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15 **ROCKET LAWYER INCORPORATED**

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19
20 LEGALZOOM.COM, INC., a Delaware
21 corporation,

22 Plaintiff,

23 v.

24 ROCKET LAWYER
INCORPORATED, a Delaware
25 corporation,

26 Defendant.

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

**ROCKET LAWYER
INCORPORATED'S
MEMORANDUM OF
EVIDENTIARY OBJECTIONS IN
SUPPORT OF ITS SEPARATE
STATEMENT OF UNDISPUTED
FACTS**

Date: August 18, 2014
Time: 9:30 a.m.
Judge: Judge Gary A. Feess
Courtroom: 740
Action Filed: November 20, 2012

1 Pursuant to the Court’s current standing Scheduling Order, Dkt. 26 at II.C.3,
2 Defendant Rocket Lawyer Incorporated (“Rocket Lawyer”) submits this
3 Memorandum of Evidentiary Objections in support of the objections it has made in
4 the Separate Statement of Undisputed Facts in support of its Motion for Summary
5 Judgment.

6 **I. LEGALZOOM’S GENERAL OBJECTIONS SHOULD BE**
7 **DISREGARDED**

8 Plaintiff LegalZoom.com, Inc. (“LegalZoom”), in its Statement of Genuine
9 Disputes, asserted four “General Objections” to Rocket Lawyer’s survey evidence.
10 As set forth herein, those General Objections are not only improper but legally and
11 factually inaccurate, and thus should be disregarded by the Court.

12 **A. LegalZoom’s General Objections Should Not Be Considered As They**
13 **Improperly Contravene This Court’s Scheduling Order**

14 LegalZoom’s “General Objections” are in direct conflict with this Court’s
15 requirements in its Scheduling Order, which reads: “DO NOT SUBMIT BLANKET
16 OR BOILERPLATE OBJECTIONS TO THE OPPONENT’S STATEMENTS OF
17 UNDISPUTED FACT: THESE WILL BE DISREGARDED AND OVERRULED.”
18 Dkt. 26 at II.C.3 (capitals in original). By failing to specifically identify which
19 fact(s) to which the “General Objections” were intended to be asserted, LegalZoom
20 has submitted blanket objections which this Court should not consider.

21 **B. LegalZoom’s General Objections Should Be Overruled are Misleading**
22 **or Legally or Factually Inaccurate**

23 Even should this Court consider the substance of LegalZoom’s “General
24 Objections,” those four objections, set forth in order below along with the responses
25 thereto, should be overruled as legally and factually inaccurate.

- 26 1. LegalZoom alleges that the expert reports of Dr. Jerry Wind are hearsay not
27 subject to any exception. However, this district has specifically held that
28 “[e]xpert reports submitted pursuant to Rule 26 constitute proper evidence to

1 support a motion for summary judgment.” *VMG Salsoul, LLC v. Ciccone*, No.
2 CV 12-05967 BRO CWX, 2013 WL 8600435, at *5 (C.D. Cal. Nov. 18, 2013).
3 Professor Wind’s reports each contain his signature as required by Rule 26 and
4 were exchanged pursuant to the deadlines provided by the Court and Rule 26’s
5 continuing obligation to supplement the reports should additional information be
6 available. *See* Declaration of Hong-An Vu (ECF NO. 61) at ¶¶ 2; 4 Exs. A, C
7 (Wind Reports). Thus, the reports alone, without further “verification” are
8 admissible on summary judgment. Furthermore, Prof. Wind’s expert reports
9 were verified at his deposition (*see* Wind Dep. 8:21-24), satisfying the
10 requirement in *King Tuna, Inc. v. Anova Food, Inc.* that “to be competent
11 summary judgment evidence, an expert report must be sworn to or otherwise
12 verified, usually by deposition or affidavit.” No. 07-7451-ODW, 2009 WL
13 650732, at *1 (C.D. Cal. Mar. 10, 2009).

14 2. LegalZoom objects that it has not been provided with the database and other
15 information which Prof. Wind relied upon for his expert report. This is
16 misleading.

- 17 • Rocket Lawyer and LegalZoom discussed exchanging database
18 information on May 12, 2014. Declaration of Hong-An Vu III (filed
19 concurrently with Rocket Lawyer’s Reply and supporting documents), at ¶
20 2, Ex. A.
- 21 • Both parties agreed to investigate how best to transfer the data provided
22 from their respective surveys – which had been produced in pdf format.
23 *Id.* at ¶ 3.
- 24 • On May 13, 2014, counsel for Rocket Lawyer, tried to contact counsel for
25 LegalZoom to discuss further. *Id.* at ¶ 4.
- 26 • Counsel for LegalZoom said she was still determining whether the
27 Isaacson survey data could be provided in another format and what format
28 she would like Rocket Lawyer’s data. *Id.*

- 1 • Ms. Winograd for did not follow-up again about the survey data. *Id.* at 5.
- 2 • On July 15, 2014, to Ms. Vu’s knowledge, counsel for LegalZoom raised
- 3 for the first time since May 13, 2014 its request for the survey data in
- 4 another format and the parties agreed to discuss this matter outside the
- 5 deposition. *Id.* at ¶ 6.
- 6 • Counsel for LegalZoom has not contacted counsel for Rocket Lawyer
- 7 since the deposition to discuss exchanging databases and what format
- 8 would be most helpful for the parties. *Id.* at ¶ 8.
- 9 • To date, Rocket Lawyer has provided all the supporting data for Professor
- 10 Wind’s survey. *Id.* at ¶ 9.

11 3. Similarly, LegalZoom objects that it was not provided a link to Prof. Wind’s
12 survey for evaluation. This is also misleading. Counsel for LegalZoom
13 requested a link to the survey as respondents would have viewed it for the first
14 time on July 15, 2014 at Professor Wind’s deposition. *Id.* at ¶ 7. As stated
15 above, although the parties agreed to discuss exchanging further information
16 about expert materials after the deposition, counsel for LegalZoom never reached
17 out to counsel for Rocket Lawyer to discuss further. *Id.* Indeed, in response to
18 Rocket Lawyer’s request for production of documents relied upon by
19 LegalZoom’s experts, many of which have not been produced, LegalZoom has
20 flat-out refused to provide such information. *Id.* at ¶ 10, Ex. B (LegalZoom’s
21 responses to Third Request for Production No. 2).

22 4. LegalZoom objects that Rocket Lawyer continues to produce documents. This is
23 inaccurate. Rocket Lawyer’s production of documents was complete as of July
24 18, 2014. As of the time of Rocket Lawyer’s filing of its Motion for Summary
25 Judgment, Rocket Lawyer had produced in excess of 22,000 documents. To the
26 extent LegalZoom complains it has not received documents or had insufficient
27 time to review them, such fault lies squarely with LegalZoom, especially in light
28 of the fact that LegalZoom to date, has only produced approximately 3,300

1 documents between itself and third party, Travis Giggy, and has no stated
2 whether it has completed its productions.

3 Accordingly, should this Court consider LegalZoom’s “General Objections”
4 despite the Court’s Scheduling Order prohibiting them, those objections should be
5 overruled.

6 **II. LEGALZOOM’S OBJECTIONS TO ROCKET LAWYER’S**
7 **UNDISPUTED FACTS IMPROPERLY LACK EVIDENTIARY**
8 **SUPPORT AND SHOULD BE OVERRULED**

9 LegalZoom failed to submit a separate memorandum in support of its
10 objections to Rocket Lawyer’s evidence, as it was required to do so under this
11 Court’s Scheduling Order. *See* Dkt. 26 at II.C.3 (“If a party disputes a fact based in
12 whole or in part on an evidentiary objection, the ground of the objection . . . should
13 be stated in the separate statement but *not argued in that document*. Evidentiary
14 objections are *to be addressed in a separate memorandum* to be filed with the
15 opposition or reply brief of the party.”) (emphasis added). Accordingly, LegalZoom
16 has provided no support for its objections to Rocket Lawyer’s evidence,¹ and any
17 such purported objections as to those facts should be overruled. Should LegalZoom
18 subsequently file the required separate memorandum in support of its objections to
19 Rocket Lawyer’s evidence, Rocket Lawyer reserves the right to assert any responses
20 thereto either in a separate filing or at oral argument.

21 It should be noted that LegalZoom improperly removed from the separate
22 statement facts that it did not dispute. Dkt. 26 at II.C.1 (“The document must be
23 in two columns; the left hand column *must restate* the allegedly undisputed fact, and
24 the right hand column *must indicate* either undisputed, or disputed”) (emphasis
25 added). In the SSUF submitted with the reply brief, Rocket Lawyer has re-inserted
26 the undisputed facts deleted by LegalZoom so that the record will be complete.

27 ¹ LegalZoom’s Statement of Genuine Disputes purports to object to Fact Nos.: 5, 9,
28 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 24, 25, 26, 28-40, 42, 54. LegalZoom has
disputed other facts, but has not made evidentiary objections to these other facts.

1 These facts were not addressed by LegalZoom, and are thus undisputed.

2 **III. Rocket Lawyer’s Objections to LegalZoom’s “Undisputed” Facts In**
3 **Support of its Opposition**

4 Separate Statement Paragraph 96: Objection to the First Amended
5 Complaint, Paragraph 14 (stating the alleged gravamen of LegalZoom’s suit), as
6 used by LegalZoom, on the grounds that it is misleading and irrelevant. To the
7 extent that this statement implies LegalZoom’s complaint is based on Rocket
8 Lawyer’s use of the word “free” generally, as opposed to the use of “free” without
9 sufficient disclosure, it is misleading. Fed. R. Evid. 403. The Court has already
10 determined this fact, and thus LegalZoom’s characterization of its claims is
11 irrelevant. Fed. R. Evid. 401, 402; *Galen v. Mobil Oil Corp.*, 922 F. Supp. 318, 320
12 (C.D.Cal. 1996) (“Previous findings of fact and conclusions of law in this case
13 govern the evaluation” of remaining claims).

14 Separate Statement Paragraph 97: Objection to the First Amended
15 Complaint, Paragraphs 13-14 (discussing LegalZoom’s allegations that Rocket
16 Lawyer’s advertisements for “free” services are misleading because consumers must
17 pay a fee), as used by LegalZoom, on the grounds that they are misleading and
18 irrelevant. To the extent that this statement implies LegalZoom’s complaint is based
19 on Rocket Lawyer’s use of the word “free” generally, as opposed to the use of
20 “free” without sufficient disclosure, it is misleading. Fed. R. Evid. 403. The Court
21 has already determined this fact, and thus LegalZoom’s characterization of its
22 claims is irrelevant. Fed. R. Evid. 401, 402; *Galen v. Mobil Oil Corp.*, 922 F. Supp.
23 318, 320 (C.D.Cal. 1996) (“Previous findings of fact and conclusions of law in this
24 case govern the evaluation” of remaining claims).

25 Separate Statement Paragraph 98: Objection to Paragraph 6 and Exhibit D of
26 the Nguyen Decl. (screenshots of Rocket Lawyer’s “Interview” for “Company Set-
27 up” and “Company Details” for incorporation), on the grounds that they are
28 incomplete and misleading as used by LegalZoom, and they do not constitute the

1 best evidence of Rocket Lawyer’s incorporation interview and disclosure of state
2 fees. To the extent that these screenshots imply that they are the only screens
3 presented to the consumer during the incorporation journey, they are incomplete and
4 the entirety of the journey should be considered. Fed. R. Evid. 106. To the extent
5 that these screenshots are presented without the context of the remainder of the
6 customer incorporation journey, they are misleading. Fed. R. Evid. 403. These
7 screenshots are not the best evidence as they reflect only an excerpt of certain
8 screens shown to the consumer during the customer incorporation journey, and the
9 full journey should be considered. Fed. R. Evid. 1001, 1002.

10 Separate Statement Paragraph 99: Objection to the First Amended
11 Complaint, Paragraph 13 and Exhibit C (describing and showing certain of Rocket
12 Lawyer’s allegedly false and misleading advertisements), on the grounds that they
13 are misleading and do not constitute the best evidence. LegalZoom has presented
14 ads that consumers are not likely to encounter in the typical consumer journey, thus,
15 the evidence is misleading. Fed. R. Civ. Proc. 403. As provided to LegalZoom, the
16 best evidence of Rocket Lawyer’s disclosure of its attorney services is Exhibit C to
17 the Hollerbach Declaration, which is the screenshot before consumers register for a
18 Rocket Lawyer free or paying plan. This screenshot speaks for itself and is the best
19 evidence of Rocket Lawyer’s ads and disclosures. Fed. R. Evid. 1001, 1002. Fed.
20 R. Evid. 1001, 1002.

21 Separate Statement Paragraph 100: Objection to the First Amended
22 Complaint, Paragraphs 13-14 and Exhibit C; and the Nguyen Decl., Paragraphs 7-8
23 and Exhibits E & F (describing and showing certain of Rocket Lawyer’s allegedly
24 false and misleading advertisements and non-disclosures in advertisements), as used
25 by LegalZoom, on the grounds that they are misleading, are not the best evidence,
26 and are used to evidence an improper legal conclusion. LegalZoom has presented
27 ads that consumers are not likely to encounter in the typical consumer journey, thus,
28 the evidence is misleading. Fed. R. Civ. Proc. 403. As provided to LegalZoom, the

1 best evidence of Rocket Lawyer’s disclosure of its attorney services is Exhibit C to
2 the Hollerbach Declaration, which is the screenshot before consumers register for a
3 Rocket Lawyer free or paying plan. This screenshot speaks for itself and is the best
4 evidence of Rocket Lawyer’s ads and disclosures. Fed. R. Evid. 1001, 1002. To the
5 extent that these statements and images are offered as fact as to the alleged
6 misleading nature of the advertisements, they are improper legal conclusions. Fed.
7 R. Civ. Proc. 56(c)(4); L.R. 7-7.

8 Separate Statement Paragraph 101: Objection to the First Amended
9 Complaint, Paragraphs 13-14 and Exhibit C; the Nguyen Decl., Paragraph 8 and
10 Exhibit F; and the Winograd Decl., Paragraph 10 and Exhibit I (describing and
11 showing certain of Rocket Lawyer’s allegedly false and misleading advertisements
12 and non-disclosures in advertisements, and a Better Business Bureau complaint
13 report about Rocket Lawyer’s ads), as used by LegalZoom, on the grounds that they
14 are misleading, are not the best evidence, and are used to evidence an improper legal
15 conclusion. LegalZoom has presented ads that consumers are not likely to
16 encounter in the typical consumer journey, thus, the evidence is misleading. Fed. R.
17 Civ. Proc. 403. As provided to LegalZoom, the best evidence of Rocket Lawyer’s
18 disclosure of its attorney services is Exhibit C to the Hollerbach Declaration, which
19 is the screenshot before consumers register for a Rocket Lawyer free or paying plan.
20 This screenshot speaks for itself and is the best evidence of Rocket Lawyer’s ads
21 and disclosures. Fed. R. Evid. 1001, 1002. To the extent that these statements and
22 images are offered as fact as to the alleged misleading nature of the advertisements,
23 they are improper legal conclusions. Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7. The
24 evidence is further misleading because one example is not indicative of consumers’
25 experience generally, and the particular consumer who issued the complaint was not
26 complaining about having to pay for services, but rather having to provide an email
27 address in order to access the free assistance. *See* Winograd Decl. ¶ 10; Fed. R. Civ.
28 Proc. 403.

1 Separate Statement Paragraph 102: Objection to the First Amended
2 Complaint, Paragraphs 15-16 (describing Rocket Lawyer’s alleged violations of
3 FTC regulations amounting to unfair competition), as used by LegalZoom, on the
4 grounds that they are misleading, are irrelevant, and are used to evidence an
5 improper legal conclusion. These statements allege that Rocket Lawyer’s
6 advertisements violate FTC regulations and constitute unfair competition; to the
7 extent that this evidence is argument presented as fact, as used by LegalZoom these
8 statements themselves are misleading. Fed. R. Evid. 403. To the extent these
9 statements allege a violation of FTC regulations they are irrelevant because a
10 violation of FTC guidelines is not actionable by a private party. FTC Operating
11 Manual, Industry Guidance, ch. 8 § 3.2; *see e.g., Ash Grove Cement Co. v. F.T.C.*,
12 577 F.2d 1368, 1374 (9th Cir. 1978) (industry guide “not binding”); *Dreisbach v.*
13 *Murphy*, 658 F.2d 720, 730 (9th Cir. 1981) (“[t]he Act rests initial remedial power
14 *solely* in the Federal Trade Commission”); Fed. R. Evid. 401, 402. To the extent
15 that these statements are offered as fact as to the alleged violations by Rocket
16 Lawyer, they are improper legal conclusions. Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7.

17 Separate Statement Paragraph 103: Objection to the First Amended
18 Complaint, Paragraphs 17 & 25 (describing LegalZoom’s alleged harm as a result of
19 Rocket Lawyer’s alleged false and misleading advertisements), as used by
20 LegalZoom, on the grounds that they are misleading, are irrelevant, and are used to
21 evidence an improper legal conclusion. LegalZoom’s allegations presented as facts
22 without evidentiary support are misleading and irrelevant on summary judgment.
23 Fed. R. Evid. 401, 402, 403. To the extent that these statements are offered as fact
24 as to the alleged violations by Rocket Lawyer or their alleged resulting harm, they
25 are improper legal conclusions. Fed. R. Civ. Proc. 56(c)(4); L.R. 7-7.

26 Separate Statement Paragraph 104: Objection to the First Amended
27 Complaint, Paragraphs 25, 33, 40 (stating the FAC seeks injunctive relief). To the
28 extent that these statements imply that LegalZoom does not also seek damages in

1 the FAC, they are misleading. Fed. R. Evid. 403.

2 Separate Statement Paragraph 105: Objection to Rocket Lawyer’s Motion for
3 Summary Judgment, lines 1:24-2:7; the Vu Decl. II, Paragraph 3 and Appendices A
4 and E to Exhibit B (relating to Prof. Wind’s survey as a reflection of the consumer
5 journey on Rocket Lawyer’s website to determine whether consumers are deceived
6 by Rocket Lawyer’s advertisements and whether they would make a purchasing
7 decision in favor of Rocket Lawyer), as used by LegalZoom, on the grounds that
8 they are misleading and irrelevant. To the extent that these statements imply Rocket
9 Lawyer’s expert’s survey was not motivated by the Court’s direction to test
10 perception and purchasing decisions based on the advertisements in context, they are
11 misleading. Fed. R. Evid. 403. To the extent the Court already determined these
12 facts or the scope of the case, they are irrelevant. Fed. R. Evid. 401, 402; *Galen v.*
13 *Mobil Oil Corp.*, 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous findings of fact
14 and conclusions of law in this case govern the evaluation” of remaining claims); *see*
15 *also* Summary Judgment Order, Dkt. 44.

16 Separate Statement Paragraph 106: Objection to the First Amended
17 Complaint, Paragraphs 13-14 (relating to the focus of LegalZoom’s suit), as used by
18 LegalZoom, on the grounds that they are misleading and irrelevant. To the extent
19 that these statement imply LegalZoom’s complaint is based on Rocket Lawyer’s use
20 of the word “free” generally, as opposed to the use of “free” without sufficient
21 disclosure, it is misleading. Fed. R. Evid. 403. To the extent the Court already
22 determined these facts, they are irrelevant. Fed. R. Evid. 401, 402; *Galen v. Mobil*
23 *Oil Corp.*, 922 F. Supp. 318, 320 (C.D. Cal. 1996) (“Previous findings of fact and
24 conclusions of law in this case govern the evaluation” of remaining claims).

25 Separate Statement Paragraph 107: Objection to Paragraphs 11-12 and
26 Exhibits J and K to the Winograd Decl. (referring to the Isaacson Report and the
27 Goedde Report), on the grounds that they are unreliable and premised upon unsound
28 scientific methodologies. To the extent that the Isaacson Report and Goedde Report

1 reflect LegalZoom’s experts’ survey results demonstrating the impact of the word
2 “free” in advertising that are based on upon unreliable or unsound scientific
3 methodologies, it is inadmissible. Fed. R. Evid. 702; *Daubert v. Merrell Dow*
4 *Pharm., Inc.*, 509 U.S. 579 (1993). This is especially true as to the report by Larry
5 Chiagouris whose opinions about consumer behavior are not supported by market
6 research or survey data. See, e.g., *Schwab v. Philip Morris USA, Inc.*, No. CV 04-
7 1945(JBW), 2005 WL 2401647, at *4 (E.D.N.Y. Sept. 29, 2005) (excluding expert
8 testimony on consumer behavior where no survey was conducted); *Sandoz Pharm.*
9 *Corp. v. Richardson-Vicks, Inc.*, 902 F.2d 222, 229 (3d Cir. 1990) (consumer
10 behavior cannot be presumed; “a plaintiff must produce consumer surveys or some
11 surrogate therefor to prove” consumer expectations; see also, *Diamond Triumph*
12 *Auto Glass, Inc. v. Safelite Glass Corp.*, 441 F. Supp. 2d 695, 711 (M.D. Pa. 2006)
13 (concluding expert opinion formed without a survey on what consumer was “likely
14 to do” was insufficient to create a disputed fact for summary judgment)

15 Separate Statement Paragraph 108: Objection to Exhibit E to the Wind
16 Report (showing test and control stimuli for the Wind survey), as used by
17 LegalZoom, on the grounds that it is misleading and is not the best evidence. To the
18 extent that this document implies that it captures the entirety of Prof. Wind’s survey
19 methodology, it is misleading and incomplete. Fed. R. Evid. 403. This document is
20 not the best evidence as it reflects only a portion of the stimuli used in support of
21 Prof. Wind’s survey, and the Wind Report speaks for itself. Fed. R. Evid. 1001,
22 1002.

23 Separate Statement Paragraph 109: Objection to Exhibit E to the Wind
24 Report (showing test and control stimuli for the Wind survey), as used by
25 LegalZoom, on the ground that it is misleading. To the extent that this exhibit is
26 offered to imply that Prof. Wind’s survey methodology or conclusions are improper,
27 this exhibit is misleading. Objection to Paragraph 14 of the First Amended
28 Complaint, as used by LegalZoom, on the ground that the evidence does not support

1 the cited proposition.

2 Separate Statement Paragraph 110: Objection to lines 36:8-21 of the Wind
3 Decl., as used by Legal Zoom, on the grounds that they are misleading and not the
4 best evidence. To the extent that these statements are offered to reflect the entirety
5 of Prof. Wind’s survey design and methodology, they are misleading. Fed. R. Evid.
6 403. To the extent these statements describe Prof. Wind’s expert report, they are not
7 the best evidence as Prof. Wind’s expert report speaks for itself. Fed. R. Evid. 1001,
8 1002.

9 Separate Statement Paragraph 111: Objection to lines 36:8-21 of the Wind
10 Decl., as used by Legal Zoom, on the grounds that they are misleading and not the
11 best evidence. To the extent these statements are used to determine whether a
12 “typical” consumer journey exists, they are not the best evidence of this fact as other
13 witnesses, such as Paul Hollerbach, with knowledge of consumers’ behavior on
14 Rocket Lawyer has provided better evidence. Fed. R. Evid. 1001, 1002.
15 LegalZoom’s presentation of Professor Wind’s statement is misleading because 1)
16 the stimuli was created with assistance from Rocket Lawyer to mimic the
17 consumers’ experience, and 2) to complete certain forms on RocketLawyer.com,
18 including incorporation, consumers must view certain webpages shown to the
19 survey respondents. Fed. R. Evid. 403.

20 Separate Statement Paragraph 113: Objection to First Amended Complaint,
21 Paragraphs 13-14 (asserting that LegalZoom’s claims are not related to the purchase
22 process at Rocket Lawyer), to the extent that it implies that the ads which are the
23 subject of LegalZoom’s claims need not be viewed in the context of Rocket
24 Lawyer’s site, including the customer purchasing process. Order Re: Plaintiff’s
25 Motion for Summary Judgment, Dkt. 44, at 9.

26 Separate Statement Paragraph 117: Objection to pages 42, 59 of the Wind
27 Report and lines 97:8-10 of the Wind Decl. (reciting the bases for Prof. Wind’s
28 survey), on the grounds that they are incomplete and misleading as used by

1 LegalZoom. First, the survey is not based on the tree; rather the tree is based on the
2 survey results. To the extent that these statements imply that these are the only
3 bases for Prof. Wind's survey, they are incomplete and the entirety of the respective
4 documents should be considered. Fed. R. Evid. 106. To the extent that these
5 statements are presented without the context of the remainder of the respective
6 documents, they are misleading. Fed. R. Evid. 403.

7 Separate Statement Paragraph 118: Objection to lines 99:10-100:20 of the
8 Wind Decl. (discussing Prof. Wind's methodology for eliminating survey
9 respondents as being not candidates for potential deception by Rocket Lawyer's
10 ads), on the grounds that they are incomplete and misleading as used by LegalZoom.
11 To the extent that these statements imply that these are the only discussion of Prof.
12 Wind's methodology for conducting his survey, they are incomplete and the entirety
13 of the document should be considered. Fed. R. Evid. 106. To the extent that these
14 statements are presented without the context of the remainder of the document, they
15 are misleading. Fed. R. Evid. 403.

16 Separate Statement Paragraph 119: Objection to lines 105:16-22 of the Wind
17 Decl. (discussing the number of candidates in Prof. Wind's survey pool used to
18 assess the impact of Rocket Lawyer's allegedly confusing or misleading ads), on the
19 grounds that they are incomplete and misleading as used by LegalZoom. To the
20 extent that these statements imply that these are the only discussion of Prof. Wind's
21 methodology for conducting his survey and test group participants, they are
22 incomplete and the entirety of the document should be considered. Fed. R. Evid.
23 106. To the extent that these statements are presented without the context of the
24 remainder of the document, they are misleading. Fed. R. Evid. 403. To the extent
25 that these statements are offered to imply Prof. Wind's methodology or conclusions
26 are flawed due to the number of survey candidates remaining in the test group as
27 opposed to the control group, the statements are misleading. Fed. R. Evid. 403.
28 Professor Wind had an acceptable sample size with over 100 respondents in each

1 test and control group.

2 Separate Statement Paragraph 120: Objection to page 42 of the Wind Report
3 (discussing Prof. Wind's process for obtaining a percentage for the test group), on
4 the grounds that it is incomplete and misleading as used by LegalZoom. To the
5 extent that LegalZoom uses the statements on page 42 to imply that Professor Wind
6 did not take sample size into account, LegalZoom's evidence is incomplete. Fed. R.
7 Evid. 106. To the extent that page 42 is presented without the context of the
8 remainder of the document, it is misleading. Fed. R. Evid. 403. To the extent that
9 the statements on page 42 imply that Prof. Wind did not account for sample size in
10 determining statistical significance, they are misleading. Fed. R. Evid. 403.

11 Separate Statement Paragraph 121: Objection to page 42 of the Wind Report
12 and Paragraph 67 of the Isaacson Report (discussing Prof. Wind's confidence level
13 and margin of error regarding a percentage for the test group), on the grounds that it
14 is incomplete and misleading as used by LegalZoom. To the extent that LegalZoom
15 uses the statements on page 42 to imply that Professor Wind did not take sample
16 size into account, LegalZoom's evidence is incomplete. Fed. R. Evid. 106. To the
17 extent that page 42 is presented without the context of the remainder of the
18 document, it is misleading. Fed. R. Evid. 403. To the extent that the statements on
19 page 42 imply that Prof. Wind did not account for sample size in determining
20 statistical significance, they are misleading. Fed. R. Evid. 403.

21 Separate Statement Paragraph 126: Objection to Paragraph 68 of and Table B
22 to the Isaacson Report, on the grounds that they are unreliable and premised upon
23 unsound scientific methodologies. To the extent that this paragraph and table reflect
24 the survey results of LegalZoom's expert that are based on upon unreliable or
25 unsound scientific methodologies, they are inadmissible. Fed. R. Evid. 702;
26 *Daubert v. Merrell Dow Pharm, Inc.*, 509 U.S. 579 (1993).

27 Separate Statement Paragraph 127: Objection to Paragraph 98 of the Isaacson
28 Report, on the grounds that it is unreliable and premised upon unsound scientific

1 methodologies. To the extent that this paragraph reflects the survey results of
2 LegalZoom’s expert that are based on upon unreliable or unsound scientific
3 methodologies, it is inadmissible. Fed. R. Evid. 702; *Daubert v. Merrell Dow*
4 *Pharm., Inc.*, 509 U.S. 579 (1993). As discussed in detail in Rocket lawyer’s briefs,
5 Dr. Isaacson, among other problemes, did not test the correct facts, engineered the
6 stimuli to get the results desired by LegalZoom, and ignored about 60% of the
7 responses to his survey. To the extent Dr. Isaacson concludes that the amount of
8 fees paid is material based on such survey results, that conclusion is an unsupported
9 by admissible evidence since he tested the “materiality” of “price” and not payment
10 of state fees.

11 Separate Statement Paragraph 128: Objection to Paragraph 78 and Table C of
12 the Isaacson Report, on the grounds that they are unreliable and premised upon
13 unsound scientific methodologies. To the extent that this paragraph and table reflect
14 the survey results of LegalZoom’s expert that are based on upon unreliable or
15 unsound scientific methodologies, they are inadmissible. Fed. R. Evid. 702;
16 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). To the extent Dr.
17 Isaacson concludes that payment of state fees is material based on such survey
18 results, that conclusion is unsupported by evidence as Dr. Isaacson tested “price”
19 and not whether paying state fees is material to consumers.

20 Separate Statement Paragraph 129: Objection to Paragraph 11 and Exhibit J
21 to the Winograd Decl. (the Isaacson Report), on the grounds that it is unreliable and
22 premised upon unsound scientific methodologies. To the extent that the Isaacson
23 Report reflects the survey results of LegalZoom’s expert that are based on upon
24 unreliable or unsound scientific methodologies, it is inadmissible. Fed. R. Evid.
25 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). Dr. Isaacson’s
26 survey also did not test the allegations at issue – free without disclosure of state fees
27 – and not “free” generally, and thus is irrelevant. Fed. R. Evid. 401, 402.

28 Separate Statement Paragraph 131: Objection to Rocket Lawyer’s Answer

1 and Amended Counterclaims, Dkt. 17, 2:26-3:1 (“Rocket Lawyer admits that it has
2 produced new advertisements regarding its business and a variety of services it
3 offers since the service of the original complaint . . .”), on the grounds that it is
4 misleading and evidence of subsequent remedial measures offered to prove culpable
5 conduct. To the extent that this statement implies Rocket Lawyer revised its
6 advertisements because they were allegedly improper or injurious, it is misleading.
7 Fed. R. Evid. 403. To the same extent and implication, the statement is evidence of
8 subsequent remedial measures and is inadmissible to show culpable conduct. Fed.
9 R. Evid. 407. To the extent that this statement is offered for any other purpose, it is
10 irrelevant as it is of no consequence to the determination of this action. Fed. R.
11 Evid. 401, 402.

12 Separate Statement Paragraph 132: Objection to Paragraph 10 and Exhibits F
13 & G of the Nguyen Decl. (attaching Rocket Lawyer’s On Call Terms of Service
14 from July 2012 and November 2012), on the grounds that they are misleading and
15 evidence of subsequent remedial measures offered to prove culpable conduct. To
16 the extent that these statements and documents imply Rocket Lawyer revised its
17 Terms of Service because they were allegedly improper or injurious, they are
18 misleading. Fed. R. Evid. 403. To the same extent and implication, the statements
19 and documents are evidence of subsequent remedial measures and are inadmissible
20 to show culpable conduct. Fed. R. Evid. 407. To the extent that these statements
21 and documents are offered for any other purpose, they are irrelevant as they are of
22 no consequence to the determination of this action. Fed. R. Evid. 401, 402.

23 Separate Statement Paragraph 133: Objection to Paragraph 10 and Exhibit I
24 of the Winograd Decl. (regarding consumer complaints about being deceived by
25 Rocket Lawyer’s advertisements), on the grounds that they are misleading and
26 irrelevant. To the extent this evidence is offered to dispute the conclusions of the
27 Wind Report as to reasonable consumer deception, it is misleading because
28 individual complaints are not sufficient to overcome market research. Fed. R. Evid.

1 403. To the extent these complaints do not represent that a significant portion of
2 customers were deceived, they are irrelevant. Fed. R. Evid. 401, 402; *see also*
3 Summary Judgment Order, Dkt. No. 44, at 10 (“[A] handful of customer statements
4 on one review site is not sufficient to demonstrate that a ‘significant portion’ of
5 customers were deceived and is not necessarily a reliable consumer survey or
6 market research.”).

7 Separate Statement Paragraph 134: Objection to Paragraph 4 of the Goedde
8 Decl. (pertaining to differences in conversion rates between different Rocket
9 Lawyers ads), on the grounds that it is improper expert testimony. This statement is
10 inadmissible as expert testimony because it is not the product of Dr. Goedde’s
11 application of reliable principles and methods of statistics and the trier of fact does
12 not need the expert’s specialized knowledge to compare the size of two numbers.
13 Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). To
14 the extent the statement is offered not as expert testimony, it is misleading as used
15 by LegalZoom as being made by the expert as it tends to imply it is the product of
16 the expert’s specialization. Fed. R. Evid. 403. Dr. Goedde does not appear to have
17 sufficient expertise in statistics for the Court to consider his opinion as used by
18 LegalZoom in this fact.

19 Separate Statement Paragraph 135: Objection to Exhibits B and C of the
20 Winograd Decl. (regarding Rocket Lawyer’s efforts to compete with LegalZoom),
21 on the grounds that they are misleading and irrelevant. To the extent this evidence
22 implies Rocket Lawyer was competing with LegalZoom unfairly, it is misleading.
23 Fed. R. Evid. 403. To the extent this evidence is offered for any other purpose, it is
24 irrelevant as it is of no consequence to the determination of this action. Fed. R.
25 Evid. 401, 402.

26 Separate Statement Paragraph 136: Objection to Exhibits B, D, and E of the
27 Winograd Decl. (regarding Rocket Lawyer’s intentional use of the word “free” in its
28 advertising), as used by LegalZoom, on the grounds that they are misleading. To

1 the extent these documents imply that Rocket Lawyer’s use of “free” in its
2 advertising, standing alone, is exploitive or legally actionable, they are misleading.
3 Fed. R. Evid. 403.

4 Separate Statement Paragraph 137: Objection to Exhibits F and G of the
5 Winograd Decl. (regarding Rocket Lawyer’s intention to ‘convert’ customers and
6 monitoring of conversions), as used by LegalZoom, on the grounds that they are
7 misleading and irrelevant. To the extent these documents imply that Rocket Lawyer
8 gained business from its ads unfairly, they are misleading. Fed. R. Evid. 403. To
9 the extent this evidence is offered for any other purpose, it is irrelevant as it is of no
10 consequence to the determination of this action. Fed. R. Evid. 401, 402.

11 Separate Statement Paragraph 138: Objection to Paragraphs 9-10 and
12 Exhibits H and I of the Winograd Decl. (regarding Rocket Lawyer’s tracking of
13 consumer complaints and Better Business Bureau complaint reports about Rocket
14 Lawyer’s allegedly misleading advertisements), as used by LegalZoom, on the
15 grounds that they are misleading and irrelevant. To the extent these documents
16 imply Rocket Lawyer spent relatively large amounts of time addressing consumer
17 complaints about its “free” advertisements or evidence significant customer
18 confusion regarding “free” with respect to payment of state fees, they are
19 misleading. Fed. R. Evid. 403. To the extent these complaints do not represent that
20 a significant portion of customers were deceived, they are irrelevant as individual
21 customer complaints do not supplant market research. Fed. R. Evid. 401, 402; *see*
22 *also* Summary Judgment Order, Dkt. No. 44, at 10 (“[A] handful of customer
23 statements on one review site is not sufficient to demonstrate that a ‘significant
24 portion’ of customers were deceived and is not necessarily a reliable consumer
25 survey or market research.”).

26 Separate Statement Paragraph 139: Objection to First Amended Complaint,
27 Exhibits A-2, A-3, and A-4 (evidencing Rocket Lawyer’s receipt of complaints
28 regarding its allegedly misleading advertising), as used by LegalZoom, on the

1 grounds that they are misleading and irrelevant. To the extent these complaints
2 imply Rocket Lawyer’s advertisements are actually misleading or that this evidence
3 is argument presented as fact, as used by LegalZoom these complaints themselves
4 are misleading. Fed. R. Evid. 403. To the extent these complaints do not represent
5 that a significant portion of customers were deceived, they are irrelevant. Fed. R.
6 Evid. 401, 402; *see also* Summary Judgment Order, Dkt. No. 44, at 10 (“[A] handful
7 of customer statements on one review site is not sufficient to demonstrate that a
8 ‘significant portion’ of customers were deceived and is not necessarily a reliable
9 consumer survey or market research.”).

10 Separate Statement Paragraph 140: Objection to First Amended Complaint,
11 Exhibits A-2, A-3, and A-4 (evidencing LegalZoom’s notification that it believed
12 that Rocket Lawyer’s advertisements were misleading and violative of the law), as
13 used by LegalZoom, on the grounds that they are misleading and irrelevant.
14 LegalZoom’s opinion is not relevant to the question of whether the ads were
15 misleading or in violation of the law. Fed. R. Evid. 401, 402; Furthermore,
16 LegalZoom’s presentation of its position as fact is misleading. Fed. R. Evid. 403. In
17 addition, LegalZoom’s opinion that the ads are misleading does not replace market
18 research or demonstrate that a substantial portion of the population has been misled.
19 *See also* Summary Judgment Order, Dkt. No. 44, at 10 (“[A] handful of customer
20 statements on one review site is not sufficient to demonstrate that a ‘significant
21 portion’ of customers were deceived and is not necessarily a reliable consumer
22 survey or market research.”).

23 Separate Statement Paragraph 141: Objection to Rocket Lawyer’s Answer
24 and Amended Counterclaims, Dkt. 17, 2:26-3:1 (“Rocket Lawyer admits that it has
25 produced new advertisements regarding its business and a variety of services it
26 offers since the service of the original complaint . . .”) and Paragraph 10 and
27 Exhibits F & G of the Nguyen Decl. (attaching Rocket Lawyer’s On Call Terms of
28 Service from July 2012 and November 2012), on the grounds that they are

1 misleading and evidence of subsequent remedial measures offered to prove culpable
2 conduct. To the extent that these statements and documents imply Rocket Lawyer
3 revised its advertisements or Terms of Service because they were allegedly
4 improper or injurious, they are misleading. Fed. R. Evid. 403. To the same extent
5 and implication, the statements and documents are evidence of subsequent remedial
6 measures and are inadmissible to prove culpable conduct. Fed. R. Evid. 407.
7 To the extent that these statements and documents are offered for any other purpose,
8 they are irrelevant as they are of no consequence to the determination of this action.
9 Fed. R. Evid. 401, 402.

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11 Dated: August 4, 2014

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