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 11 **ROCKET LAWYER INCORPORATED**

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

16 LEGALZOOM.COM, INC., a Delaware  
 17 corporation,  
 18 Plaintiff,  
 19 v.  
 20 ROCKET LAWYER  
 21 INCORPORATED, a Delaware  
 22 corporation,  
 Defendant.

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

**DEFENDANT'S MEMORANDUM  
 OF EVIDENTIARY OBJECTIONS  
 IN SUPPORT OF ITS OPPOSITION  
 TO LEGALZOOM'S MOTION FOR  
 SUMMARY JUDGMENT**

Date: October 21, 2013  
 Time: 9:30 a.m.  
 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 Pursuant to the Court’s current standing Scheduling Order, Defendant Rocket  
2 Lawyer Incorporated (“Rocket Lawyer”) submits this Memorandum of Evidentiary  
3 Objections to Plaintiff Legalzoom.com, Inc.’s Separate Statement of Undisputed  
4 Material Facts.

5 Separate Statement Paragraph 7: Objection to Paragraph 5 of the Declaration  
6 of Mary Ann T. Nguyen (“Nguyen Decl.”) (“Rocket Lawyer’s customers are  
7 required to pay the state fees associated with incorporation and formation”) on the  
8 grounds that it is misleading. To the extent this statement implies that Rocket  
9 Lawyer imposes the fees, as opposed to the state, or that customers of LegalZoom or  
10 of any other competitor are not required to pay the same fees, it is misleading. Fed.  
11 R. Evid. 403.

12 Separate Statement Paragraph 8: Objection to Exhibit D to the Nguyen Decl.,  
13 “Screen grabs of Rocket Lawyer’s ‘Interview’ for ‘Company Set-Up’ and  
14 ‘Company Details,’” on the grounds that the evidence is incomplete and misleading.  
15 To the extent that it is offered to show the only disclosure of state filing fees on  
16 Rocketlawyer.com, it is incomplete and misleading. Fed. R. Evid. 106, 403.

17 Separate Statement Paragraph 9: Objection to the assertion that “Rocket  
18 Lawyer subsequently changed the language of these advertisements after  
19 LegalZoom filed its original Complaint” on the grounds that it is irrelevant,  
20 evidence of a subsequent remedial measure, and misleading. Any Rocket Lawyer  
21 advertising not complained of is irrelevant. Fed. R. Evid. 401, 402. To the extent it  
22 is offered as a subsequent remedial measure demonstrating culpable conduct, it is  
23 inadmissible. Fed. R. Evid. 407. To the extent it is offered to show an admission of  
24 guilt, it is misleading as LegalZoom has offered no evidence and Rocket Lawyer has  
25 made no concession that its new advertisements resulted from the original  
26 Complaint. Fed. R. Evid. 403.

27 Separate Statement Paragraph 10: Objection to Exhibit E to the Nguyen Decl.,  
28 “Screen grabs of Rocket Lawyer’s Advertisements,” on the grounds that the

1 evidence is misleading and irrelevant. Page 45 of Exhibit E purports to show that  
2 Rocket Lawyer advertised “free legal review.” The evidence is taken from Rocket  
3 Lawyer’s website and does not make clear when in the user experience this screen is  
4 encountered. Thus, to the extent it is offered to show what Rocket Lawyer  
5 advertised to non-customers, it is misleading and irrelevant to the fact asserted. Fed.  
6 R. Evid. 401, 402, 403.

7 Separate Statement Paragraph 12: Objection to the supporting evidence of  
8 <http://www.rocketlawyer.com/on-call-terms-of-service.rl> for assertion that “The  
9 paid-membership requirement for access to the purported ‘free help from local  
10 attorneys’ and ‘free legal review’ was not disclosed in close proximity to the  
11 advertisements on Rocket Lawyer’s website” on the grounds that it is irrelevant and  
12 misleading. The evidence provided does not demonstrate the disclosure’s proximity  
13 or lack thereof to Rocket Lawyer’s advertising and is therefore irrelevant to the  
14 asserted fact. Fed. R. Evid. 401, 402. To the extent it is used for such purpose, it is  
15 misleading. Fed. R. Evid. 403.

16 Separate Statement Paragraph 13: Objection to the supporting evidence of  
17 <http://www.rocketlawyer.com/on-call-terms-of-service.rl> for assertion that “The  
18 paid-membership requirement was only disclosed in Rocket Lawyer’s ‘On Call  
19 Terms of Service,’ which was accessible to customers on a separate link found at  
20 <http://www.rocketlawyer.com/on-call-terms-of -service.rl>.” The evidence provided  
21 does not support the assertion that the Terms of Service are the only disclosure. To  
22 the extent that it is used for that purpose, it is misleading. Fed. R. Evid. 403.

23 Separate Statement Paragraph 14: Objection to the supporting evidence of  
24 Rocket Lawyer’s On Call Terms of Service dated November 2012 on the grounds  
25 that it is irrelevant, misleading, and evidence of a subsequent remedial effort. Any  
26 Rocket Lawyer terms of service not complained of are not relevant. Fed. R.  
27 Evid. 401, 402. To the extent it is offered as a subsequent remedial measure  
28 demonstrating culpable conduct, it is inadmissible. Fed. R. Evid. 407. To the extent

1 it is offered to show an admission of guilt or that the prior terms of service were  
2 insufficient as a disclosure, it is misleading. Fed. R. Evid. 403.

3 Separate Statement Paragraph 15: Objection to the supporting evidence of  
4 Rocket Lawyer’s On Call Terms of Service, dated July 2012, and Rocket Lawyer’s  
5 On Call Terms of Service, dated November 2012, on the grounds that they are  
6 misleading. Rocket Lawyer’s terms of service do not demonstrate what customers  
7 actually had access to attorney review. To the extent they are offered for that  
8 purpose, they are misleading. Fed. R. Evid. 403.

9 Separate Statement Paragraph 16: Objection to the supporting evidence of  
10 Rocket Lawyer’s On Call Terms of Service, dated November 2012, on the grounds  
11 that it is misleading. To the extent Rocket Lawyer’s terms of service are offered to  
12 show that customers provided Rocket Lawyer with credit card information and were  
13 billed, they are misleading. Fed. R. Evid. 403.

14 Separate Statement Paragraph 18: Objection to Paragraph 13 of the  
15 supporting Nguyen Decl. (“[C]ustomers who sign up for a one-week free trial  
16 membership under the ‘Basic Legal Plan’ or ‘Pro Legal Plan’ must first provide  
17 Rocket Lawyer with their credit card information and enroll in Rocket Lawyer’s  
18 ‘negative option’ program – i.e., a program in which customers are automatically  
19 enrolled and billed and must contact Rocket Lawyer to opt out of.”) on the grounds  
20 that it is misleading and improperly sets forth a legal conclusion. To the extent that  
21 it is offered to show that Rocket Lawyer charges its customers for free trials, it is  
22 misleading. Fed. R. Evid. 403. It is also misleading as to the use of the word “first.”  
23 *Id.* To the extent that it concludes Rocket Lawyer’s free trial is a negative option  
24 plan, it is an improper legal conclusion. Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7; *see*  
25 *Jones v. Corbis Corp.*, 815 F. Supp. 2d 1108, 1112 (C.D. Cal. 2011) *aff’d*, 489 F.  
26 App’x 155 (9th Cir. 2012) (agreeing with defendant that “while Plaintiff may testify  
27 to facts relevant to the legal determination [at issue], she may not testify as to the  
28 legal determination itself.”).

1           Separate Statement Paragraph 19: Objection to Exhibit I to the supporting  
2 Nguyen Decl. on the grounds that it is incomplete, misleading, and an improper  
3 legal conclusion. To the extent that it is offered to show that this is the only  
4 disclosure of Rocket Lawyer’s free trial terms, it is incomplete, misleading, and  
5 offers an improper legal conclusion. Fed. R. Evid. 106, 403; Fed. R. Civ.  
6 Proc. 56(c)(4); L.R. 7-7. To the extent it concludes that Rocket Lawyer’s free trial is  
7 a negative option plan, it is an improper legal conclusion. Fed. R. Civ.  
8 Proc. 56(c)(4); L.R. 7-7. Furthermore, to the extent it alleges a violation of the  
9 Negative Option law, it is irrelevant since LegalZoom lacks a right of action under  
10 that law. *See Noll v. eBay Inc.*, 5:11-CV-04585-EJD, 2013 WL 2384250 (N.D. Cal.  
11 May 30, 2013) (“The Legislature employed specific language in Section 17602  
12 limiting recovery under Section 17600 et seq. to California *consumers*. The court  
13 will not contravene the Legislature’s clear intention.”) (emphasis added).

14           Separate Statement Paragraph 20: Objection to Paragraph 13 (“No further  
15 acknowledgement regarding the negative option is provided.”) of and Exhibit I to  
16 the supporting Nguyen Decl. on the grounds that it is incomplete, misleading, and an  
17 improper legal conclusion. To the extent that it is offered to show that this is the  
18 only disclosure of Rocket Lawyer’s free trial terms, it is incomplete and misleading.  
19 Fed. R. Evid. 106, 403. To the extent it concludes that Rocket Lawyer’s free trial is  
20 a negative option plan, it is an improper legal conclusion. Fed. R. Civ.  
21 Proc. 56(c)(4); L.R. 7-7. Furthermore, to the extent it alleges a violation of the  
22 Negative Option law, it is irrelevant since LegalZoom lacks a right of action under  
23 that law. *See Noll v. eBay Inc.*, 5:11-CV-04585-EJD, 2013 WL 2384250 (N.D. Cal.  
24 May 30, 2013) (“The Legislature employed specific language in Section 17602  
25 limiting recovery under Section 17600 et seq. to California *consumers*. The court  
26 will not contravene the Legislature’s clear intention.”) (emphasis added).

27           Separate Statement Paragraph 21: Objection to Exhibit J to the Nguyen Decl.  
28 on the grounds that it is misleading, incomplete and contains irrelevant hearsay. To

1 the extent it is offered to show the exchange between Mssrs. Liu and Nye, it is  
2 incomplete. Fed. R. Evid. 106. To the extent it is offered to show that LegalZoom’s  
3 legal department raised these alleged issues, it is irrelevant hearsay, since the  
4 initiation of the conversation is not at issue. Fed. R. Evid. 401, 402, 801, 802.  
5 LegalZoom’s evidence shows no communication between mid-November 2011 and  
6 November 2012, when Rocket Lawyer was served with papers for this dispute.  
7 Therefore to the extent the evidence is offered to show that LegalZoom sought to  
8 resolve this dispute out of court before filing this lawsuit, it is misleading. Fed. R.  
9 Evid. 403.

10 Separate Statement Paragraph 22: Objection to Exhibit J to the Nguyen Decl.  
11 on the grounds that it is incomplete. To the extent it is offered to show the exchange  
12 between Mssrs. Liu and Nye, it is incomplete. Fed. R. Evid. 106.

13 Separate Statement Paragraph 23: Objection to Exhibit K to the Nguyen Decl.  
14 on the grounds that it is irrelevant and contains irrelevant hearsay and an improper  
15 legal conclusion. To the extent that it is offered to show that LegalZoom took issue  
16 with Rocket Lawyer’s advertising, it is irrelevant hearsay since LegalZoom’s state  
17 of mind is not at issue. Fed. R. 401, 402, 801, 802. To the extent it is offered to  
18 show that state-imposed fees negate a free service, it is an improper legal  
19 conclusion. Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7.

20 Separate Statement Paragraph 24: Objection to Exhibit K to the Nguyen Decl.  
21 on the grounds that it is irrelevant, misleading, and contains irrelevant hearsay and  
22 an improper legal conclusion. To the extent it is offered to show that Rocket Lawyer  
23 has violated the Federal Trade Commission’s guidelines regarding the use of the  
24 word free (“FTC Guide”), it is irrelevant, since compliance with the FTC Guide is  
25 not at issue, hearsay, misleading, and an improper legal conclusion. Fed. R. Evid.  
26 401, 402, 403, 801, 802; Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7. Furthermore, to the  
27 extent it is offered to show the requirements of the FTC Guide, it is not the best  
28 evidence, which would be the Guide itself. Fed. R. Evid. 1001, 1002.

1           Separate Statement Paragraph 25: Objection to Exhibit K to the Nguyen Decl.  
2 on the grounds that it is misleading, prejudicial, hearsay, and an improper legal  
3 conclusion. To the extent that it is offered to show that any of Rocket Lawyer’s  
4 advertisements were misleading, the exhibit is misleading and prejudicial, hearsay,  
5 and an improper legal conclusion. Fed. R. Evid. 403, 801, 802; Fed. R. Civ. Proc.  
6 56(c)(4); L.R. 7-7.

7           Separate Statement Paragraph 26: Objection to Exhibit L to the Nguyen Decl.  
8 on the grounds that it is hearsay and not the best evidence. To the extent that it is  
9 offered to show that Rocket Lawyer’s advertisements of free services had not been  
10 changed or removed, it is hearsay and not the best evidence of that purported fact.  
11 Fed. R. Evid. 801, 802, 1001, 1002.

12           Separate Statement Paragraph 27: Objection to Exhibit L to the Nguyen Decl.  
13 on the grounds that it is hearsay, misleading and prejudicial, and an improper legal  
14 conclusion. To the extent it is offered to show that Rocket Lawyer’s conduct  
15 constituted false advertising or unfair competition, it is misleading and prejudicial,  
16 hearsay, and an improper legal conclusion. Fed. R. Evid. 403, 801, 802; Fed. R. Civ.  
17 Proc. 56(c)(4); L.R. 7-7.

18 Dated: September 23, 2013

Respectfully submitted,

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