of misled consumers. Thus, the Court should disregard
any such new arguments or facts if raised on reply. *See Zamani v. Carnes*, 491 F.3d
990, 997 (9th Cir. 2007) (“The district court need not consider arguments raised for
the first time in a reply brief.”)

1 must pay fees assessed by *the state*; statement (4) is false because only paid
2 customers have access to “free help” and “free legal review;” and statement (5) is
3 false because customers must opt out of an ongoing legal plan after their one-week
4 trial. *See* Motion at 8-9.

5 However, the evidence shows that none of these statements is explicitly false;
6 each of Rocket Lawyer’s advertisements is true. Rocket Lawyer charges no fee for
7 its assistance in processing and filing incorporation papers for trial and paid Pro
8 Legal Plan Members. SS at 65.⁴ LegalZoom asserts that the statement at Exhibit E,
9 p. 45, containing the statement “free legal review,” is used as an improper lure to
10 customers, without first establishing at what stage in the user experience the
11 screenshot was taken. LegalZoom mistakenly conflates legal review of documents
12 with “free legal help,” which has always been available to registered users in the
13 form of free consultations with On Call attorneys. *Id.* at 67. Thus, no explicit claim
14 can be found literally false.

15 Likewise, LegalZoom cannot prove that any necessarily implied claim in
16 Rocket Lawyer’s ads is false. “To find an advertisement ‘literally false’ by
17 ‘necessary implication,’ . . . the claim must be analyzed in its entirety to determine
18 whether ‘the audience would recognize the claim as readily as if it had been
19 explicitly stated.’” *Aussie Nads U.S. Corp. v. Sivan*, 41 F. App’x 977, 977 (9th Cir.
20 2002) (quoting *Clorox Co. v. Proctor & Gamble Commercial Co.*, 228 F.3d 24, 35
21 (1st Cir. 2000)). LegalZoom never addresses this standard and never specifies what
22 the ads in question might necessarily imply. Further, LegalZoom has not met its
23 burden of demonstrating that ordinary customers actually perceive the ad to make
24 that implication because it has not submitted any such evidence. *See Walker &*

25 _____
26 ⁴ Though not binding, Section (2)(b) of FTC Guidelines defines “free” as when a
27 merchant will not “recover, in whole or in part, the cost of the free merchandise or
28 service by marking up the price of the article which must be purchased, by the
substitution of inferior merchandise or service, or otherwise.” Rocket Lawyer does
not retain any portion of the state fees charged; all such charges are assessed by the
state, and thus are entirely passed on to the state through a third party. *Id.* at 66.

1 *Zanger, Inc. v. Paragon Indus., Inc.*, 549 F.Supp.2d 1168, 1182 (N.D. Cal. 2007)
2 (“[I]f an advertisement is not false on its face . . . plaintiff must produce evidence,
3 usually in the form of market research or consumer surveys, showing exactly what
4 message ordinary consumers perceived.”).

5 At most, LegalZoom implies that the ads might be ambiguous—that some
6 consumers might expect to pay no state fees, or to access free legal help before
7 becoming a customer, or to have a trial period terminate automatically. But “only an
8 *unambiguous* message can be literally false.” *Time Warner Cable, Inc. v. DIRECTV,*
9 *Inc.*, 497 F.3d 144, 158 (2d Cir. 2007) (quoting *Clorox*, 228 F.3d at 35). Even if
10 both interpretations were equally reasonable, no literal falsity can be found. *See*
11 *Aussie Nads*, 41 F. App’x at 978 (finding that, where considering an ambiguous ad,
12 “the doctrine of literal falsity is inapplicable”); *Scotts Co. v. United Indus. Corp.*,
13 315 F.3d 264, 275 (4th Cir. 2002) (finding no basis for literal falsity where a
14 statement “can reasonably be understood as conveying different messages”).

15 In addition, LegalZoom’s interpretation of the advertisements applies an
16 *irrational* consumer standard. Internet consumers encounter free trial offers in
17 countless situations; well-known consumer-facing Internet companies like
18 Microsoft, Amazon, Turbo Tax, Netflix and SiriusXM offer free trial programs
19 similar to Rocket Lawyer—and many of these businesses require credit card
20 information. Requiring such information does not negate the free nature of the trial.
21 Further, just as no reasonable person would believe that using Turbo Tax’s “free”
22 services to complete tax forms means that they would not have to pay any taxes, no
23 reasonable consumer would believe that Rocket Lawyer’s offer of free incorporation
24 frees him from paying mandated state fees. *See also supra* note 4.

25 Considering Rocket Lawyer’s advertisements in context further dispels any
26 notion that Rocket Lawyer’s use of the word “free” is explicitly or implicitly false.⁵

27 _____
28 ⁵ *See Southland*, 108 F.3d at 1139 (“When evaluating whether an advertising claim
is literally false, the claim must always be analyzed in its full context”).

1 Each Rocket Lawyer advertisement at issue contains a link to Rocketlawyer.com or
2 is published on Rocketlawyer.com. SS at 68. Rocket Lawyer discloses the state fees
3 on the incorporation and entity formation page of its website, and at other points
4 prior to the customer inserting any credit card information. *Id.* at 69. Rocket Lawyer
5 does in fact provide the “free legal help” advertised by making attorney consultation
6 available to all registered users. *Id.* at 70. All of the details of Rocket Lawyer’s free
7 trial plan are also disclosed on Rocketlawyer.com. *Id.* at 71.

8 Regarding the “Zoom Charges \$99, We’re Free” statement, LegalZoom’s
9 incorporation services start at \$99. *Id.* at 72.



13 The pricing for the incorporation service of both parties is truthfully and fairly
14 advertised without mentioning state fees for either party. The advertisement does not
15 state that LegalZoom charges state fees while omitting that Rocket Lawyer charges
16 state fees. In fact, the advertisement fairly references the *lowest* price offered by
17 LegalZoom. *Id.* It is in the consumers’ interest and public policy to promote
18 consumer choice by presenting competitive offers based on price.



21 Thus, Rocket Lawyer’s advertisements are not explicitly or implicitly false.

22 **b. Truth Cannot Be Deceptive**

23 LegalZoom asserts that deception is presumed and the burden shifts to Rocket
24 Lawyer based on intentionality and literal falsity. Motion at 10-11. This
25 presumption does not apply to the case at hand. As the district court explained in
26 *Soilworks, LLC v. Midwest Indus. Supply, Inc.*, such a presumption only arises in the
27 case of *deliberately false comparative* claims. 575 F. Supp. 2d 1118, 1135 (D. Ariz.
28 2008); *see also Southland*, 108 F.3d at 1146 (“[p]ublication of *deliberately false*

1 comparative claims gives rise to a presumption of actual deception and reliance.”)
2 (emphasis added). LegalZoom has not shown falsity, let alone deliberate falsity, and
3 has alleged only one putatively comparative claim. That claim, “Zoom Charges \$99.
4 Rocket Lawyer is Fast, Easy, & Free” (see Motion at 1, 2, and 8), was not pleaded in
5 LegalZoom’s First Amended Complaint, and should therefore not provide the basis
6 for a favorable presumption at the summary judgment stage.⁶

7 The presumption also does not apply because the comparative statement—
8 that “Zoom” charges \$99 while Rocket Lawyer is free—is true and not misleading.
9 As shown above, LegalZoom charges \$99 for its most basic package, SS at 72,
10 while Rocket Lawyer offers a free trial. Absent any deliberately false comparative
11 claim, the presumption is inapplicable.

12 Rocket Lawyer’s advertisements paired with its website have no tendency to
13 deceive. A representation’s tendency to deceive must be assessed in its entire
14 context. See *Freeman*, 68 F.3d at 289-90 (“Any ambiguity that Freeman would read
15 into any particular statement is dispelled by the promotion as a whole”). Courts have
16 applied this reasoning to false advertising claims (and UCL claims) involving online
17 representations, holding that disclosures and clarifying terms on a website can
18 render an inference of deception unreasonable. See, e.g., *Castagnola*, 2012 WL
19 2159385, at *9 (stating the court “cannot look at the statements on the webpage in
20 isolation,” and emphasizing references to “offer details”).⁷ The disclosure of the
21 terms of the advertised services on Rocketlawyer.com dispels any plausible
22 inference that a reasonable consumer has been misled.

23 Aside from the conclusory statement that Rocket Lawyer’s advertisements

24 ⁶ See, e.g., *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292 (9th Cir.2000) (“The
25 Court will not consider claims raised for the first time at summary judgment which
Plaintiffs did not raise in their pleadings”).

26 ⁷ *Berry*, 2011 WL 1375665, at *6 (dismissing claims where webpage included
27 disclosures “sufficient to place the consumer on notice of the conditions and
28 terms”); *Baxter v. Intelius, Inc.*, No. SACV 09-1031 AG, 2010 WL 3791487 (C.D.
Cal. Sep. 16, 2010) (dismissing FAL and UCL claims where webpage referred to
clear “offer details”).

1 “are likely to cause confusion or mistake as to the actual cost” of Rocket Lawyer’s
2 services, LegalZoom provides no evidence regarding the deception element. Motion
3 at 11. Without the requisite factual support, the Motion should be denied.

4 **c. Any Allegedly False Claims Are Immaterial**

5 LegalZoom relies on supposition and faulty presumption to prove materiality,
6 and is not entitled to summary judgment on this element. An alleged deception is
7 material when “it is likely to influence the purchasing decision” *Rice v. Fox*
8 *Broad. Co.*, 330 F.3d 1170, 1181 (9th Cir. 2003). “A plaintiff may establish this
9 materiality requirement by proving that the defendants misrepresented an inherent
10 quality or characteristic of the product.” *POM Wonderful LLC v. Purely Juice, Inc.*,
11 CV 07–02633 CAS (JWJX), 2008 WL 4222045, at *11 (C.D. Cal. July 17, 2008),
12 *aff’d.*, 362 F. App’x 577 (9th Cir.2009).

13 LegalZoom wrongly claims that “actually false claims are presumed
14 material.” Motion at 12. No such presumption exists. *See Quattrocchi*, 673 F.3d at
15 1111 (inquiring into materiality where literal falsity is uncontested); *see also*
16 *Osmose, Inc. v. Viance, LLC*, 612 F.3d 1298, 1319 (11th Cir. 2010) (“Even if an
17 advertisement is literally false, the plaintiff must still establish materiality.”).

18 Without such a standard, LegalZoom has no facts to demonstrate materiality.
19 LegalZoom supposes that the cost of Rocket Lawyer’s services confuses consumers;
20 Rocket Lawyer targets “economical individuals and small to medium sized
21 businesses”; and “Cost is a key factor in such customers’ purchasing decisions.”
22 Motion at 12. LegalZoom offers no support for any of these conclusory allegations
23 and entirely missuses *In re Samuel Stores*, 27 F.T.C. 882, 888 (1938). In fact:

- 24 • The costs for Rocket Lawyer’s services are disclosed to consumers several
25 times before any purchase is made;
- 26 • Whom Rocket Lawyer targets is not probative of materiality, *see*
27 *Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Ave.*, 284 F.3d 302,
28 312 n.10 (1st Cir. 2002) (“Whether a misrepresentation is material has

1 nothing to do with . . . the defendant’s intent.”); and

- 2 • Cost is subsidiary to many other factors for customers in this industry. All
3 competitors offer low-cost services, neutralizing the materiality of price,
4 and customers differentiate among them based on speed, quality, ease of
5 use, and breadth of services. *See* SS at 73.⁸

6 LegalZoom is wrong on the legal standard and the facts that apply to that
7 standard. There is no basis for a finding of materiality.

8 **d. LegalZoom Has Suffered No Actual Injury**

9 LegalZoom again applies the wrong standard to an element of this claim—
10 here, harm. Although proof of injury is not required for *an injunction* “in a suit for
11 damages under section 43(a), however, actual evidence of some injury resulting
12 from the deception is an essential element of the plaintiff’s case.” *Harper House,*
13 *Inc. v. Thomas Nelson, Inc.*, 889 F.3d 197, 210 (9th Cir. 1989). LegalZoom, here,
14 seeks damages in addition to an injunction. *Southland*’s consideration of a monetary
15 award absent a showing of damages provides no help. The Court in *Southland*
16 reversed a grant of summary judgment for the defendant on causation and injury,
17 concluding that (1) an un rebutted presumption of deception, or (2) consumer survey
18 and market analysis evidence could justify monetary relief. 108 F.3d at 1146.
19 LegalZoom has proffered no survey or market analysis evidence, and, as discussed
20 above, can establish no deliberately false comparative claims, as required for a
21 presumption of deception. Indeed, LegalZoom has not even attempted to
22 demonstrating facts sufficient to establish this element—i.e., LegalZoom’s Separate
23 Statement of Facts does not include a single reference to any injury it has suffered as
24 a result of Rocket lawyer’s alleged conduct. As such, LegalZoom has no basis for

25 _____
26 ⁸ In this way, LegalZoom misses the benefit of a free trial—it does not directly
27 induce customers to choose Rocket Lawyer, but exposes potential customers to the
28 quality of the service offered, which in turn influences their purchasing decision, to
Rocket Lawyer’s benefit. In this way, the free trial offer actually *reduces* a
customer’s reliance on cost as a determining factor and instead focuses on the user
experience and customer satisfaction..

1 sidestepping its burden to establish this “essential element.”

2 LegalZoom has not and cannot prove an injury. Conclusory allegations of
3 “direct diversion of sales,” in a footnote, with no evidentiary support, cannot suffice
4 for summary judgment. *See* Motion at 13 n.3.; *see also* Fed. R. Civ. Proc. 56(c);
5 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (at summary judgment,
6 plaintiff “can no longer rest on such ‘mere allegations,’ but must ‘set forth’ by
7 affidavit or other evidence ‘specific facts,’” to prove standing). LegalZoom has
8 offered no evidence of diversion of sales or of any consumer’s refusal to deal with
9 LegalZoom, let alone that any such conduct *resulted* from Rocket Lawyer’s
10 advertising.

11 LegalZoom cannot prove harm because no such harm exists. After March
12 2013, when Rocket Lawyer began to mention state fees in all of its incorporation
13 advertisements, the average number of incorporations performed using Rocket
14 Lawyer services each month remained basically unchanged. *Id.* at 74. The change in
15 ad copy had no effect on usage.

16 Underscoring the anticompetitive nature of these claims, LegalZoom
17 completely ignores the fact that many its competitors in this industry provide
18 advertising similar to the Rocket Lawyer ads challenged in the instant case. *Id.* at
19 52. LegalZoom also ignores the likely conclusion that consumers may prefer Rocket
20 Lawyer’s services because they are provided electronically, are cheaper, and are
21 more comprehensive. Thus, LegalZoom cannot show what harm, if any, is ascribed
22 to Rocket Lawyer instead of other competitors or the inferiority of LegalZoom’s
23 offerings and business model.

24 Absent actual facts in support of an injury, LegalZoom has not met its burden
25 regarding injury. Without proof to support the essential elements of this cause of
26 action, LegalZoom is not entitled to summary judgment for false advertising under
27 the Lanham Act.

28 ///

1 **2. Rocket Lawyer Has Not Engaged in False Advertising Under**
2 **Section 17500**

3 Similar to the Lanham act, the FAL makes it unlawful for any person to
4 “induce the public to enter into any obligation” based on a statement that is known,
5 or reasonably should be known, to be “untrue or misleading.” Cal. Bus. & Prof.
6 Code § 17500 (“FAL”). To prevail on its FAL claim, LegalZoom must show that
7 “members of the public are likely to be deceived” under a reasonable consumer test.
8 *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1162 (9th Cir. 2012); *see also*
9 *Freeman*, 68 F.3d at 289.

10 **a. Rocket Lawyer’s Advertisements Are Not False**

11 California courts have recognized that whether a statement is deceptive will
12 usually be a question of fact. *See Williams v. Gerber Prods., Co.*, 552 F.3d 934, 938
13 (9th Cir. 2008). LegalZoom’s FAL claim fails because it has provided no evidence
14 to show that Rocket Lawyer’s advertisements are actually false, but instead merely
15 sets forth unsupported—and, thus, insufficient —allegations. *See Brosnan v.*
16 *Tradeline Solutions, Inc.*, 681 F. Supp. 2d 1094, 1103 (N.D. Cal. 2010).

17 Alleged falsity of advertising statements is assessed under the FAL the same
18 as under the Lanham Act claim. *See Kwan Software Eng’g v. Foray Techs., LLC*,
19 2013 U.S. Dist. LEXIS 14708 at *7 (N.D. Cal. Jan. 22, 2013) (“[t]he parties agree
20 that false advertising under California law requires the same showing of falsity as
21 the Lanham Act”); *Cytosport, Inc. v. Vital Pharms., Inc.*, 894 F. Supp. 2d 1285,
22 1295 (E.D. Cal. 2012) (“In the Ninth Circuit, claims of unfair competition and false
23 advertising under [the FAL and UCL] are substantially congruent to claims made
24 under the Lanham Act[.]”); *Walker & Zanger, Inc. v. Paragon Indus., Inc.*, 549
25 F.Supp.2d 1168, 1182 (N.D.Cal.2007) (same). As such, the Court should find that
26 LegalZoom has failed to meet the burden of showing that Rocket Lawyer’s
27 advertisements are false for the same reasons stated in section IV.B.1, *supra*.

28 ///

1 **b. Rocket Lawyer’s Advertisements Have Not Deceived**
2 **Reasonable Consumers**

3 Whether an advertisement is misleading is judged by the effect it has on “the
4 reasonable consumer acting reasonably under the circumstances.” *Davis*, 691 F.3d at
5 1161; *see also Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 504 (2003)
6 (rejecting “least sophisticated consumer” standard). “Under the reasonable
7 consumer standard, plaintiff is required to show not simply that the defendants’
8 [advertisements] *could* mislead the public, but that they were *likely* to mislead the
9 public.” *Haskell v. Time, Inc.*, 965 F. Supp. 1398, 1406-07 (E.D. Cal. 1997)
10 (emphasis in original). The court in *Lavie* held that “[l]ikely to deceive’ implies
11 more than a mere possibility that the advertisement might conceivably be
12 misunderstood by some few consumers viewing it in an unreasonable manner.” 105
13 Cal. App. 4th at 508. Instead, it indicates that “the ad is such that it is probable that a
14 significant portion of the general consuming public or of targeted consumers, acting
15 reasonably in the circumstances, could be misled.” *Id.* LegalZoom has not and
16 cannot prove deception for at least two reasons:

17 First, LegalZoom quotes from several Rocket Lawyer advertisements, but
18 fails to proffer any evidence to demonstrate how or even whether reasonable
19 consumers might be misled by the statements. Yet, “to prevail, plaintiff must
20 demonstrate by extrinsic evidence, such as consumer survey evidence, that the
21 challenged statements tend to mislead consumers. . . . ‘[A] statistically significant
22 part of the commercial audience holds the false belief allegedly communicated by
23 the challenged advertisement’ to state a cognizable claim.” *Haskell*, 965 F.Supp. at
24 1407 (internal citation and quotations omitted). LegalZoom sets forth no evidence
25 whatsoever demonstrating that Rocket Lawyer’s ads have misled any consumer, let
26 alone that they have resulted in the deception of a significant number of consumers.
27 The record here is devoid of requisite survey results and LegalZoom as not offered
28 even anecdotal evidence to support its claims.

1 Second, Rocket Lawyer’s disclosure of the terms of its free trial services
2 sufficiently dispels any potential deception. *See Ford v. Hotwire, Inc.*, No. 07-CV-
3 1312, 2007 WL 6235779, at *4 (S.D. Cal. Nov. 19, 2007) (dismissing FAL and
4 UCL claims where payment authorization page required confirmation that plaintiff
5 read defendant’s “Terms of Use Agreement” hyperlinked on page); *see also Hook v.*
6 *Intelius, Inc.*, No. 5:10-CV-239(MTT), 2011 WL 1196305, at *10 (M.D. Ga. Mar.
7 28, 2011) (dismissing claim under Georgia law based on online subscription in
8 context of website, which “disclosed the details . . . at least five times before
9 plaintiff made his purchase”).

10 Finally, the only way LegalZoom can prevail on this issue is if an *irrational*
11 consumer standard applied. As stated above, *see supra*, section IV.B.2, reasonable
12 consumers are very familiar with free trial programs like Rocket Lawyer’s, and also
13 would not reasonably expect to avoid paying mandated state fees just because
14 Rocket Lawyer advertises that *its* assistance in incorporating a business is free.

15 **c. LegalZoom Has No Evidence in Support of Violations**
16 **of Section 17509 or the Negative Option Rule**

17 LegalZoom states in passing that Rocket Lawyer’s advertisements violated
18 Section 17509, which requires disclosure of the price of any additional product or
19 service that is a “condition of sale” of an advertised service. Cal. Bus. & Prof. Code
20 § 17509. Rocket Lawyer’s free trial is not contingent upon the purchase of any item.
21 *See* SS at 75. The incorporation services webpage conspicuously discloses that the
22 service is available for free trial and paying Pro Legal Plan members and the price
23 of these plans – free and \$39.95 per month. *Id.* at 76. In addition, as stated above,
24 the terms and price of the legal plans that include the On Call services are also
25 disclosed, and LegalZoom is wrong that “free help from local attorneys” was not
26 available as advertised. *Id.* at 50. Section 17509 does not prohibit conditions on sale,
27 it just requires disclosure –a requirement that Rocket Lawyer has satisfied.

28 LegalZoom also supports its FAL claim with passing references to the

1 California Negative Option Law. Motion at 15. However, LegalZoom does not offer
2 any evidence to prove a violation of the Negative Option Law. Indeed, it cannot.
3 Rocket Lawyer conspicuously discloses the terms of its free trial plans, requires
4 consumers to acknowledge that they have “read, understood and agree to the Terms
5 of Service” and are clicking “get free trial” to enroll in the free trial as described on
6 the same page, and provides consumers with information on how to cancel the free
7 trial by phone, email, chat, or through the consumer’s member page. SS at 45, 46.⁹
8 In addition LegalZoom’s failure to prove “bad faith” is fatal to any claim for
9 damages based on the negative option rule. *See* Cal. Bus. & Prof. Code § 17604 (“If
10 a business complies with the provisions of this article in good faith, it shall not be
11 subject to civil remedies”).

12 For all of these reasons, summary judgment is inappropriate as to
13 LegalZoom’s FAL claim.

14 **3. Rocket Lawyer Does Not Unfairly Compete Under Section**
15 **17200**
16 **a. LegalZoom’s UCL Claim Fails Because it is Derivative**
of Other Insufficient Claims

17 LegalZoom justifies its UCL claim on the same grounds as its Lanham Act
18 and FAL claims. Thus, this claim is entirely derivative of the other causes of
19 actions, and summary judgment should be denied as to this claim for the same
20 reasons stated above. *See Prachasaisoradej v. Ralphs Grocery Co., Inc.*, 42 Cal. 4th
21 217, 244 (2007) (“The derivative claim of liability under Business and Professions
22 Code section 17200 thus also fails.”); *Steinhebel v. L.A. Times Commc’ns*, 126 Cal.
23 App. 4th 696, 703-04, 711 (2005) (affirming ruling that UCL claim “also failed
24

25 ⁹ LegalZoom misapplies *FTC v. Williams*, No. C11–828 MJP, 2011 WL 4103542,
26 *4 (W.D. Wash. Sept. 13, 2011). In *Williams*, the court relied on “substantial
27 anecdotal” and expert testimony that practices were “actually misleading.” *Id.* at *4-
28 5. The court did not conclude that a free trial in conjunction with a so-called
“negative option” plan is inherently misleading, but much more broadly stated that
“failure to disclose the true terms of the negative option and continuity plans, as
well as [defendants’] refund and cancellation policies violate the FTCA.” *Id.* at *6.

1 because [it] is derivative of the first cause of action”). In particular, where a UCL
2 claim relies on false advertising claims, the result of the latter dictates the result of
3 the former. *See Rice*, 330 F.3d at 1181-82 (granting summary judgment to
4 defendants on UCL claim based strictly on grant of summary judgment on Lanham
5 Act false advertising claim).¹⁰

6 **b. The FTC Guide Cannot Support a UCL Claim**

7 Furthermore, LegalZoom’s allegations of Federal Trade Commission Guide
8 (“FTC Guide”) violations cannot save the UCL claim. First, the FTC has *never*
9 initiated an action nor contacted Rocket Lawyer about any of its advertisements. SS
10 at 77. Second, the FTC Guide cannot sustain a UCL claim as a matter of law. “[T]he
11 FTC’s guide does not have the force of law, so it cannot be ‘borrowed’ under the
12 UCL.” *Laster v. T-Mobile USA, Inc.*, 05CV1167, 2009 WL 4842801, at *5 n.1 (S.D.
13 Cal. Dec. 14, 2009) *vacated in part*, 466 F. App’x 613 (9th Cir. 2012); *see also* 16
14 C.F.R. § 240.1 (the FTC’s guides “do not have the force of law”); *Pocino v. Jostens,*
15 *Inc.*, B181449, 2006 WL 1163785, at *6 (Cal. Ct. App. May 3, 2006)
16 (distinguishing violation of federal law from violation of FTC guide, requiring
17 instead a violation of the underlying statute on which the guide is based).
18 LegalZoom alleges only a violation of the guide, not an underlying statute, Memo at
19 16-17, and therefore cannot justify its UCL claim. *Accord Frainier v. Priceline.com,*
20 *Inc.*, No. B225920, 2012 WL 592189, *3-4 (Cal. Ct. App. Feb. 22, 2012) (granting
21 summary judgment for defendant finding no violation of the FTCA because the
22 customers were not likely to have been misled by the clear online disclosure that
23 hotel-specific fees may also apply and even though fees were not listed in the “Total
24 Charges”). Summary judgment, therefore, is inappropriate for the UCL claim.

25
26 ¹⁰ Also, as in *Rice*, even if the UCL claim were not dependent on the false
27 advertising claims, LegalZoom is not entitled to summary judgment, “because there is no evidence of a
28 reasonable consumer being misled by defendants’ alleged false statements.” *Rice*,
330 F.3d at 1182 n.8.

1 **C. LegalZoom Has No Standing to Pursue Any of These Claims**

2 To have standing in federal court, “a plaintiff must show ‘injury in fact,’
3 causation, and redressability.” *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs.*
4 (*TOC*), *Inc.*, 528 U.S. 167, 180-81 (2000) (citing *Lujan*, 504 U.S. at 560-61). In
5 addition, the Lanham Act, the FAL, and the UCL each require a showing of *actual*
6 damages for standing. Under the false advertising prong of the Lanham Act, invoked
7 by LegalZoom, a plaintiff must show a commercial injury based upon a
8 misrepresentation that is competitive, or harmful to the plaintiff’s ability to compete
9 with the defendant. *FLIR Sys., Inc. v. Sierra Media, Inc.*, 3:10-CV-00971-HU, 2013
10 WL 4046323, at *5 (D. Or. Aug. 8, 2013) (citing *Jack Russell Terrier Network of N.*
11 *Ca. v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1037 (9th Cir. 2005)). Similarly,
12 California’s FAL and UCL require an injury in fact and the loss of money or
13 property as a result of a defendant’s conduct in order to maintain standing. *See*
14 *Stanwood v. Mary Kay, Inc.*, SACV 12-00312-CJC, 2012 WL 7991231 (C.D. Cal.
15 Sept. 20, 2012), *recons. denied* (Nov. 13, 2012) (a plaintiff asserting a UCL or FAL
16 claim must establish a loss of money or property, and that such injury was caused by
17 the unfair business practice or false advertising that is the gravamen of the claim);
18 *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 322 (2011).

19 LegalZoom has not proffered sufficient facts to justify standing to pursue
20 these claims. Allegations of harm are insufficient to meet the burden for standing;
21 LegalZoom must provide specific facts demonstrating its harm. *Cf. Lujan*, 504 U.S.
22 at 561 (explaining that, at the summary judgment stage, “the plaintiff can no longer
23 rest on such ‘mere allegations,’ but must ‘set forth’ by affidavit or other evidence
24 ‘specific facts,’” to meet its burden to prove standing) (quoting Fed. R. Civ. Proc.
25 56(e)). LegalZoom asserts that it need not prove injury, that injury can be presumed,
26 and that a direct diversion of sales would constitute actual injury. Motion at 13. But
27 LegalZoom is wrong that it need not prove injury, LegalZoom is wrong that injury
28 can be presumed, and LegalZoom provides no specific facts that tend to show any

1 diversion of sales—conclusory statements that it is losing business notwithstanding.
2 Conversely, Rocket Lawyer can show that no harm exists as a result of the conduct
3 complained of by LegalZoom. *See also supra* at IV.B.1.d.

4 A lack of standing alone is sufficient to defeat summary judgment. *E.g., PK*
5 *Tanasbourne Vill., LP v. Oregon Golf, Inc.*, 3:09-CV-1429-HA, 2010 WL 2990341
6 (D. Or. July 28, 2010) (“Plaintiff’s lack of standing provides independent grounds
7 for the denial of their motion for summary judgment[.]”).¹¹

8 **v. CONCLUSION**

9 For the foregoing reasons, the Court should deny LegalZoom’s motion for
10 summary judgment based on the law, the existence of disputed material facts, and
11 because the doctrine of unclean hands prohibits LegalZoom from prevailing.

12 Dated: September 23, 2013

Respectfully submitted,

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24
25
26 ¹¹ On this basis, the Court should not only deny summary judgment but also dismiss
27 the case for lack of jurisdiction. *B.C. v. Plumas Unified School Dist.*, 192 F.3d 1260,
28 1264 (9th Cir. 1999) (“[F]ederal courts are required *sua sponte* to examine
jurisdictional issues such as standing.”).