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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

NC

CV 15 80003 MISC.

Glaser Weil

12 LEGALZOOM.COM, INC.,

13 Plaintiff,

14 v.

15 ROCKET LAWYER INC.,

16 Defendants.

CASE NO. _____

PLAINTIFF, LEGALZOOM.COM,
 INC.'S MOTION TO COMPEL
 COMPLIANCE WITH SUBPOENA
 TO GOOGLE, INC.;
 DECLARATION OF AARON P.
 ALLAN IN SUPPORT

Hearing Date: _____

Time: _____

Courtroom: _____

FAXED

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TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION AND FACTUAL BACKGROUND.....1

 A. The Underlying Lawsuit.....1

 B. Google Holds Relevant Documents1

 C. The Court Order Authorizing this Discovery2

 D. The Subpoena to Google2

 E. Efforts to Meet and Confer.....2

 F. Google Ties to Rocket Lawyer Make It Less Than a Third Party5

 G. Relief Sought by this Motion6

II. STATEMENT OF THE ISSUES6

III. CONCLUSION..... 13

GlaserWeil

TABLE OF AUTHORITIES

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FEDERAL CASES

<i>Gonzalez v. Google, Inc.</i> , 234 F.R.D. 674 (N.D. Cal. 2006).....	7
<i>Silicon Knights, Inc. v. Epic Games, Inc.</i> , 917 F. Supp. 2d 503 (E.D.N.C. 2012), <i>aff'd</i> 551 Fed. Appx. 646, 2014 WL 30865.....	8

FEDERAL STATUTES

Fed. R. Civ. P. 26	7
Fed. R. Civ. P. 26(b)(1).....	7
Fed. R. Civ. P. 26(b)(2).....	6, 8
Fed. R. Civ. P. 26(b)(2)(B)	9
Fed. R. Civ. P. 26(b)(2)(C)	9
Fed. R. Civ. P. 34	7
Fed. R. Civ. P. 37-2.....	4, 6

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1 **I. INTRODUCTION AND FACTUAL BACKGROUND**

2 The following facts are supported by the attached Declaration of Aaron P.
3 Allan and accompanying exhibits attached hereto.

4 **A. The Underlying Lawsuit**

5 Plaintiff LegalZoom.com, Inc. ("LegalZoom") is an online provider of legal
6 solutions that sued a competitor, Rocket Lawyer Incorporated ("Rocket Lawyer"), for
7 engaging in false advertising practices in violation of the Lanham Act and California
8 unfair competition laws. A central issue in the litigation is whether Rocket Lawyer
9 acted with an intent to deceive consumers by using the term "free" in its online
10 advertisements when in fact the advertised product or service required some form of
11 payment or credit card information, as well as signing up for a trial. The case, which
12 is pending in the United States District Court for the Central District of California,
13 had been scheduled for trial on December 9, 2014, but the trial was delayed to April
14 21, 2015, to enable the parties to engage in limited additional discovery. Declaration
15 of Aaron Allan ("Allan Decl."), ¶2.

16 **B. Google Holds Relevant Documents**

17 Based on documentation that was produced late in the case by Rocket Lawyer,
18 LegalZoom learned that Google Inc. ("Google") had been communicating with
19 Rocket Lawyer about the "free" Rocket Lawyer advertisements, and that Google had
20 complained to Rocket Lawyer that its "free" advertisements were in violation of
21 certain Google online advertising policies because of the deceptive nature of the
22 advertisements. These communications are extremely relevant to the claim being
23 pursued by LegalZoom against Rocket Lawyer because they may provide supporting
24 evidence that Rocket Lawyer was acting with knowledge that its advertisements had a
25 potential to deceive consumers, and that Rocket Lawyer's decision to continue to run
26 its advertisements in the face of such communications by Google demonstrated an
27 intent to deceive. One of the Google employees involved in these communications is
28 identified in an email as "Katherine K," but existing documents provide no other

1 identifying information for that employee. *Id.* at ¶3.

2 **C. The Court Order Authorizing this Discovery**

3 On November 10, 2014, United States District Judge Gary A. Feess issued an
 4 order allowing for LegalZoom to take additional discovery, and specifically
 5 authorized LegalZoom to pursue depositions of third parties Google and “Katherine
 6 K” (Google) relating to Google’s inquiry into Rocket Lawyer’s free advertisements.
 7 The order also authorized a document subpoena to Google relating to Google’s
 8 inquiry into Rocket Lawyer’s free advertisements. The order provided two months to
 9 complete the discovery, requiring the discovery to be completed by January 16, 2015.
 10 Attached hereto as Exhibit A to the Allan Decl., ¶4, is a true and correct copy of the
 11 November 10, 2014 Order issued by the Honorable Gary Feess.

12 **D. The Subpoena to Google**

13 On November 14, 2014, LegalZoom served Google with a subpoena seeking
 14 four categories of documents in Google’s possession which all relate to Google’s
 15 inquiry to Rocket Lawyer concerning Rocket Lawyer’s “free” advertisements. The
 16 subpoena requested a production by December 1, 2014. Attached hereto as Exhibit B
 17 to the Allan Decl., ¶5, is a true and correct copy of the Subpoena and attachment
 18 served on Google. On November 26, 2014, Google served Responses and Objections
 19 to LegalZoom’s subpoena, largely complaining about the burden of compliance.
 20 Attached hereto as Exhibit C to the Allan Decl., ¶6, is a true and correct copy of
 21 Google’s Responses and Objections to LegalZoom’s subpoena dated November 26,
 22 2014.

23 **E. Efforts to Meet and Confer**

24 During subsequent attempts to meet and confer about the subpoena,
 25 LegalZoom made several offers to narrow the time, scope and manner of the
 26 production, and also offered to explore ways to reduce any burden on Google in
 27 complying with the subpoena. In response, Google took unreasonable positions and
 28 stonewalled compliance.

1 Shortly after receiving Google's Responses and Objections, LegalZoom's
2 counsel initiated telephone conferences with Google's counsel and exchanged emails
3 regarding the subpoena. Based on these conferences, as confirmed in an email dated
4 December 3, 2014:

- 5 • LegalZoom provided a copy of the court order authorizing the discovery, as
6 well as the protective order for the underlying case.
- 7 • LegalZoom offered to limit the scope of the subpoena to January 1, 2010,
8 through December 31, 2013, in response to Google's objection that the
9 "specified relevant period of almost seven years renders the Request
10 particularly overbroad and oppressive."
- 11 • LegalZoom offered to rely upon a declaration of a custodian of records,
12 without the need for live testimony, to authenticate any records produced.
- 13 • LegalZoom offered to extend by over two weeks the time to comply with
14 the subpoena to December 17, 2014.
- 15 • LegalZoom stated its willingness to provide information and to work with
16 Google to address any financial or other burden associated with compliance.

17 Attached hereto as Exhibit D to the Allan Decl., ¶8, is a true and correct copy of the
18 email sent by counsel for LegalZoom, Aaron Allan, to counsel for Google, Jacob
19 Veltman on December 3, 2014.

20 Google's response to these meet and confer efforts was to stonewall. During a
21 meet and confer telephone call on December 5, 2014, Google's counsel stated that he
22 had nothing new to report and was unable to confirm whether Google would comply
23 with the subpoena. *Id.* at ¶9.

24 On December 9, 2014, LegalZoom sent a letter reiterating the prior attempts to
25 compromise on the subpoena and to address Google's burden arguments, explaining
26 the need to expedite the production in light of the court's January deadline for
27 completing discovery, and insisting upon a response from Google which either (a)
28 confirmed that Google intended to comply under some set of parameters or (b) that

1 LegalZoom would have to pursue a motion. Attached hereto as Exhibit E to the Allan
2 Decl., ¶10, is a true and correct copy of the meet and confer letter sent by counsel for
3 LegalZoom to counsel for Google dated December 9, 2014.

4 In a letter dated December 11, 2014, Google's counsel reiterated a prior
5 objection that LegalZoom's subpoena seeks documents that (according to Google)
6 should already be in the possession of Rocket Lawyer, and that therefore should be
7 exclusively sought from Rocket Lawyer. Google's counsel refused to confirm
8 whether and when it might comply with the subpoena, instead suggesting that Google
9 might respond to the subpoena within some reasonable time frame, but that
10 production by the 17th of December might not be practicable. Attached hereto as
11 Exhibit F to the Alan Decl., ¶11, is a true and correct copy of a letter sent on
12 December 11, 2014 by counsel for Google to counsel for LegalZoom.

13 In email correspondence between counsel for Google and counsel for
14 LegalZoom dated December 11, 2014, Google refused to agree to any deadline for
15 deciding whether it would comply. Thereafter, counsel for LegalZoom sent an email
16 articulating that should a resolution not be reached, LegalZoom would have no choice
17 but to put Google's conduct before the Court. Attached hereto as Exhibit G to the
18 Allan Decl., ¶12, is a true and correct copy of an email chain sent by counsel for
19 LegalZoom to counsel for Google on December 11, 2014. LegalZoom therefore has
20 no alternative but to seek judicial intervention to compel Google's compliance with
21 LegalZoom's subpoena. Accordingly, LegalZoom's counsel wrote a letter on
22 December 11, 2014, which identified all of the outstanding discovery issues and
23 LegalZoom's analysis for why compliance should be required pursuant to United
24 States District Court Local Rule 37-2. Attached hereto as Exhibit H to the Allan
25 Decl., ¶13, is a true and correct copy of a letter sent by counsel for LegalZoom to
26 counsel for Google on December 11, 2014.

27 On December 18, 2014, counsel for LegalZoom and Google had a final
28 telephonic meet and confer discussion in an effort to avoid the need for Court

1 intervention. During that telephone call, Google's counsel refused to produce any of
2 the subject communications with Rocket Lawyer, taking the position (without citation
3 to any legal authority) that those documents should already be in Rocket Lawyer's
4 possession. When LegalZoom's counsel attempted to discuss the issue of burden
5 associated with producing those documents, Google's counsel refused to engage on
6 that subject, stating that "this is not a deposition." Instead, Google's counsel made a
7 "take it or leave it" offer: Google would produce documents related to a study
8 performed by its affiliate Google Ventures, which is the subject of one of the four
9 subpoena requests, but no other documents; and Google would also provide the last
10 known contact information for "Katherine K," but reserved the right to object to any
11 deposition of Katherine K. LegalZoom declined Google's ultimatum, and indicated
12 that it would pursue relief in court. *Id.* at ¶14. Accordingly, on December 18, 2014,
13 Aaron Allan, counsel for LegalZoom, wrote an email to counsel for Google, Jacob
14 Veltman, which summarized the telephonic conference held that same day. Attached
15 hereto as Exhibit I to the Allan Decl., ¶15, is a true and correct copy of the December
16 18, 2014 email from Aaron Allan to Jacob Veltman.

17 **F. Google's Ties to Rocket Lawyer Make it Less Than a Third Party**

18 During the course of deposition discovery in the underlying case, LegalZoom
19 learned that David C. Drummond, the Senior Vice President, Corporate Development
20 and Chief Legal Officer of Google, is also on the Board of Directors for Rocket
21 Lawyer. In addition, LegalZoom has learned that Mr. Drummond was previously a
22 partner in the same law firm that is representing Google with respect to the subpoena.
23 Lastly, Google Ventures, Google's investment group, is a significant investor in
24 Rocket Lawyer. These facts call into question whether Google is really acting as a
25 neutral third party with respect to its efforts to frustrate this limited discovery.
26 Attached hereto as Exhibit J to the Allan Decl., ¶16 is a true and correct printout of a
27 list of Board of Directors of Rocket Lawyer printed on December 30, 2014 and an
28 August 11, 2011 Forbes Article regarding Google's investment in Rocket Lawyer.

1 **G. Relief Sought by this Motion**

2 By this motion, LegalZoom seeks an order from this Court compelling Google
 3 to comply with the subpoena and to produce documents and communications with
 4 defendant Rocket Lawyer regarding Rocket Lawyer’s free advertisements and the last
 5 known contact information of “Katherine K,” a former Google employee. The
 6 information sought by the subpoena is both narrow and extremely material to the
 7 underlying case. Moreover, LegalZoom cannot obtain the information from a
 8 different source, and this production should not create an undue burden on Google.

9 **II. STATEMENT OF THE ISSUES**

10 Pursuant to Local Rule 37-2, LegalZoom sets forth each of the four discovery
 11 requests at issue in full, followed by Google’s responses. In addition, LegalZoom sets
 12 forth the basis for LegalZoom’s contention that discovery should be compelled and
 13 that the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are
 14 satisfied.

15 **REQUEST TO PRODUCE DOCUMENTS NO. 1:**

16 Any and all DOCUMENTS RELATING TO ROCKET LAWYER FREE
 17 ADVERTISEMENTS¹ between January 1, 2008 and present.

18 **RESPONSE TO REQUEST NO. 1:**

19 Google objects to this Request on the grounds that it seeks irrelevant
 20 information and is overbroad and unduly burdensome, especially given that Google is
 21 a non-party. The demand for “any and all” documents relating to Rocket Lawyer
 22 Free Advertisements is particularly burdensome, as it may encompass a substantial
 23 amount of information, most of which is cumulative and/or irrelevant to the claims
 24

25 ¹ Within the subpoena, “ROCKET LAWYER FREE ADVERTISEMENTS” was
 26 defined to mean and refer to any marketing, advertising and/or promotion of
 27 ROCKET LAWYER and/or ROCKET LAWYER PRODUCTS AND SERVICES, in
 28 in which the term “free” appears in the marketing, advertisement and promotion and/or
 in which the term “free” is used as a keyword or other search term to trigger the
 marketing, advertisement and/or promotion of ROCKET LAWYER and/or ROCKET
 LAWYER PRODUCTS AND SERVICES.

1 and defenses asserted in this lawsuit. The specified relevant period of almost seven
2 years renders the request particularly overbroad and oppressive, given that the claims
3 and defenses asserted in this lawsuit relate to events beginning in late 2011.

4 Google further objects to this Request on the grounds that many of the
5 documents encompassed by the Request, such as communications between Google
6 and Rocket Lawyer, are necessarily in the possession, custody or control of Rocket
7 Lawyer. As a nonparty, Google should not be subjected to the burden and expense of
8 searching for and producing these documents until LegalZoom has exhausted
9 reasonable means of obtaining them directly from Rocket Lawyer.

10 Subject to the foregoing objections, Google responds to this Requests as
11 follows:

12 Google will not produce documents in response to this Request due to the
13 issues identified above. It is, however, open to a meet and confer process with
14 LegalZoom to discuss whether this Request can be appropriately revised, clarified and
15 narrowed.

16 Why Discovery Should Be Compelled

17 1. The Federal Rules of Civil Procedure governing discovery also govern
18 subpoenaed material. *See* Fed. R. Civ. Proc. 26, 34; *Gonzalez v. Google, Inc.*, 234
19 F.R.D. 674, 679 (N.D. Cal. 2006). Rule 26(b)(1) provides for “discovery regarding
20 any non-privileged matter that is relevant to any party's claim or defense.” Fed. R.
21 Civ. Proc. 26(b)(1). This includes “the existence, description, nature, custody,
22 condition, and location of any documents or other tangible things and the identity and
23 location of persons who know of any discoverable matter.” *Id.* In addition, “[f]or
24 good cause, the court may order discovery of any matter relevant to the subject matter
25 involved in the action.” *Id.* Relevance is defined broadly for discovery purposes,
26 with minor limitations. *Gonzalez v. Google, Inc.*, 234 F.R.D. at 679-680.

27 2. Here, the documents being sought (documents relating to Rocket
28 Lawyer's free advertisements) are directly relevant to a central issue in the underlying

1 false advertising lawsuit. To the extent that Google identified deceptive aspects of the
2 subject advertisements as a basis for finding that Rocket Lawyer was in violation of
3 its policies, the manner and means for such an identification could be used as
4 evidence at trial to show that the advertisements had a tendency to deceive
5 consumers. To the extent that Google complained to Rocket Lawyer about the
6 deceptive nature of the advertisements, and to the extent that Rocket Lawyer ignored
7 those complaints and continued to run the advertisements, that could be used as
8 evidence at trial to show that Google was acting with an intent to deceive consumers.

9 3. Google has not acted in good faith in resisting a production of the subject
10 documents. Google has rejected, and not even attempted to negotiate, LegalZoom's
11 offers to reduce and/or alleviate the burden associated with compliance. LegalZoom
12 offered to narrow the date range for documents; provided Rocket Lawyer email
13 addresses to assist Google in searches; agreed to accept a custodian declaration in lieu
14 of testimony; extended the time for compliance, and offered to extend it again as long
15 as it was for a date certain; offered to "work with" Google to alleviate any burden
16 associated with finding and producing documents; and indicated an openness to
17 consider any other proposals to reach an agreement. In response, Google refused to
18 make any commitment to produce, and ultimately refused to produce altogether.
19 "Vague, open-ended responses to some discovery requests, which merely stated an
20 intention to make some production at an unspecified date of party's own choosing,
21 was not a complete answer as required by rule and, therefore, would be treated as a
22 failure to answer or respond." *See Silicon Knights, Inc. v. Epic Games, Inc.*, E.D.N.C.
23 2012, 917 F. Supp. 2d 503, *affirmed* 551 Fed. Appx. 646, 2014 WL 30865. Under the
24 deadline set by the underlying court, and without any commitment to produce by
25 Google, LegalZoom was left with no choice but to seek a court order.

26 4. Rule 26(b)(2) requires the Court to consider whether the discovery at
27 issue is unreasonably cumulative or duplicative, or can be obtained from some other
28 source that is more convenient, less burdensome, or less expensive. Certainly

1 Google's *internal* documents relating to Rocket Lawyer's free advertisements cannot
2 be obtained from any other source. Rule 26(b)(2) also requires a consideration of
3 whether the burden or expense of the discovery outweighs its likely benefit in light of
4 the needs of the case, the importance of the issues, and the resources of the parties.
5 Here, the subject documentation is directly on point in connection with the central
6 most important issues in the case – whether Rocket Lawyer's free advertisements
7 were deceptive and whether Rocket Lawyer acted with knowledge and an intent to
8 deceive consumers. Moreover, when LegalZoom made inquiry to Google's counsel
9 about the burden associated with producing documents and electronically stored
10 information, Google's counsel refused to answer those questions and refused to
11 discuss that topic as part of a negotiation to produce. Google should therefore be
12 precluded from now making that showing pursuant to Rule 26(b)(2)(B) or Rule
13 26(b)(2)(C). The documentation being sought should be relatively narrow, and
14 Google has made no showing as to why it may not be easily located and produced.

15 **REQUEST TO PRODUCE DOCUMENTS NO. 2:**

16 Any and all COMMUNICATIONS between YOU and ROCKET LAWYER
17 RELATING TO ROCKET LAWYER FREE ADVERTISEMENTS between January
18 1, 2008 and present.

19 **RESPONSE TO REQUEST NO. 2:**

20 Google objects to this Request on the grounds that it seeks irrelevant
21 information and is overbroad and unduly burdensome, especially given that Google is
22 a non-party. The demand for "any and all" documents relating to Rocket Lawyer
23 Free Advertisements is particularly burdensome, as it may encompass a substantial
24 amount of information, most of which is cumulative and/or irrelevant to the claims
25 and defenses asserted in this lawsuit. The specified relevant period of almost seven
26 years renders the request particularly overbroad and oppressive, given that the claims
27 and defenses asserted in this lawsuit relate to events beginning in late 2011.

28 Google further objects to this Request on the grounds that many of the

1 documents encompassed by the Request, such as communications between Google
 2 and Rocket Lawyer, are necessarily in the possession, custody or control of Rocket
 3 Lawyer. As a nonparty, Google should not be subjected to the burden and expense of
 4 searching for and producing these documents until LegalZoom has exhausted
 5 reasonable means of obtaining them directly from Rocket Lawyer.

6 Subject to the foregoing objections, Google responds to this Requests as
 7 follows:

8 Google will not produce documents in response to this Request due to the
 9 issues identified above. It is, however, open to a meet and confer process with
 10 LegalZoom to discuss whether this Request can be appropriately revised, clarified and
 11 narrowed.

12 **Why Discovery Should Be Compelled**

13 All of the same arguments stated above with respect to Request No. 1 apply
 14 equally here to Request No. 2. In addition, Google’s argument is without merit that it
 15 should be absolved from producing communications with Rocket Lawyer because
 16 those same documents should have been produced by Rocket Lawyer in the
 17 underlying case. LegalZoom has asked Rocket Lawyer for these same
 18 communications, but has no assurance that Rocket Lawyer has produced all of the
 19 communications. For this reason, LegalZoom should be entitled to review documents
 20 in Google’s possession as a cross-check against any production previously made by
 21 Rocket Lawyer. The subject matter of the documents being sought (communications
 22 between Google and Rocket Lawyer relating to Rocket Lawyer free advertisements)
 23 is relatively narrow, and should not involve an extensive collection of materials.

24 **REQUEST TO PRODUCE DOCUMENTS NO. 3:**

25 Any and all DOCUMENTS RELATING TO studies managed or performed by
 26 Google Ventures for ROCKET LAWYER, to the extent those studies examine or
 27 concern ROCKET LAWYER FREE ADVERTISEMENTS.

28 **RESPONSE TO REQUEST NO. 3:**

1 Google objects to this Request on the grounds that it seeks irrelevant
2 information and is overbroad and unduly burdensome, especially given that Google is
3 a non-party. The demand for “any and all” documents relating to Rocket Lawyer
4 Free Advertisements is particularly burdensome, as it may encompass a substantial
5 amount of information, most of which is cumulative and/or irrelevant to the claims
6 and defenses asserted in this lawsuit. The specified relevant period of almost seven
7 years renders the request particularly overbroad and oppressive, given that the claims
8 and defenses asserted in this lawsuit relate to events beginning in late 2011.

9 Google further objects to this Request on the grounds that many of the
10 documents encompassed by the Request, such as communications between Google
11 and Rocket Lawyer, are necessarily in the possession, custody or control of Rocket
12 Lawyer. As a nonparty, Google should not be subjected to the burden and expense of
13 searching for and producing these documents until LegalZoom has exhausted
14 reasonable means of obtaining them directly from Rocket Lawyer.

15 Subject to the foregoing objections, Google responds to this Requests as
16 follows:

17 Google will not produce documents in response to this Request due to the
18 issues identified above. It is, however, open to a meet and confer process with
19 LegalZoom to discuss whether this Request can be appropriately revised, clarified and
20 narrowed.

21 Why Discovery Should Be Compelled

22 All of the same arguments stated above with respect to Request No. 1 apply
23 equally here to Request No. 3. In addition, Google expressed a willingness to
24 produce the documents responsive to this category, but only as part of an ultimatum
25 offer that would unreasonably require LegalZoom to withdraw other requests. It
26 appears, therefore, that Google has located these documents and could produce them,
27 and Google has not communicated any burden associated with doing so.

28 ///

1 **REQUEST TO PRODUCE DOCUMENTS NO. 4:**

2 Any and all DOCUMENTS sufficient to show the complete name, address, and
3 telephone number for Katherine K. whose email address is Katherine.k@google.com.

4 **RESPONSE TO REQUEST NO. 4:**

5 Google objects to this Request on the grounds it seeks irrelevant information.
6 It is not clear to Google why the identity of the person using the email address
7 Katherine.k@google.com bears on the claims and defenses asserted in this litigation.

8 Google will not produce documents in response to this Request due to the
9 issues identified above. It is, however, open to a meet and confer process with
10 LegalZoom to discuss whether this Request can be appropriately revised, clarified and
11 narrowed.

12 **Why Discovery Should Be Compelled**

13 All of the same arguments stated above with respect to Request No. 1 apply
14 equally here to Request No. 4. In addition, the nature of this request is extremely
15 limited. LegalZoom simply wants contact information for a Google employee who
16 authored a key communication with Rocket Layer about the free advertisements, so
17 that LegalZoom may take that employee's deposition.

18 Katherine K. was a Google employee who communicated to Rocket Lawyer
19 that some of the Rocket Lawyer advertisements at issue in this lawsuit violated
20 Google's Offer Not Found Policy. The nature and extent of those communications
21 are relevant, and may be significant, in putting Rocket Lawyer on notice that its
22 advertisements were potentially deceptive to consumers. Katherine K's knowledge,
23 understanding, and actions taken with regards to Rocket Lawyer's violation of
24 Google's Offer Not Found Policy are not within the possession of Rocket Lawyer,
25 and are matters that LegalZoom should be entitled to appropriately inquire about from
26 her at a deposition once her identity has been produced. Google has identified no
27 basis for withholding that information.

28 ///


1 **III. CONCLUSION**

2 The requested documents are material to LegalZoom's case against Rocket
3 Lawyer, Google has made no showing of an undue burden in producing them. In fact,
4 Google has rejected every effort made by LegalZoom in an attempt to narrow the
5 scope of the subpoena requests in order to lessen the burden on Google. For the
6 reasons stated above, LegalZoom respectfully requests that the Court grant its motion
7 to compel a production of records by Google.

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DATED: January 5, 2015

GLASER WEIL FINK HOWARD
AVCHEN & SHAPIRO LLP

By: 

PATRICIA L. GLASER
FRED D. HEATHER
AARON P. ALLAN
Attorneys for Plaintiff
LegalZoom.com, Inc.

Glaser Weil

Court Name: U.S. District Court, NDCA
Division: 5
Receipt Number: 5461101298
Cashier ID: waltonb
Transaction Date: 01/05/2015
Payer Name: SAN FRANCISCO LEGAL SUPPORT,

MISCELLANEOUS PAPERS

For: Legalzoom, Com., Inc
Case/Party: D-CAN-3-15-16-000003-001
Amount: \$46.00

PAPER CHECK CONVERSION

Check/Money Order Num: 162785
Amt Tendered: \$46.00

Total Due: \$46.00
Total Tendered: \$46.00
Change Amt: \$0.00

Misc Case

HC

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.