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9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

Glaser Weil

12 LEGALZOOM.COM, INC.,

13 Plaintiff,

14 v.

15 ROCKET LAWYER INC.,

16 Defendants.

**CASE NO: 5:15-mc-80003-NC**

**APPENDIX OF EXHIBITS IN  
 SUPPORT OF PLAINTIFF,  
 LEGALZOOM.COM, INC.'S  
 MOTION FOR RELIEF FROM  
 NONDISPOSITIVE PRETRIAL  
 ORDER OF MAGISTRATE JUDGE**

Before: Hon. Lucy H. Koh

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**APPENDIX OF EXHIBITS**

<b>TAB NO.</b>	<b>DOCUMENT</b>
1	Order re Ex Parte Application to Continue Hearing dated October 1, 2014
2	LegalZoom.com's Motion to Compel Compliance with Subpoena to Google, Inc. dated January 5, 2015
3	Declaration of Aaron Allan in Support of Motion to Compel Compliance with Subpoena dated January 5, 2015
4	Google Inc.'s Opposition to Motion to Compel Compliance with Subpoena dated January 20, 2015
5	Declaration of Jacob T. Veltman in Support of Motion to Compel Compliance with Subpoena dated January 20, 2015
6	LegalZoom.com's Reply to the Motion to Compel Compliance with Subpoena dated January 27, 2015
7	Reply Declaration of Aaron Allan in Support of Motion to Compel Compliance with Subpoena dated January 27, 2015
8	Transcript of Proceedings re Motion to Compel Compliance with Subpoena dated February 25, 2015
9	Order Denying LegalZoom.com's Motion to Compel Compliance Against Non-Party Google, Inc. dated March 23, 2015

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DATED: April 6, 2015

GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP

By: 

AARON P. ALLAN  
Attorneys for Plaintiff  
LegalZoom.com, Inc.

**TAB 1**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-9942 GAF (AGR <sub>x</sub> )	Date	October 1, 2014
Title	LegalZoom.com Inc. v. Rocket Lawyer Incorporated		

Present: The Honorable	<b>GARY ALLEN FEES</b>		
Stephen Montes Kerr	None	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
None	None		

**Proceedings: (In Chambers)**

**ORDER RE: EX PARTE APPLICATION  
TO CONTINUE HEARING**

**A. BACKGROUND**

On June 30, 2014, Defendant Rocket Lawyer filed a motion for summary judgment (“MSJ”). (Docket No. 61.) On July 14, 2014, Plaintiff LegalZoom.com (“Legal Zoom”) filed a cross-MSJ. (Docket No. 69.) The hearing for both MSJs was continued to October 6, 2014. (Docket No. 120.) An issue regarding discovery proceedings has now arisen that affects the scheduling of the pending motions.

Early in the litigation, Legal Zoom served a document request on Rocket Lawyer. (See Docket No. 126 [Legal Zoom’s Motion to Supplement Factual Record (“LZ Mem. Supp. Record”)] at 3, ¶ 2.) Although Legal Zoom initiated that request on March 12, 2013, Rocket Lawyer did not produce certain responsive documents until July 3, 11, and 18, 2014. (Id. at 3, ¶ 3.) Because of the late production which was temporally disconnected from the demand by more than a year and because it was immersed in preparing the pending motion for summary judgment, Legal Zoom did not become aware of and thus did not incorporate these documents into its motions. (Id. at 3-4.) Accordingly, Legal Zoom has filed a motion to supplement the record with the newly discovered documents. (See id.) Legal Zoom also believes that Rocket Lawyer’s assertions in its motions are untruthful and warrant sanctions based on the newly discovered information and have thus filed a motion for Rule 11 sanctions. (Docket No. 127.)

Legal Zoom attempted to resolve the issue without Court relief. (LZ Mem. Supp. Record at 3-4, ¶ 5; Docket No. 126-2 [Declaration of Aaron P. Allan] at 1, ¶ 2.) However, Rocket Lawyer would not stipulate to supplementing the record. (Id.) Legal Zoom now asks the Court to shorten

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	CV 12-9942 GAF (AGR <sub>x</sub> )	Date	October 1, 2014
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the time for response regarding the motion to supplement the record or continue the hearing to a later date. (Docket No. 126 [LZ's Ex Parte Application].)

**B. THE EX PARTE STANDARD**

To obtain ex parte relief, a party must show that: (1) it will be irreparably harmed but for ex parte relief; and (2) it is without fault in creating the need for ex parte relief. Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995). Additionally, continuing the hearing date would require the Court to modify the current scheduling and case management order. "A schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Rule 16(b)'s "good cause" standard "focuses on the reasonable diligence of the moving party." Noyes v. Kelly Svs., 488 F.3d 1163, 1174 n.6 (9th Cir. 2007). "If the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted." Zivokovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)).

**C. DISCUSSION**

After a review of the documents it is clear to the Court that not allowing supplement to the record would cause Legal Zoom irreparable harm and potentially make it vulnerable to Rocket Lawyer's MSJ.

Legal Zoom has provided an adequate explanation for the delay in making this application. Legal Zoom explains that due to the late nature of Rocket Lawyer's late production, the volume of documents, and looming deadlines for its Opposition and Reply Motions, it was unable to review and assess the content of the delayed production at an earlier date. (LZ Mem. Supp. Record at 3, ¶¶ 3-4) After failed attempts to resolve the issue with Rocket Lawyer, Legal Zoom moved to supplement the record and applied for ex parte relief on the same day. (See LZ's Ex Parte Application; LZ Mem. Supp. Record.) In short, it does not appear that any delay was the calculated result of Legal Zoom's actions.

On the other hand, the record suggests that Rocket Lawyer intentionally dragged its feet over a year in producing documents long after the pertinent documents had been requested. (Id. at 3, ¶¶ 2-3.) This essentially misled Legal Zoom regarding the presence of useful information in Rocket Lawyer's belated productions. It appears that the late production contains information that is not just relevant and may have a significant bearing on the Court's resolution of the pending motions. While it is conceivable that Legal Zoom could have acted with more diligence in reviewing the documents, given the time pressures, volume of documents, and Rocket Lawyer's

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	CV 12-9942 GAF (AGR <sub>x</sub> )	Date	October 1, 2014
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apparent delay in production, the Court finds that Legal Zoom acted reasonably promptly. It is surely the case that Legal Zoom has gained no advantage by waiting to supplement the record in connection with the current motions.

Rather than shorten the time, so that Rocket Lawyer and any objections it has may be heard, the Court will instead continue the hearing date.

For the foregoing reasons, the ex parte application is **GRANTED**. The hearing presently scheduled for October 6, 2014, is **CONTINUED to October 27, 2014** at 9:30 a.m., at which time the Rule 11 motion, the cross-Motions for Summary Judgment and Motion to Supplement the record will all be heard.

**IT IS SO ORDERED.**

**TAB 2**

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JAN 05 2015

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

NC

11 CV 15 80003 MISC.

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12 LEGALZOOM.COM, INC.,

CASE NO. \_\_\_\_\_

13 Plaintiff,

14 v.

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

15 ROCKET LAWYER INC.,

16 Defendants.

Hearing Date: \_\_\_\_\_  
Time:  
Courtroom:

FAXED

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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.

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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

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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

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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 ADVERTISEMENTS<sup>1</sup> 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           <sup>1</sup> 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  
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

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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

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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:

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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 ///

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

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

**RESPONSE TO REQUEST NO. 4:**

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

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

**Why Discovery Should Be Compelled**

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

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

///


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.

8  
9 DATED: January 5, 2015

GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP

10  
11 By: \_\_\_\_\_

  
12 PATRICIA L. GLASER  
13 FRED D. HEATHER  
14 AARON P. ALLAN  
15 Attorneys for Plaintiff  
16 LegalZoom.com, Inc.

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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.



**TAB 3**

E-filing

Filed

JAN 05 2015

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

NC

ORIGINAL

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4 GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP  
5 10250 Constellation Boulevard, 19th Floor  
Los Angeles, California 90067  
6 Telephone: (310) 553-3000  
Facsimile: (310) 556-2920

7 Attorneys for Plaintiff  
8 LegalZoom.com, Inc.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 **CV 15 80003 MISC.**

12 LEGALZOOM.COM, INC. a Delaware  
corporation,

13 Plaintiff,

14 v.

15 ROCKET LAWYER INCORPORATED,  
16 a Delaware corporation

17 Defendants.  
18

**DECLARATION OF AARON P.  
ALLAN IN SUPPORT OF MOTION  
TO COMPEL COMPLIANCE  
WITH SUBPOENA.**

GlaserWeil

FAXED

**DECLARATION OF AARON P. ALLAN**

I, AARON P. ALLAN, declare and state as follows:

1. I am an attorney at law duly admitted to practice before this Court and am a Partner of the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP, attorneys of record for Plaintiff LegalZoom.com, Inc. I submit this declaration in support of the Motion to Compel Compliance with Subpoena brought by Plaintiff LegalZoom.com, Inc. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath.

2. In the underlying case in this matter, Plaintiff LegalZoom.com, Inc. ("LegalZoom"), sued a competitor, Rocket Lawyer Incorporated ("Rocket Lawyer"), for engaging in false advertising practices in violation of the Lanham Act and California unfair competition laws. A central issue in that litigation is whether Rocket Lawyer acted with an intent to deceive customers by using the term "free" in its online advertisements. The case is pending in the United States District Court for the Central District of California (Case No. 2:12-cv-09942-GAF). It had been scheduled for trial December 9, 2014, but trial was delayed to April 15, 2015 to enable the parties to engage in limited additional discovery.

3. Based on documentation produced in the case by Rocket Lawyer, LegalZoom learned that Google Inc. ("Google") had been communicating with Rocket Lawyer about the "free" Rocket Lawyer advertisements, and that Google had complained to Rocket Lawyer that its "free" advertisements were in violation of certain Google online advertising policies. These communications are extremely relevant to the claim being pursued by LegalZoom against Rocket Lawyer because they may provide supporting evidence that Rocket Lawyer was acting with knowledge that its advertisements had a potential to deceive consumers, and that Rocket Lawyer's decision to continue to run its advertisements in the face of such communications by Google demonstrated an intent to deceive. One of the Google employees involved in these communications is identified in an email as "Katherine

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1 K,” but existing documents provide no other identifying information for that  
2 employee.

3 4. Upon learning about Google’s communications with Rocket Lawyer  
4 concerning the “free” advertisements as well as other documents that were produced  
5 at a late stage of the case by Rocket Lawyer, LegalZoom requested an order from the  
6 underlying court permitting additional discovery and a supplementation of the record  
7 for purposes of an upcoming hearing on cross-motions for summary judgment. In  
8 response, Rocket Lawyer made a similar request. At a court status conference on  
9 November 10, 2014, the Court requested that the two parties negotiate an appropriate  
10 stipulation. Attached hereto as Exhibit A is a true and correct copy of the Order  
11 Granting Stipulation re Scheduling and Additional Discovery issued by United States  
12 District Judge Gary A. Feess on November 10, 2014.

13 5. Pursuant to the underlying court’s order, LegalZoom promptly issued a  
14 subpoena to Google which requests the same documentation permitted by the order.  
15 Attached hereto as Exhibit B is a true and correct copy of the subpoena LegalZoom  
16 served on Google dated November 14, 2014.

17 6. Attached hereto as Exhibit C is a true and correct copy of Google’s  
18 Responses and Objections to LegalZoom’s subpoena dated November 26, 2014.

19 7. After receiving Google’s Responses and Objections to LegalZoom’s  
20 subpoena, I initiated telephone conferences with Google’s counsel and exchanged  
21 emails regarding the subpoena.

22 8. Attached hereto as Exhibit D is a true and correct copy of an email I  
23 wrote to Google’s counsel, Jacob Veltman, dated December 3, 2014, summarizing  
24 our meet and confer telephone conferences.

25 9. On December 5, 2014, I had a telephonic meet and confer with Google’s  
26 counsel, during which Google’s counsel stated he had nothing new to report and was  
27 unable to confirm whether Google intended to comply with LegalZoom’s subpoena.

28 10. Attached hereto as Exhibit E is a true and correct copy of a letter I wrote

1 to David H. Kramer and Jacob T. Veltman, counsel for Google, dated December 9,  
2 2014, regarding our prior attempts to compromise on the subpoena and the need to  
3 expedite production of the requested documents.

4 11. Attached hereto as Exhibit F is a true and correct copy of a letter  
5 addressed to me from Google's counsel, Jacob Veltman, dated December 11, 2014.

6 12. Attached hereto as Exhibit G is a true and correct copy of email  
7 correspondence between Jacob Veltman and myself dated December 11, 2014.

8 13. Attached hereto as Exhibit H is a true and correct copy of a letter I wrote  
9 to Google's counsel dated December 11, 2014, which identified all outstanding  
10 discovery issues and LegalZoom's analysis for why compliance should be required.

11 14. On December 18, 2014, I had a final telephonic meet and confer with  
12 Google's counsel in an effort to avoid the need for court intervention. During this  
13 meet and confer call, Google's counsel refused to produce any of the requested  
14 communications with Rocket Lawyer, taking the position that these documents should  
15 already be in Rocket Lawyer's possession. When I attempted to discuss the issue of  
16 burden associated with producing these documents, Google's counsel refused to  
17 engage on the subject, and stated, "this is not a deposition." Instead, Google's  
18 counsel made a "take it or leave it" offer: Google would produce documents related  
19 to a study performed by its affiliate Google Ventures, which is the subject of one of  
20 the four subpoena requests, but no other documents; and Google would also provide  
21 the last known contact information for "Katherine K," but reserved the right to object  
22 to any deposition of Katherine K. After considering Google's offer, LegalZoom  
23 declined the ultimatum and chose to pursue relief in court.

24 15. Attached hereto as Exhibit I is an email I wrote to Jacob Veltman, dated  
25 December 18, 2014, which summarizes our telephonic meet and confer held that same  
26 day.

27 16. During the course of deposition discovery in the underlying case,  
28 LegalZoom learned that David C. Drummond, the Senior Vice President, Corporate

1 Development and Chief Legal Officer of Google, is also on the Board of Directors for  
 2 Rocket Lawyer. In addition, LegalZoom has learned that Mr. Drummond was  
 3 previously a partner in the same law firm that is representing Google with respect to  
 4 the subpoena. Lastly, Google Ventures, Google's investment group, is a significant  
 5 investor in Rocket Lawyer. These facts call into question whether Google is really  
 6 acting as a neutral third party with respect to its efforts to frustrate this limited  
 7 discovery. Attached hereto as Exhibit J to the Allan Decl. is a true and correct  
 8 printout of a list of Board of Directors of Rocket Lawyer printed on December 30,  
 9 2014 and an August 11, 2011 Forbes Article regarding Google's investment in Rocket  
 10 Lawyer.

11 I declare under penalty of perjury under the laws of the State of California and  
 12 the United States that the foregoing is true and correct. Executed on January 5, 2015,  
 13 at Los Angeles, California.

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AARON P. ALLAN

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**EXHIBIT A**

1 Forrest A. Hainline III (SBN 64166)  
 fhainline@goodwinprocter.com  
 2 Hong-An Vu (SBN 266268)  
 hvu@goodwinprocter.com  
 3 **GOODWIN PROCTER LLP**  
 Three Embarcadero Center  
 4 24th Floor  
 San Francisco, California 94111  
 5 Tel.: 415.733.6000  
 Fax.: 415.677.9041

NOTE: CHANGES MADE BY THE COURT

6 Michael T. Jones (SBN 290660)  
 mjones@goodwinprocter.com  
 7 **GOODWIN PROCTER LLP**  
 135 Commonwealth Drive  
 8 Menlo Park, California 94025-1105  
 9 Tel.: 650.752.3100  
 Fax.: 650.853.1038

10 Brian W. Cook (*Pro Hac Vice*)  
 11 bcook@goodwinprocter.com  
**GOODWIN PROCTER LLP**  
 12 53 State Street  
 Boston, MA 02109-2802  
 13 Tel.: 617.570.1000  
 Fax.: 617.523.1231

14 *Attorneys for Defendant*  
 15 **ROCKET LAWYER INCORPORATED**

16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **WESTERN DIVISION**

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

21 Plaintiff,

22 v.

23 **ROCKET LAWYER**  
**INCORPORATED**, a Delaware  
 24 corporation,

25 Defendant.

Case No. 2:12-cv-09942-GAF (AGRx)

**ORDER GRANTING STIPULATION  
 RE SCHEDULING AND  
 ADDITIONAL DISCOVERY**

Judge: Judge Gary A. Fees  
 Courtroom: 740  
 255 East Temple Street  
 Los Angeles, CA 90012  
 Action Filed: November 20, 2012

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1           Upon consideration of the *Joint Stipulation for Order re Scheduling and*  
 2 *Limited Additional Discovery* and good cause appearing, the Court hereby  
 3 **ORDERS** the following:

4           The above-captioned action shall proceed on the following schedule:

Matter	Weeks before trial (at least)	New Date or Deadline
Trial Estimated length: 6 trial days		April 21, 2015 at 8:30 a.m.
Hearing on Motions in Limine; Hearing on Disputed Jury Instructions	-1	April 13, 2015 at 9:30 a.m.
Pretrial Conference; Motions in Limine to be filed; Proposed Voir Dire Qs Lodged and Agreed-to Statement of Case	-4	March 16, 2015 at 3:30 p.m.
Deadline to amend pretrial filings	-6	March 10, 2015
Last date to conduct Settlement Conference (with Magistrate Gandhi as originally proposed in Rule 26(f) Report)	-8	February 24, 2015
Hearing on Cross-Motions for Summary Judgment	N/A	February 23, 2015 at 9:30 a.m.
Deadline to supplement summary judgment record	N/A	February 2, 2015 (only one brief per side per motion)
Close of Limited Renewed Discovery (start date – November 14, 2014 or as soon as the court enters an order re scheduling and renewed discovery)	N/A	January 16, 2015

25           During the approximately 60-day renewed discovery period:

26           1. LegalZoom may pursue the following discovery:

27                 a. Depositions of third-parties:  
 28

- 1 i. Dr. Elizabeth Ferguson;
- 2 ii. Jenn Mazzon;
- 3 iii. Michael Margolis;
- 4 iv. Katherine K (Google);
- 5 v. Google relating to Google's inquiry into Rocket Lawyer's free
- 6 advertisements
- 7 b. Deposition of Alan Hungate regarding the reports served on November
- 8 5, 2014;
- 9 c. **Document Subpoenas:**
- 10 i. Dr. Elizabeth Ferguson;
- 11 ii. Google Ventures relating to any and all Topline studies and/or
- 12 any studies done by Google Ventures concerning Rocket
- 13 Lawyer to the extent these studies relate to the advertisements at
- 14 issue in this litigation or other similar free advertisements and
- 15 have not been produced; and
- 16 iii. **Google relating to Google's inquiry into Rocket Lawyer's free**
- 17 **advertisements; and**
- 18 d. Documents from Rocket Lawyer:
- 19 i. The other usability studies, including all videotapes and notes
- 20 taken in conjunction with each of these studies referenced in
- 21 RLI0040690 to the extent these studies relate to the
- 22 advertisements at issue in this litigation and have not been
- 23 produced.
- 24 ii. Any and all Topline studies and/or any studies done by Google
- 25 Ventures concerning Rocket Lawyer, including any videotapes
- 26 and/or notes taken in conjunction thereto to the extent these
- 27 studies relate to the advertisements at issue in this litigation or
- 28 other similar free advertisements and have not been produced.

1                   iii. The identity of Katherine K of Google as referenced in  
2                   RLI0042339.

3           2. Rocket Lawyer may pursue the following discovery:

- 4           a. Deposition of Dr. Goedde concerning his Second Supplemental Report  
5           served on October 6, 2014;
- 6           b. Deposition of Dr. Isaacson's concerning his Second Supplement  
7           Report served on October 27, 2014;
- 8           c. Document and deposition subpoenas for Google relating to any inquiry  
9           made to LegalZoom concerning double serving/bidding;
- 10          d. Deposition of Matt Scanlan (Google); and
- 11          e. Documents and Information from LegalZoom:
- 12            i. WTR/NPS reports from January 2009 to September 2013 that  
13            include (i) complaints relating to LegalZoom's business  
14            formation services; (ii) complaints relating to LegalZoom's free  
15            trial; (iii) complaints relating to ads both in search engine  
16            marketing and on your website for free products or services.
- 17            ii. Permissions from consumers to use their WTR/NPS responses  
18            in marketing.
- 19            iii. Studies and surveys (including usability studies, focus group  
20            studies, and awareness studies) conducted or commissioned by  
21            LegalZoom concerning: (i) Rocket Lawyer; (ii) freemium  
22            offerings/microsites (e.g., Legalcenterpro, lightwavelaw,  
23            creating will); (iii) LegalZoom's Free Trial offerings; and/or (iv)  
24            fee disclosures for LegalZoom's business formation offerings.
- 25            iv. Payments to LegalSpring.com, Own Vision, and/or Mr. Giggy  
26            relating to LegalSpring's affiliate relationship with LegalZoom,  
27            including data and reports from Cake, Direct track, and  
28            LegalZoom's payment tracking system.

1 A party who receives documents or information in response to a third party  
2 subpoena shall produce to the other party a copy of all such documents and  
3 information within three business days.

4 A non-subpoenaing party may ask questions at deposition in case the witness  
5 become unavailable for trial and to avoid having such witnesses appear for more  
6 than one deposition.



7  
8 **IT IS SO ORDERED.**

9 DATED: November 10, 2014

10 Honorable Gary A. Feess  
11 United States District Court Judge  
12 Central District of California  
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**EXHIBIT B**

1 PATRICIA L. GLASER - State Bar No. 55668  
 2 pglaser@glaserweil.com  
 3 FRED D. HEATHER - State Bar No. 110650  
 4 fheather@glaserweil.com  
 5 AARON P. ALLAN - State Bar No. 144406  
 6 allan@glaserweil.com  
 7 GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP  
 8 10250 Constellation Boulevard, 19th Floor  
 9 Los Angeles, California 90067  
 10 Telephone: (310) 553-3000  
 11 Facsimile: (310) 556-2920

12 Attorneys for Plaintiff  
 13 LegalZoom.com, Inc.

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

17 LEGALZOOM.COM, INC., a Delaware  
 18 corporation,

19 Plaintiff,

20 v.

21 ROCKET LAWYER INCORPORATED,  
 22 a Delaware corporation,

23 Defendants.

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

25 Hon. Gary A. Feess  
 26 Courtroom: 740

27 **LEGALZOOM.COM, INC.'S  
 28 NOTICE OF SUBPOENA TO  
 PRODUCE DOCUMENTS,  
 INFORMATION, OR OBJECTS OR  
 TO PERMIT INSPECTION OF  
 PREMISES IN A CIVIL ACTION  
 TO GOOGLE, INC.**

Date: December 1, 2014  
 Time: 3:00 PM  
 Place: Veritext – San Francisco  
 101 Montgomery Street  
 Suite 450  
 San Francisco, CA 94104

Glaser Weill Fink Jacobs  
 Howard Avchen & Shapiro LLP

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

2 **PLEASE TAKE NOTICE** of Plaintiff LegalZoom.com, Inc.'s ("LegalZoom")  
3 Subpoena To Produce Documents, Information, Or Objects Or To Permit Inspection  
4 of Premises In A Civil Action ("Subpoena") to Google, Inc. ("Google"), located at  
5 1600 Amphitheatre Parkway, Mountain View, California 94043), pursuant to Rules  
6 34 and 45 of the Federal Rules of Civil Procedure. A true and correct copy of the  
7 Subpoena to be served on Google, Inc. on November 14, 2014, is attached hereto as  
8 Exhibit A.

9  
10  
11 DATED: November 14, 2014

Respectfully submitted,

12 **GLASER WEIL FINK JACOBS**  
13 **HOWARD AVCHEN & SHAPIRO LLP**

14 By: s/ Fred D. Heather

15 **PATRICIA L. GLASER**

16 **FRED D. HEATHER**

17 **AARON P. ALLAN**

18 **BARAK VAUGHN**

19 **Attorneys for Plaintiff**  
20 **LegalZoom.com, Inc.**

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP

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Glaser Weill Fink Jacobs  
Howard Avchen & Shapiro LLP

EXHIBIT A



AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

**UNITED STATES DISTRICT COURT**

for the  
CENTRAL District of CALIFORNIA

LEGALZOOM.COM, INC.

\_\_\_\_\_  
*Plaintiff*

v.

ROCKET LAWYER INCORPORATED

\_\_\_\_\_  
*Defendant*

)  
)  
) Civil Action No. 2:12-CV-09942-GAF-AGR  
)  
)  
)

**SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION**

GOOGLE, INC. c/o CSC Lawyers Incorporating Service, 2710 Gateway Oaks, Suite  
To: 150N, Sacramento, CA 95833.

\_\_\_\_\_  
*(Name of person to whom this subpoena is directed)*

**Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: Custodian of Records to authenticate the documents requested.

Place: Veritext-San Francisco, 101 Montgomery Street, Suite 450, San Francisco, CA 94104	Date and Time: December 1, 2014; 3:00 p.m.
---	---

The deposition will be recorded by this method: Stenographically and Videotaped

**Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment "1"

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/14/14

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

  
\_\_\_\_\_  
*Attorney's signature*

Barak Vaughn

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* LegalZoom.com,

Inc., who issues or requests this subpoena, are:  
Fred Heather; GLASER WELL, 10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067; (310)553-3000

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_

on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**ATTACHMENT 1**

**DEFINITIONS**

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2  
3 A. "YOU," "YOUR" and "GOOGLE" mean Google, Inc. located at 1600  
4 Amphitheatre Way, Mountain View California 943043, and its current and former  
5 parents, subsidiaries, affiliates, predecessors, successors, employees, managers,  
6 officers, directors, partners, agents, representatives, attorneys, or anyone acting or  
7 purporting to act on its behalf or under its control.

8 B. "LEGALZOOM" and "PLAINTIFF" mean and refer, without limitation,  
9 to Plaintiff LegalZoom.com, Inc., its attorneys, agents and all PERSONS, as defined  
10 below, acting on its behalf.

11 C. "ROCKET LAWYER" and "DEFENDANT" mean and refer, without  
12 limitation, to Rocket Lawyer Incorporated, its employees, attorneys, agents,  
13 independent contractors, officers, directors, shareholders, representatives, and all  
14 PERSONS or entities acting on its behalf.

15 D. "ROCKET LAWYER FREE ADVERTISEMENTS" mean and refer to  
16 any marketing, advertising and/or promotion of ROCKET LAWYER and/or  
17 ROCKET LAWYER PRODUCTS AND SERVICES, in which the term "free"  
18 appears in the marketing, advertisement and promotion and/or in which the term  
19 "free" is used as a keyword or other search term to trigger the marketing,  
20 advertisement and/or promotion of ROCKET LAWYER and/or ROCKET LAWYER  
21 PRODUCTS AND SERVICES.

22 E. "COMMUNICATION" includes, without limitation, communications  
23 by whatever means transmitted (i.e., whether oral, written, electronic, or other  
24 methods are used), as well as any note, memorandum, or other document record  
25 thereof.

26 F. "DOCUMENT" has the full meaning ascribed to it by the Federal Rules  
27 of Civil Procedure and the Federal Rules of Evidence, and includes without limitation  
28 any writing, COMMUNICATION, correspondence or tangible thing on which

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1 information can be stored or from which information can be retrieved, whether signed  
2 or unsigned, in draft or final form, an original or a copy, including electronic formats.

3 G. "CONSTITUTING," "CONCERNING," "REFERRING TO,"  
4 "RELATED TO," and "RELATING TO," whether used alone or in conjunction with  
5 one another, are used in their broadest sense and shall mean and refer to, without  
6 limitation, constituting, summarizing, memorializing, or directly or indirectly  
7 referring to, discussing, pertaining to, regarding, evidencing, supporting,  
8 contradicting, containing information regarding, embodying, comprising, identifying,  
9 stating, reflecting, dealing with, commenting on, responding to, describing, analyzing,  
10 or in any way pertinent to the subject matter of the type of DOCUMENTS sought.

11 H. "PERSON" means an individual, firm, partnership, corporation,  
12 proprietorship, association, governmental body, or any other organization or entity.

13 I. "Each" and "any" include both "each" and "every" whenever  
14 appropriate. The terms "and" as well as "or" shall be construed either disjunctively or  
15 conjunctively as necessary to bring within the scope of the inquiry or request any  
16 information which might otherwise be construed to be outside of the scope.

17 J. "Or," "and," and "and/or" shall be interpreted both conjunctively and  
18 disjunctively, so as to be inclusive rather than exclusive, and each term shall include  
19 the other whenever such construction will serve to bring within the scope of a request  
20 documents, information or tangible things which would not otherwise be within its  
21 scope, and these terms shall not be interpreted to exclude any information, documents  
22 or tangible things otherwise within the scope of a request.

23 K. The present tense of any verb shall include the past tense, and vice versa,  
24 whenever such construction will serve to bring within the scope of a request  
25 documents, information or tangible things which would not otherwise be within its  
26 scope.

27 L. The singular shall include the plural and vice versa, and words in one  
28 gender shall include the other gender.

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**REQUEST TO PRODUCE DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 34 *et seq.*, YOU are obligated to produce at the time and place identified above, on the designated date, those DOCUMENTS or COMMUNICATIONS responsive to the requests listed below:

**REQUEST TO PRODUCE DOCUMENTS NO. 1**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 2**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 3**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 4**

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

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Howard Avchen & Shapiro LLP

**PROOF OF SERVICE**

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

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

ON NOVEMBER 14, I SERVED THE FORGOING DOCUMENTS:

**LEGALZOOM.COM, INC.'S NOTICE OF SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION TO GOOGLE, INC.**

on the interested parties to this action by delivering thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

“SEE ATTACHED LIST”

(BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(BY E-MAIL SERVICE) I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.

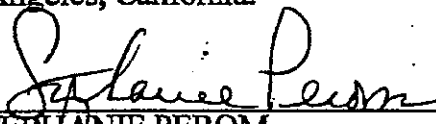
(BY OVERNIGHT DELIVERY) I served the foregoing document by FedEx, an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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

Executed on November 14, 2014 at Los Angeles, California.

  
STEPHANIE PEROM

Glaser Weill Fink Jacobs  
Howard Avchen & Shapiro LLP

**SERVICE LIST**

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Fax: (617) 523-1231

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Howard Avchen & Shapiro LLP



**EXHIBIT C**

1 DAVID H. KRAMER, State Bar No. 168452  
 2 JACOB T. VELTMAN, State Bar No. 247597  
 3 WILSON SONSINI GOODRICH & ROSATI  
 Professional Corporation  
 4 650 Page Mill Road  
 Palo Alto, CA 94304-1050  
 Telephone: (650) 493-9300  
 Facsimile: (650) 565-5100  
 5 Email: dkramer@wsgr.com  
 Email: jvelmtan@wsgr.com  
 6  
 7 Attorneys for Nonparty  
 Google Inc.

8 UNITED STATES DISTRICT COURT  
 9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
 11 LEGALZOOM.COM, INC.,  
 12 Plaintiff,  
 13 v.  
 14 ROCKET LAWYER INC.,  
 15 Defendant.

CASE NO.: 2:12-cv-09942-GAF-AGR  
 RESPONSES AND OBJECTIONS OF  
 NONPARTY GOOGLE INC. TO  
 PLAINTIFF'S SUBPOENA TO  
 TESTIFY AT A DEPOSITION IN A  
 CIVIL ACTION

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1 Pursuant to Federal Rule of Civil Procedure 45 ("Rule 45"), nonparty  
2 Google Inc. ("Google") makes the following objections to the subpoena served by  
3 Plaintiff Legalzoom.com, Inc. ("LegalZoom") dated November 14, 2014 (the  
4 "Subpoena") and the requests for production ("Requests") therein.

#### 5 GENERAL OBJECTIONS

6 1. Google objects to the Subpoena on the grounds that the specified date  
7 of compliance – December 1, 2014 – is unreasonable. If Google produces  
8 documents in response to the Subpoena, it will produce them at a later, more  
9 reasonable, date.

10 2. Google objects to the Subpoena on the grounds that the Requests are  
11 overbroad and unduly burdensome. Compliance with Plaintiff's repeated requests  
12 for "any and all" documents would impose a substantial burden on Google in  
13 contravention of Rule 45(c)(1)'s mandate that parties "must take reasonable steps  
14 to avoid imposing undue burden or expense on a [non-party] subject to a  
15 subpoena."

16 3. Google objects to the Subpoena under Rule 45(d)(2)(B)(ii) because  
17 the cost of complying with the subpoena is estimated to exceed \$15,000 and would  
18 thus impose a "significant expense" on nonparty Google.

19 4. Google will not produce information in response to the subpoena  
20 unless Plaintiff first agrees to reimburse the costs and fees incurred by Google to  
21 comply with the subpoena.

22 5. Google objects to the Subpoena because it seeks information beyond  
23 the limitations of non-party discovery imposed by Rule 45, as the requested  
24 information may be obtained from sources, such as parties to the action, from  
25 whom production would be less burdensome.

26 6. Google objects to the Subpoena to the extent that it seeks information  
27 protected from disclosure applicable privileges (hereinafter "Privileged  
28 Information"). Any inadvertent disclosure of such information shall not be

1 deemed a waiver of any such privilege, and Google expressly requests that the  
2 receiving party(ies) immediately return and do not make use of any inadvertently  
3 produced Privileged Information.

4 7. Google objects to the Subpoena to the extent it seeks electronically  
5 stored information that is not reasonably accessible by Google because of undue  
6 burden or cost.

7 8. Google objects to the Subpoena to the extent it seeks confidential,  
8 trade secret, or proprietary information belonging to Google or a third party  
9 (“Confidential Information”). Google has not been provided with a copy of any  
10 protective order that may have been entered in this action and cannot evaluate  
11 whether sufficient restrictions on the disclosure and use of Confidential  
12 Information requested to be produced by Google are in place. Google will not  
13 produce documents containing Confidential Information in the absence of those  
14 restrictions.

15 9. Google objects to the Subpoena to the extent it seeks the disclosure of  
16 information that is neither relevant to the subject matter of the action nor  
17 reasonably calculated to lead to the discovery of admissible evidence.

18 10. Google reserves the right to assert additional objections as appropriate  
19 and to supplement these objections and responses if Google deems necessary.

#### 20 OBJECTIONS TO DEFINITIONS

21 1. Google objects to the definition of “You,” “Your,” and “Google” on  
22 the grounds that those terms are defined to include Google’s “subsidiaries,  
23 affiliates, predecessors, successors, employees, managers, officers, directors,  
24 partners, agents, representatives, attorneys, or anyone acting or purporting to act on  
25 its behalf or under its control.” These definitions render the Requests overbroad,  
26 unduly burdensome, and unintelligible. Google also objects to these definitions  
27 on the grounds that they call for a legal conclusion.

28

1           2.     Google objects to the definition of "Rocket Lawyer" and "Defendant"  
 2 on the grounds that those terms are defined to include Rocket Lawyer's  
 3 "employees, attorneys, agents, independent contractors, officers, directors,  
 4 shareholders, representatives, and all Persons or entities action on its behalf." This  
 5 definition renders the Requests overbroad, unduly burdensome, and unintelligible.  
 6 Google also objects to these definitions on the grounds that they call for a legal  
 7 conclusion. In objecting and responding to the Requests, Google will construe the  
 8 terms "Rocket Lawyer" and "Defendant" to refer solely to Rocket Lawyer  
 9 Incorporated.

#### 10                           **OBJECTIONS TO AUTHENTICATING DEPOSITION**

11           Google objects to the deposition sought by the Subpoena of a "Custodian of  
 12 Records to authenticate the documents requested." To the extent Google produces  
 13 documents in response to the Subpoena, those documents may be authenticated  
 14 with much less burden and inconvenience to Google through an authenticating  
 15 declaration. Google will provide such a declaration upon request.

#### 16                           **SPECIFIC OBJECTIONS AND RESPONSES**

17           Google hereby incorporates by reference each of the foregoing objections  
 18 into each specific response that follows. A specific response may repeat an  
 19 objection for emphasis or some other reason. The failure to include any of the  
 20 foregoing objections in any specific response shall not be interpreted as a waiver of  
 21 any objection to that response.

#### 22           **REQUEST NO. 1:**

23           Any and all DOCUMENTS RELATING TO ROCKET LAWYER FREE  
 24 ADVERTISEMENTS between January 1, 2008 and present.

#### 25           **RESPONSE TO REQUEST NO. 1:**

26           Google objects to this Request on the grounds that it seeks irrelevant  
 27 information and is overbroad and unduly burdensome, especially given that Google  
 28 is a non-party. The demand for "any and all" documents relating to Rocket

1 Lawyer Free Advertisements is particularly burdensome, as it may encompass a  
2 substantial amount of information, most of which is cumulative and/or irrelevant to  
3 the claims and defenses asserted in this lawsuit. The specified relevant period of  
4 almost seven years renders the Request particularly overbroad and oppressive  
5 given that the claims and defenses asserted in this lawsuit relate to events  
6 beginning in late 2011.

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

13 Subject to the foregoing objections, Google responds to this Request as  
14 follows:

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

19 **REQUEST NO. 2:**

20 Any and all COMMUNICATIONS between YOU and ROCKET LAWYER  
21 RELATING TO ROCKET LAWYER FREE ADVERTISEMENTS between  
22 January 1, 2008 and present.

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

24 Google objects to this Request on the grounds that it seeks irrelevant  
25 information and is overbroad and unduly burdensome, especially given that Google  
26 is a non-party. The demand for "any and all" communications is particularly  
27 burdensome, as it encompasses information that is cumulative and/or irrelevant to  
28 the claims and defenses asserted in this lawsuit. The specified relevant period of

1 almost seven years renders the Request particularly overbroad and oppressive  
2 given that the claims and defenses asserted in this lawsuit relate to events  
3 beginning in late 2011.

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

10 Subject to the foregoing objections, Google responds to this Request 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  
15 and narrowed.

16 **REQUEST NO. 3:**

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

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

21 Google objects to this Request on the grounds that it seeks irrelevant  
22 information and is overbroad and unduly burdensome, especially given that Google  
23 is a non-party. The demand for "any and all" documents is particularly  
24 burdensome, as it may encompass a massive amount of information that is  
25 cumulative and/or irrelevant to the claims and defenses asserted in this lawsuit.  
26 The failure to specify a relevant time period renders the Request particularly  
27 overbroad and oppressive given that the claims and defenses asserted in this  
28 lawsuit relate to events that did not begin until late 2011.

1 Google further objects to this Request on the grounds that many of the  
2 documents encompassed by the Request (to the extent any such studies were  
3 managed or performed by Google Ventures for Rocket Lawyer) are necessarily in  
4 the possession, custody or control of Rocket Lawyer. As a nonparty, Google  
5 should not be subjected to the burden and expense of searching for and producing  
6 these documents until LegalZoom has exhausted reasonable means of obtaining  
7 them directly from Rocket Lawyer.

8 Subject to the foregoing objections, Google responds to this Request as  
9 follows:

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

14 **REQUEST NO. 4:**

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

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

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

23 Google will not produce documents in response to this Request due to the  
24 issues identified above. It is, however, open to a meet and confer process with  
25 LegalZoom to discuss whether this Request can be appropriately revised, clarified  
26 and explained.

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Dated: November 26, 2014

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:  <sup>sr</sup>  
\_\_\_\_\_  
David H. Kramer

Attorneys for Nonparty  
Google Inc.

**CERTIFICATE OF SERVICE**

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I, Deborah Grubbs, declare:

I am employed in Santa Clara County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

On this date, I served:

**1. RESPONSES AND OBJECTIONS OF NONPARTY GOOGLE INC. TO PLAINTIFF'S SUBPOENA TO TESTIFY ATA DEPOSITION IN A CIVIL ACTION**

By placing the document(s) in a sealed envelope for collection and mailing with the United States Postal Service on this date to the following person(s):

Mr. Fred Heather  
Glaser Weil  
10250 Constellation Blvd.  
Suite 1900  
Los Angeles, CA 90067

By forwarding the document(s) by electronic transmission on this date to the Internet email address listed below:

Fred Heather      Email: fheather@glaserweil.com

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the United States of America foregoing is true and correct. Executed at Palo Alto, California on November 26, 2014.

  
Deborah Grubbs

**EXHIBIT D**

**Aaron Allan**

---

**From:** Aaron Allan  
**Sent:** Wednesday, December 03, 2014 5:04 PM  
**To:** 'jveitman@wsgr.com'  
**Cc:** Fred Heather; Barak Vaughn; 'dkramer@wsgr.com'  
**Subject:** LegalZoom v. Rocket Lawyer  
**Attachments:** 969827\_1.pdf; 828861\_1.pdf

Jacob,

Thanks for calling me back today to discuss the subpoenas that LegalZoom served on Michael Margolis and Google. As we discussed, attached is the court order which permits this discovery. Also attached, per your request, is a copy of the protective order entered in the case.

We agreed during the call to limit the time/scope of these subpoenas to 1/1/10 -- 12/31/13. We also discussed the fact that we are willing to postpone Mr. Margolis' deposition to January 9, 2015, and that we would limit the time involved to two hours (assuming that we have an opportunity to first review the documents that he produces). With respect to Google, we discussed our willingness to rely upon a declaration of a custodian of records, without the need for live testimony, to authenticate any records produced. We are requesting, however, that Google's documents be produced by December 17, 2014, if possible. We are willing to work with you and Google to address any burden issues in meeting that deadline, and in particular you have asked that we attempt to provide (a) the RL email addresses associated with this account; and (b) the customer ID number, bank reference number or URL transfer number/address associated with the adwords account. We will look at our existing documents, and attempt to provide this information tomorrow by email.

Based on the answers that I gave concerning the case and the relevance of this material, you agreed to pursue further discussions with your clients about resolving the objections and proceeding to provide the discovery. In particular, you agreed to explore whether there is any need for us to separately pursue documents from Google Ventures, and you agreed to explore how we may proceed to take a brief deposition of Katherine K.

Finally, you agreed to get back to me within a couple of days on these topics. Thank you for your time and cooperation.

**Aaron P. Allan** | Partner  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

**EXHIBIT E**

# Glaser Weil

10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2920 FAX

Aaron P. Allan

December 9, 2014

Direct Dial  
310.282.6279  
Direct Fax  
310.785.3579  
Email  
aallan@glaserweil.com

## VIA FACSIMILE & EMAIL

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Re: **LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google**

Dear Counsel:

I write in response to your November 26, 2014 Responses and Objections regarding the deposition subpoena served on Google, Inc., and further to the various communications that I have had with Jacob Veltman to meet and confer regarding those objections.

United States District Judge Gary Feess has ordered in the above matter that LegalZoom be permitted to take third party discovery from Google, Inc. on a limited basis, and we have a limited amount of time by which to complete this and other discovery in the case. By an email sent on December 3, 2014, I provided you with a copy of Judge Feess' order. The subjects for production identified in our subpoena conformed to the narrow parameters of the Court's order. We also provided, at your request, a copy of the protective order entered in this case.

Notwithstanding that any denial by Google of the requested information would be inconsistent with the Court's Order, we agreed as part of a meet and confer effort to limit the scope of the production to 1/1/10 – 12/31/13, and we also agreed to provide you with some information that you requested to assist your search: (a) the Rocket Lawyer email addresses associated with the subject Google adwords account; and (b) the customer ID number, bank reference number or URL transfer number/address associated with the adwords account. In reviewing our documents, we have found the following responsive emails addresses:

cm@rocketlawyer.com

aweiner@rocketlawyer.com

svolkov@rocketlawyer.com

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
December 9, 2014  
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mike@ppcassociates.com

We were unable to locate any customer ID number, bank reference number or URL transfer number/address associated with the adwords account, but I offered to "work with" Google to help alleviate any burden associated with locating and producing responsive documents. For example, we agreed to accept a declaration from a custodian of records in lieu of live testimony for authenticating any responsive documents produced. We are open to considering other proposals.

In my email dated December 3, 2014, I made clear our desire that Google adhere to the December 17, 2014, date for production, if possible. Part of the reason for our need to expedite the production is that we have a January 16, 2015, deadline to complete all discovery in the case, including a deposition of "Katherine K" who was a Google employee (based on emails communications with Rocket Lawyer) that we have requested be identified by Google. Katherine K. was an instrumental party regarding some of the Rocket Lawyer advertisements that are at issue in this lawsuit and that violated Google's Offer Not Found Policy. Katherine K's knowledge, understanding, and actions taken with regards to Rocket Lawyer's violation of Google's Offer Not Found Policy are not within the possession of Rocket Lawyer, and are matters that we may appropriately inquire about from her at a deposition once her identity has been produced to us.

We remain willing to work with your firm and with Google to extend out the December 17 production date, but only if I receive some confirmation from your office that the production is proceeding and that Google is not intending to rely upon its objections to avoid producing responsive documents and information. During our December 3 telephone call, Mr. Veltman agreed to get back to me on this subject by December 5. On December 5, Mr. Veltman emailed me to tell me that he had no update, and that he was still discussing the issue internally and would respond "as soon as [he] can."

Given our January 16, 2015, deadline to complete all discovery, we must insist upon a response by close of business tomorrow, December 10, 2014, confirming Google's intentions with respect to the subpoena, or we will have no alternative but to begin the process to pursue a motion to compel. Because the original subpoena provided adequate notice under the rules, and was limited in scope to the subjects allowed by the Court order, we would move with respect to that original subpoena and would not have a need to serve any new subpoena (as I mistakenly indicated we planned to do in my email earlier today). We would also seek monetary sanctions based on the legal fees required to bring the motion.

As I previously indicated, we greatly prefer to work this out with Google on a consensual basis rather than to involve the Court with expensive motion practice. But absent hearing from

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Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
December 9, 2014  
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you by tomorrow on this subject, you leave us with no alternative but to proceed with motion practice. I look forward to hearing from you as soon as possible on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Allan', with a long horizontal flourish extending to the right.

AARON P. ALLAN  
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

APA:cc



**EXHIBIT F**

December 11, 2014

*Via E-Mail*

Aaron P. Allan  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067

**Re: LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google**

Dear Aaron:

I write in response to your letter dated December 9, 2014. I frankly do not appreciate the false urgency and unreasonable, artificial deadlines you and your colleagues continue to inject in this routine discovery process.

Although the Court authorized additional discovery on November 10, you waited until the day before Thanksgiving to serve Mr. Margolis with a subpoena, and that subpoena demanded his appearance at a deposition only four business days later despite the fact that discovery does not close until January 16, 2015. You similarly waited a week to serve Google with a second subpoena yet demanded that it produce documents the day after Thanksgiving weekend. After Google timely asserted objections despite your unnecessarily compressed time frame, you waited a week before communicating further with my office, at which point you insisted that we call you back that afternoon. After I complied and discussed the subpoena with you that day, you provided a copy of the study necessary for us to evaluate your requests on Friday, December 5. Then on December 9, you demanded that I “confirm[] that the production is proceeding.”

As I communicated to you on Friday, we are continuing to discuss your subpoena with Google and will provide you with a substantive response regarding which documents we are willing to produce as soon as possible. Your insistence that we conclude this process within three business days of having received the study at issue is simply unreasonable. Google is an extremely large corporation and ascertaining what documents are available to be produced, what the burden associated with that production would be, and whether there are privacy or confidentiality concerns relating to those documents takes time, particularly given that Google is a third party and had no familiarity with this dispute until our conversation last week.

Although your subpoenas seek documents that are largely in the possession of Rocket Lawyer Inc. and that therefore should have been sought from Rocket Lawyer, I assure you that they have not been forgotten or ignored and that we will respond to you as soon as possible, and

Aaron P. Allan  
December 11, 2014  
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within a reasonable time frame. I realize you would prefer to receive Google's production by December 17, but that may not be practicable. Yours are certainly not the only subpoenas currently being processed by Google at this time, and any firm expectation that discovery from Google would be concluded in less than a month from the service of your subpoenas is, again, unreasonable. This case has been pending for more than two years. If there is any urgency in your discovery demands, it is due to your decision to wait until the eleventh hour to seek discovery from Google.

You may opt to short-circuit the meet and confer process and move to compel as you seem to threaten. Doing so, however, will not get you the discovery you seek any faster, and Google will seek redress for your failure to abide by Rule 45's mandate to avoid undue burden on non-parties.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

Jacob Veltman

**EXHIBIT G**

**Aaron Allan**

---

**From:** Aaron Allan  
**Sent:** Thursday, December 11, 2014 11:52 AM  
**To:** 'Veltman, Jacob'  
**Cc:** Barak Vaughn; Fred Heather  
**Subject:** RE: LegalZoom v. Rocket Lawyer

If we are able to reach agreement, then that would be to everyone's benefit. But given the timing requirements for pursuing a motion to compel, we simply don't have the luxury of waiting indefinitely to hear whether Google intends to cooperate in discovery, or will continue to obstruct with objections. We therefore intend to bring Google's conduct to the Court's attention at the earliest opportunity in an effort to compel compliance with our focused and reasonable requests. We also remain open to having further dialogue if that can lead to a resolution short of court involvement.

**Aaron P. Allan** | Partner  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

---

**From:** Veltman, Jacob [<mailto:jveltman@wsgr.com>]  
**Sent:** Thursday, December 11, 2014 11:38 AM  
**To:** Aaron Allan  
**Cc:** Barak Vaughn; Fred Heather  
**Subject:** RE: LegalZoom v. Rocket Lawyer

Aaron,

We are still trying to figure out what we have, and how long it might take to locate, review and if appropriate, produce. Your continued insistence on a deadline, particularly an expedited one, is just harassment.

Once again, your lack of planning here should not be used to foster an artificial urgency for a non-party. And your conduct in this regard flouts Rule 45's dictates and borders on sanctionable.

We will address Mr. Margolis separately.

Best,

Jake

---

**From:** Aaron Allan [<mailto:aallan@glaserweil.com>]  
**Sent:** Thursday, December 11, 2014 9:19 AM  
**To:** Veltman, Jacob  
**Cc:** Barak Vaughn; Fred Heather  
**Subject:** RE: LegalZoom v. Rocket Lawyer

Jake,

I've reviewed your letter, and I'm disappointed at Google's unwillingness to confirm that it will endeavor to produce responsive documents along with the identity of Katherine K by some agreed upon deadline (which is all that we have asked Google to do at this point). The urgency is not false, and the deadlines are not artificial, and the record will reflect that we have made every reasonable attempt to meet and confer to address Google's timing and burden concerns. In light of your response, we will be sending you a letter today pursuant to Local Rule 37-1 to start the motion to compel

process, and we will be ultimately asking Google to reimburse the legal fees spent in pursuit of that process and any order compelling the production. If you wish to discuss, please feel free to call me.

With respect to Mr. Margolis, we reserved his subpoena to address your complaint about timing and notice, and we are assuming that he plans to appear for his deposition on January 9, 2015, as commanded by the subpoena. If that assumption is in error, I would appreciate you letting me know immediately so that we can also place that discovery dispute before the Court.

Aaron

**Aaron P. Allan** | Partner  
Glaser Weill Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

---

**From:** Veltman, Jacob [mailto:jveltman@wsgr.com]  
**Sent:** Thursday, December 11, 2014 8:20 AM  
**To:** Aaron Allan  
**Subject:** LegalZoom v. Rocket Lawyer

Aaron,

Please see the attached. Regarding your email, I am able to accept service on behalf of Google Inc. and/or Google Ventures.

Best,

Jake Veltman

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

**EXHIBIT H**

# Glaser Weil

10250 Constellation Blvd.  
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Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2920 FAX

Aaron P. Allan

December 11, 2014

Direct Dial  
310.282.6279  
Direct Fax  
310.785.3579  
Email  
aallan@glaserweil.com

## VIA FACSIMILE & EMAIL

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Re: **LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google – Meet and Confer Pursuant to USDC Local Rule 37-1**

Dear Counsel:

I write pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37-1 regarding the discovery dispute that has arisen by Google's objections and refusal to produce documents responsive to a properly served subpoena. Pursuant to Local Rule 37-1, we are providing this letter to identify each issue and/or discovery request in dispute, along with LegalZoom's position on each issue and the terms of the discovery order to be sought. We are also requesting, pursuant to that same local rule, that you participate in a telephonic conference to be held within ten (10) days from the date of this letter as part of an attempt to settle our differences.

Please find quoted below LegalZoom's document requests, Google's objections. Following those requests and objections, we provide LegalZoom's analysis for the production of the requested documents.

### REQUEST NO. 1:

Any and all DOCUMENTS RELATING TO ROCKET LAWYER FREE  
ADVERTISEMENTS BETWEEN January 1, 2018 and present.

### RESPONSE TO REQUEST NO. 1:

Google objects to this Request on the grounds that it seeks irrelevant information and is overbroad and unduly burdensome, especially given that Google is a non-party. The demand for "any and all" documents relating to Rocket Lawyer Free Advertisements is particularly burdensome, and it may encompass a substantial amount of information, most of which is



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cumulative and/or irrelevant to the claims and defenses asserted in this lawsuit. The specified relevant period of almost seven years renders the Request particularly overbroad and oppressive given the claims and defenses asserted in this lawsuit relate to events beginning in late 2011.

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

Subject to the foregoing objections, Google responds to the Request as follows:

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

#### LEGALZOOM'S ANALYSIS

United States District Judge Gary Feess has ordered in the above matter that LegalZoom be permitted to take third party discovery from Google, Inc. on a limited basis, and we have a limited amount of time by which to complete this and other discovery in the case. By an email sent on December 3, 2014, I provided you with a copy of Judge Feess' order. The subjects for production identified in our subpoena conformed to the narrow parameters of the Court's order. We also provided, at your request, a copy of the protective order entered in this case.

In an attempt to reach a resolution of Google's objections, we agreed as part of a meet and confer effort to limit the scope of the production to 1/1/10 – 12/31/13, and we also provided you with the Rocket Lawyer email addresses associated with the subject Google adwords account that you requested. We further offered to "work with" Google to help alleviate any burden associated with locating and producing responsive documents. For example, we agreed to accept a declaration from a custodian of records in lieu of live testimony for authenticating any responsive documents produced. I have indicated we are open to considering other proposals, and yet you have failed to make such a proposal or otherwise identify the nature of the burden that Google is facing.

In my email dated December 3, 2014, I made clear our desire that Google adhere to a December 17, 2014, date for production, if possible, but I also made clear that we were willing to provide more time as long as we get a clear indication that Google would be producing by some

David H. Kramer  
Jacob T. Veltman  
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set time period within our limited discovery period. Part of the reason for our need to expedite the production is that we have a January 16, 2015, deadline to complete all discovery in the case, including a deposition of "Katherine K" who was a Google employee (based on email communications with Rocket Lawyer) that we have requested be identified by Google.

Even though we have attempted to accommodate Google at every turn, Google has refused to agree to the production of a single document, refused to propose any time period by which they would produce documents, and has failed to agree to produce the identity of Katherine K. Courts have ruled that "Vague, open-ended responses to some discovery requests, which merely stated an intention to make some production at an unspecified date of party's own choosing, was not a complete answer as required by rule and, therefore, would be treated as a failure to answer or respond." See, Silicon Knights, Inc. v. Epic Games, Inc., E.D.N.C.2012, 917 F.Supp.2d 503, affirmed 551 Fed.Appx. 646, 2014 WL 30865. Under the circumstances, and without any commitment to produce by Google, we are left with no choice but to seek a court order.

#### REQUEST NO. 2

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

#### RESPONSE TO REQUEST NO. 2:

Google objects to this Request on the grounds that it seeks irrelevant information and is overbroad and unduly burdensome, especially given that Google is a non-party. The demand for "any and all" communications is particularly burdensome, and it may encompass a substantial amount of information, most of which is cumulative and/or irrelevant to the claims and defenses asserted in this lawsuit. The specified relevant period of almost seven years renders the Request particularly overbroad and oppressive given the claims and defenses asserted in this lawsuit relate to events beginning in late 2011.

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

Subject to the foregoing objections, Google responds to the Request as follows:

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

### **LEGALZOOM'S ANALYSIS**

The same analysis set forth above with respect to Request No. 1 applies here.

### **REQUEST NO. 3**

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

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

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

Google further objects to this Request on the grounds that many of the documents encompassed by the Request (to the extent any such studies were managed or performed by Google Ventures for Rocket Lawyer) are necessarily in the possession, custody and control of Rocket Lawyer. As a nonparty, Google should not be subjected to the burden and expense of searching for and producing these documents until LegalZoom has exhausted reasonable means of obtaining them directly from Rocket Lawyer.

Subject to the foregoing objections, Google responds to the Request as follows:

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

David H. Kramer  
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**LEGALZOOM'S ANALYSIS**

The same analysis set forth above with respect to Request No. 1 applies here.

**REQUEST NO. 4**

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

**RESPONSE TO REQUEST NO. 4**

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

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

**LEGALZOOM'S ANALYSIS**

As we have previously indicated to you through a letter sent to your office on December 3, 2014, Katherine K. was a Google employee who communicated to Rocket Lawyer that some of the Rocket Lawyer advertisements at issue in this lawsuit violated Google's Offer Not Found Policy. The nature and extent of those communications are relevant, and may be significant, in putting Rocket Lawyer on notice that its advertisements were potentially deceptive to consumers. Katherine K's knowledge, understanding, and actions taken with regards to Rocket Lawyer's violation of Google's Offer Not Found Policy are not within the possession of Rocket Lawyer, and are matters that we may appropriately inquire about from her at a deposition once her identity has been produced to us. We simply wish to take her deposition, and we need you to provide her contact information so that we may properly issue a subpoena for that testimony. Google has identified no basis for withholding that information.

As I have previously indicated, we greatly prefer to work this out with Google on a consensual basis rather than to involve the Court with expensive motion practice. However, Google has failed to comply with the original subpoena and thus requires LegalZoom to conduct a Rule 37-1 conference.

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
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Please respond to this letter by providing me with three different dates and times during regular business hours over the next ten (10) days when you would be available to participate in this Rule 37-1 conference. I look forward to hearing from you.

Sincerely,

AARON P. ALLAN  
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

APA:cc

**EXHIBIT I**

**Aaron Allan**

---

**From:** Aaron Allan  
**Sent:** Thursday, December 18, 2014 10:56 AM  
**To:** 'Veltman, Jacob'; 'dkramer@wsgr.com'  
**Cc:** Barak Vaughn; Fred Heather  
**Subject:** LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Dear Counsel,

This will confirm that we had a telephonic meet and confer discussion this morning that lasted approximately 15 minutes. During our discussion, you revealed the following:

1. Google is unwilling to produce communications with Rocket Lawyer because Google takes the position that such documents are already in Rocket Lawyer's possession, and there is no evidence that Rocket Lawyer engaged in spoliation of evidence. **When I asked about the burden associated with producing such materials, you refused to provide me with any answer (or to even engage) on that subject. Instead you stated that the issue of burden would be addressed by you only in opposing a motion to compel, and that this was "not a deposition." When I attempted to further meet and confer on that subject, you refused to engage.**
2. As part of a compromise, Google would be willing to make a production of all documents relating to the study performed by Michael Margolis and Google Ventures, but would be unwilling to produce any other documents in response to our subpoena (i.e., documents relating to Rocket Lawyer's free advertisements or communications with Rocket Lawyer concerning such advertisements). Google would also be willing to provide the last known contact information for "Katherine K," but is not willing to produce any witness for deposition and would reserve the right to object to the taking of any deposition of Katherine K. You also stated that Mr. Margolis would not be appearing for deposition.
3. You were uncertain whether any of Katherine K's emails or documents remain available at Google, but were told this was "very unlikely" because she was terminated in 2012, well prior to the subpoena. You were therefore unwilling to search for, or produce, Katherine K's emails or other documents.
4. You agreed to put your proposal into written form so that it may be considered by LegalZoom.

Please provide me with Google's written proposal today, or you may alternatively confirm that this email accurately states that proposal. Absent hearing from you by the close of business today, we will assume that Google is are refusing to cooperate in discovery and we will proceed with drafting a joint stipulation for purposes of moving to compel.

**Aaron P. Allan** | Partner  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

**EXHIBIT J**





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Dan joined Rocket Lawyer's Board of Directors in December 2009 and served as Rocket Lawyer's CEO for five years, from 2010 to 2014. Dan has more than 20 years of experience in the high-tech field with a focus on online software and services...

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**David C. Drummond**

**Google**

**Senior Vice President, Corporate Development and Chief Legal Officer**

David Drummond joined Google in 2002, initially as vice president of corporate development. Today as senior vice president and chief legal officer, he leads Google's global teams for legal, government relations, corporate development (M&A and investment projects) and new business development (strategic partnerships and licensing opportunities).

David was first introduced to Google in 1998 as a partner in the corporate transactions group at Wilson Sonsini Goodrich and Rosati, one of the nation's leading law firms representing technology businesses. He served as Google's first outside counsel and worked with Larry Page and Sergey Brin to incorporate the company and secure its initial rounds of financing. During his tenure at Wilson

Sonsini, David worked with a wide variety of technology companies to help them manage complex transactions such as mergers, acquisitions and initial public offerings.

David earned his bachelor's degree in history from Santa Clara University and his JD from Stanford Law School.

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**Abhijeet Lele**

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**Morgan Stanley**

**Managing Director**

Melissa is a Managing Director at Morgan Stanley and a Managing Partner of Morgan Stanley Expansion Capital. Over the last fifteen years at Morgan Stanley, Melissa has been an active growth equity investor and board member in numerous software and service companies in both the IT and healthcare sectors...

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## Google Jumps Into Online-Law Business With Rocket Lawyer

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Traditional lawyers may not like it, but venture capitalists are pouring money into one of the last industries to resist commoditization on the Web. Google Ventures today announced it is part of a group that infused \$18.5 million into Rocket Lawyer, which bills itself as the “fastest growing online legal service.”

*Image via Wikipedia*

Founder Charley Moore told me the firm has 70,000 users a day and has doubled revenue for four years straight to more than \$10 million this year. Rocket Lawyer provides online legal forms, from wills to Delaware certificates of incorporation, that non-lawyers can fill out and store and share on the Web. For \$19.95 a month, consumers can also have their documents reviewed by a real lawyer and even get legal advice at no additional cost.

The multibillion-legal industry would seem to be a natural for disintermediation, or in layman’s terms, breaking up into higher-volume, lower-margin parts. Online competitor LegalZoom, about which IPO chatter swirls, claims 1 million customers and has executives from Berkshire Hathaway, Intel and Polaris Ventures on its board. Rocket Lawyer raised \$7 million in June from Investor Growth Capital, put former LinkedIn Chief Executive Dan Nye in charge as president, and its directors include David Drummond, Google’s top lawyer.

Moore was careful to differentiate his company from LegalZoom, which has tangled with lawyers and bar officials in several states who accuse it of practicing law without a license. (A trap that people who provide legal documents can find hard to escape.) Rocket Lawyer is also affiliated with real lawyers who can provide advice in a pinch. Federal issues are handled nationwide, while somebody with a question about, say, New York contract law would be hitched up with a lawyer licensed in that state. (NOTE: LegalZoom offers similar legal services, for a fee.)

“Rocket Lawyer gives consumers technology to do things themselves with no human intervention at all,” said Moore. “When they do need help, and they do, they can consult with a lawyer.”

The model is similar to those pre-paid legal services that have generated controversy over the years, but with Google technology in the background. Documents are stored, Google Docs fashion, on Rocket Lawyer’s servers and can be edited and passed around before the consumer prints them out to be filed at the nearest courthouse.

Google, Moore said, is interested in anything that “changes the world in a big way.” It doesn’t hurt that legal documents are one of the most searched-for categories on the web. Moore declined to say what value the latest round puts on his company but you can bet more will be pushing into this market once the pioneers work out a *modus vivendi* with offline lawyers and their bar association enforcers, who are still resisting the Internet invasion of some of their highest-volume, most lucrative businesses.

LegalZoom has drawn attention of Silicon Valley VCs as well. It raised \$66 million in its latest round, announced last month, from firms including Kleiner Perkins and Institutional Venture Partners.

**TAB 4**



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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 LEGALZOOM.COM, INC.,  
17 Plaintiff,  
18 v.  
19 ROCKET LAWYER INC.,  
20 Defendant.

21 CASE NO.: 5:15-mc-80003-NC  
22 NONPARTY GOOGLE INC.'S  
23 OPPOSITION TO  
24 LEGALZOOM.COM, INC.'S  
25 MOTION TO COMPEL  
26 COMPLIANCE WITH SUBPOENA

27 Before: Hon. Nathanael M. Cousins  
28

**MEMORANDUM OF POINTS AND AUTHORITIES****PRELIMINARY STATEMENT**

1  
2  
3 Nonparty Google Inc. (“Google”) has been dragged into a false advertising lawsuit  
4 between LegalZoom.com, Inc. (“LegalZoom”) and Rocket Lawyer Inc. (“Rocket Lawyer”),  
5 competitors in the online legal services business. To date, Google, its subsidiaries and its  
6 employees have been bombarded with *six* subpoenas in the case – five from movant  
7 LegalZoom,<sup>1</sup> and another from its adversary, Rocket Lawyer. To its credit, Rocket Lawyer has  
8 been mindful of Rule 45’s mandate to avoid undue burdens on nonparties. LegalZoom,  
9 however, has ignored that basic principle. This motion continues its misguided discovery  
10 campaign.

11 From what Google has gleaned about the case, LegalZoom alleges that Rocket Lawyer has  
12 misleadingly advertised “free” legal services through Google’s advertising platform. Accordingly,  
13 it seems reasonable to assume that any relevant documents relating to the disputed advertising (for  
14 example, communications between Google and Rocket Lawyer) could be obtained from Rocket  
15 Lawyer directly. But LegalZoom demanded “all” those documents from nonparty Google  
16 instead. And LegalZoom went further, demanding Google produce “any and all documents”  
17 relating to a usability analysis of the Rocket Lawyer website that a subsidiary, Google Ventures,  
18 conducted for Rocket Lawyer. This, despite the fact that the analysis is unrelated to Rocket  
19 Lawyer’s disputed advertising, and that Rocket Lawyer would have those documents.

20 Google repeatedly explained to LegalZoom that Google is an outsider to its years’ long  
21 litigation with Rocket Lawyer, but LegalZoom expressed no interest in a meaningful meet-and-  
22 confer process. When Google questioned why LegalZoom could not obtain the requested  
23 information directly from Rocket Lawyer, LegalZoom had no response. When Google asked  
24 LegalZoom for guidance to focus its search on specific exchanges and people, LegalZoom had no  
25 response. And when Google offered as a compromise to produce all documents related to the  
26

27  
28 <sup>1</sup> One of these subpoenas revised the compliance date of an earlier subpoena.

1 usability test, LegalZoom had no response for almost three weeks, then rejected Google’s offer  
2 without explanation and filed this motion.

3 Even in its motion, LegalZoom offers no real explanation for why Google should search  
4 for and produce documents that are undoubtedly in Rocket Lawyer’s possession, such as  
5 correspondence between Google and Rocket Lawyer and work product Google Ventures provided  
6 to it. Mere speculation that Rocket Lawyer might not have produced all of these documents  
7 cannot overcome the clear authority precluding resort to subpoenas when inter-party discovery is  
8 available.

9 Additionally, LegalZoom’s requests are overbroad and burdensome. It demands “any and  
10 all” documents referencing Rocket Lawyer’s use of the word “free,” but has given no guidance on  
11 how Google should search for these needles within its large haystack, and has not offered to  
12 reimburse Google for the cost of that, or any, search.

13 Google respectfully requests that the Court deny LegalZoom’s Motion to Compel and  
14 direct it to seek these documents through party discovery, if at all.

15 **STATEMENT OF THE ISSUES**

16 1. Should Google be compelled to produce the documents sought by LegalZoom Request  
17 Nos. 1 and 2 relating to “Rocket Lawyer Free Advertisements”?

18 2. Should Google be compelled to produce the documents sought by LegalZoom Request  
19 No. 3 relating to the usability analysis conducted by Google Ventures of the Rocket Lawyer  
20 website?

21 **BACKGROUND**

22 **A. The Underlying Litigation**

23 On November 20, 2012, LegalZoom filed suit in the U.S. District Court for the Central  
24 District of California against Rocket Lawyer Inc., a competitor in the online legal services  
25 industry. *See LegalZoom.com Inc. v. Rocket Lawyer Inc.*, No. 12-cv-9942 (C.D. Cal.). Although  
26 Google is not a party to that litigation, it understands that LegalZoom has accused Rocket Lawyer  
27 of false advertising. Specifically, LegalZoom alleges that Rocket Lawyer displayed messages  
28

1 through Google's advertising platform that misleadingly suggest that various legal services  
2 provided by Rocket Lawyer are "free." *See id.*, dkt. # 14 ¶¶ 10-17.

### 3 **B. Google's Relationship to the Litigation**

4 Google operates an online advertising platform allowing countless businesses around the  
5 world to display their advertisements to an online audience. LegalZoom itself utilizes the service  
6 as does Rocket Lawyer. *See id.*, dkt. # 14 ¶ 13.<sup>2</sup> LegalZoom contends that a Google account  
7 representative communicated with Rocket Lawyer about its use of the term "free," although  
8 LegalZoom has not shared any of that correspondence with Google. *See* Declaration of Jacob T.  
9 Veltman ("Veltman Decl.") ¶ 6.

10 Separately, back in 2011, Rocket Lawyer asked Google Ventures, a subsidiary of Google  
11 Inc., to conduct a usability analysis of Rocket Lawyer's website in an attempt to improve the  
12 visitor experience. Users were asked for their impressions of the site, and Google Ventures  
13 created a report for Rocket Lawyer setting forth the results, including user input regarding the use  
14 of the term "free" on the site. *Id.* ¶ 6.

### 15 **C. LegalZoom's Subpoenas**

16 After an extended discovery period in their case closed, LegalZoom and Rocket Lawyer  
17 were given two more months to seek additional discovery from each other and several third  
18 parties. Mot. at 2. Given this new life, LegalZoom has focused extensively on Google, serving  
19 deposition and document subpoenas on Google Inc., its subsidiary, Google Ventures, Michael  
20 Margolis (a Google Ventures employee who worked on the Rocket Lawyer report) and Katherine  
21 Kramer (a former Google employee whom LegalZoom claims corresponded with Rocket Lawyer).  
22 Veltman Decl. ¶¶ 2-3, 19 & Ex. 1. The subpoenas seek "all documents" relating to Rocket  
23 Lawyer's use of the word "free" in any advertising and "all documents" relating to Google  
24 Ventures' report. *Id.*, Ex. 1.

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25 <sup>2</sup> Rocket Lawyer claims in the case that LegalZoom itself misused the Google advertising  
26 service in a variety of ways. Rocket Lawyer served Google with a subpoena seeking information  
27 about LegalZoom's use of the service. Unlike LegalZoom, however, Rocket Lawyer engaged in  
28 good faith meet-and-confer discussions with Google, narrowed its subpoena, agreed to seek  
information directly from LegalZoom, and ultimately reached a compromise to resolve the  
matter. Veltman Decl. ¶ 20.

1 LegalZoom's subpoena to Google Inc. (the only one at issue in this motion) was served on  
2 November 17, 2014, and called for Google to produce documents and attend a deposition the day  
3 after Thanksgiving weekend, seven working days later. *Id.* ¶ 2 & Ex. 1. Similarly, the subpoena  
4 directed to Mr. Margolis was served the day before Thanksgiving and purported to require him to  
5 attend a deposition four business days later. *Id.* ¶ 3.

6 Google and Mr. Margolis promptly served objections to both subpoenas on November 26,  
7 the same day the Margolis subpoena was served. *Id.* ¶ 4 & Ex. 2. As noted, Google objected that  
8 all relevant information sought was in the possession of Rocket Lawyer and that the subpoenas'  
9 requests were overbroad and unduly burdensome.<sup>3</sup> On December 3, LegalZoom's counsel  
10 requested that the parties meet telephonically as soon as possible, and Google agreed to do so that  
11 same day. *Id.* ¶¶ 5-6. During that initial call and in a subsequent email, Google's counsel  
12 explained its objections, but said it would confer with Google about what documents might be  
13 available to be produced if LegalZoom would provide a copy of the Google Ventures' report in  
14 question. *Id.* ¶¶ 6-10. On Friday December 5, LegalZoom's counsel provided a copy. *Id.* ¶ 11.

15 On December 9, 2014, LegalZoom's counsel sent a letter to Google's counsel demanding  
16 that Google confirm within 24 hours that "the production is proceeding." *Id.*, Ex. 4. Google was  
17 not "stonewalling," as LegalZoom asserts in its motion. It had only been in possession of the  
18 report in question for two business days.<sup>4</sup>

19 LegalZoom demanded that the parties meet and confer a second time. *Id.* ¶ 13. Google  
20 agreed, and the parties' counsel met telephonically on December 18, 2014. *Id.* ¶ 14. While  
21 Google came prepared with an offer of compromise on the subpoena, it was immediately apparent  
22 that LegalZoom was treating the call only as a procedural hurdle to a motion to compel. *Id.*  
23 LegalZoom's counsel did not address any of Google's objections during the call, nor make any

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24 <sup>3</sup> Rocket Lawyer also served objections to the Margolis subpoena, objecting that it sought  
25 documents relating to advertisements not at issue in the litigation, that it was overbroad as to  
26 time, and that documents created and received by Mr. Margolis relating to Rocket Lawyer  
belong to his employer, Google Ventures.

27 <sup>4</sup> LegalZoom's characterization of a delay of a few days to stonewalling rings especially  
28 hollow given that LegalZoom failed to respond to Google's December 18 offer of compromise  
for almost three weeks.

1 productive suggestions or concessions, merely demands. *Id.* When Google’s counsel became  
2 frustrated by the one-sided nature of the call, LegalZoom’s counsel demanded that Google submit  
3 its compromise offer in writing. *Id.* Google complied with the demand and submitted a proposal  
4 later that same day, offering to produce documents in its possession relating to Google Ventures’  
5 report on the Rocket Lawyer website.<sup>5</sup> *Id.*, Ex. 7. LegalZoom did not respond for almost three  
6 weeks. It then rejected the proposal without explanation, and without counter, stating only that it  
7 would be filing this motion. *Id.*, Ex. 8.

8 LegalZoom’s refusal to address Google’s objections continued after this motion was filed.  
9 *Id.* ¶ 17. On January 8, 2015, LegalZoom’s counsel requested that the parties meet and confer  
10 regarding its latest subpoena to Google Ventures. *Id.* ¶ 18. Google’s counsel responded that it  
11 believed it would be more productive for LegalZoom’s counsel to address certain of Google’s  
12 questions in writing given the prior meet-and-confer call. *Id.*, Ex. 9. These questions included  
13 “why communications between Google Ventures and Rocket Lawyer cannot be obtained from  
14 Rocket Lawyer,” and “how you believe Google Ventures could effectively search for ‘all  
15 documents’ relating to Rocket Lawyer Free Advertisements.” *Id.* To date, LegalZoom has not  
16 responded at all.<sup>6</sup> *Id.* ¶ 18.

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19 <sup>5</sup> LegalZoom refers to this proposal as an “ultimatum” and a “take-it-or-leave-it offer.” Mot.  
20 at 5. In fact, it was an ordinary proposal of the type contemplated by the meet-and-confer  
21 process. Google’s counsel never described it as a final offer (let alone an ultimatum).  
LegalZoom could have submitted a counter-proposal but chose to move to compel instead.

22 <sup>6</sup> LegalZoom intimates that Google is “less than a third party” and biased against LegalZoom  
23 due to certain connections with Rocket Lawyer. Mot. at 5. LegalZoom cites no authority  
24 suggesting that a subpoenaed entity must have no connections to either party in order to be  
25 treated as a nonparty for purposes of Rule 45(d) (indeed, subpoenas are typically issued to a  
26 nonparty *because* of its connections to one of the parties). Further, the seeming impetus of the  
27 discovery LegalZoom seeks – correspondence from Google telling Rocket Lawyer it had  
28 violated Google’s advertising policies – demonstrates that Google and Rocket Lawyer operate at  
arms’ length. In point of fact, Google has treated LegalZoom and Rocket Lawyer no differently  
in discovery. Google objected to both parties’ subpoenas and made itself available to both to  
meet and confer. Google and Rocket Lawyer were able to reach an agreement regarding Rocket  
Lawyer’s subpoena because Rocket Lawyer acted reasonably in the meet-and-confer process. In  
contrast to LegalZoom, Rocket Lawyer did not impose artificial deadlines, it explained why it  
could not obtain the documents it was seeking from its adversary, and it ultimately agreed to  
withdraw its request for deposition and the majority of its document requests in exchange for a  
reasonable production from Google. Veltman Decl. ¶ 20.

## ARGUMENT

LegalZoom's motion disregards the significant limits that the Federal Rules place on nonparty discovery. *See* Fed. R. Civ. P. 45(c)(1) ("A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena."); *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980); *High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 161 F.R.D. 86, 88 (N.D. Cal. 1995) ("nonparties subject to discovery requests deserve extra protection from the courts"). "A court keeps this distinction between a party and nonparty in mind when it determines the propriety of a nonparty's refusal to comply with a subpoena by balancing the relevance of the discovery sought, the requesting party's need, and the potential hardship to the party subject to the subpoena." *Beinin v. Ctr. for the Study of Popular Culture*, No. C 06-2298, 2007 WL 832962, at \*6 (N.D. Cal. Mar. 16, 2007) (internal quotation marks omitted). Here, that balance tips decisively against LegalZoom. The documents LegalZoom seeks are in the possession of a party to the litigation and production by Google would be burdensome. LegalZoom's bid to compel such discovery should be rejected.

### **I. LegalZoom's Request No. 4 Is Moot**

Request No. 4 in the LegalZoom subpoena seeks documents "sufficient to show the complete name, address, and telephone number" for the Google employee using the email address <katherine.k@google.com>. In its letter dated December 18, 2014, counsel for Google offered to provide this information once Google was able to confirm the identity and contact information of that employee. Veltman Decl., Ex. 7. Google subsequently provided this information in an email sent on January 9, 2015. *Id.* ¶ 19. LegalZoom then used the information to subpoena that now-former employee. *Id.* Accordingly, Request No. 4 is moot.

### **II. LegalZoom Can Obtain the Discovery It Seeks from Rocket Lawyer**

In the discovery context, "there is simply no reason to burden nonparties when the documents sought are in possession of the party defendant." *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007). Parties must "obtain discovery from one another before burdening non-parties with discovery requests." *Soto v. Castlerock Farming & Transp., Inc.*, 282

1 F.R.D. 492, 505 (E.D. Cal. 2012); *cf.* Fed. R. Civ. P. 26(b)(2)(C)(i) (court “must” limit discovery  
2 if the discovery sought “can be obtained from some other source that is more convenient, less  
3 burdensome, or less expensive”). Subpoenas to nonparties seeking information that could be  
4 provided by a party are quashed routinely. *See, e.g., Harris v. Kim*, No. 05-cv-00003, 2013 WL  
5 636729, at \*2 (E.D. Cal. Feb. 20, 2013); *Arista Records LLC v. Lime Grp. LLC*, No. 10-cv-2074,  
6 2011 WL 679490, at \*2 (W.D. Wash. Feb. 9, 2011); *Dibel v. Jenny Craig, Inc.*, No. 06-cv-2533,  
7 2007 WL 2220987, at \*2 (S.D. Cal. Aug. 1, 2007).

8 This sensible limit on the use of subpoenas squarely applies here. LegalZoom seeks  
9 information about communications between Google and Rocket Lawyer and analysis performed  
10 by Google Ventures for Rocket Lawyer. To the extent that information has any relevance to the  
11 underlying case, it is readily obtainable from Rocket Lawyer. At no time during the meet and  
12 confer process did LegalZoom provide any explanation for why it is seeking this information  
13 from Google. And that failure continues in its motion. LegalZoom does not, for instance, show  
14 that spoliation may have occurred, or that Rocket Lawyer has refused to produce this  
15 information. It simply says: “LegalZoom has asked Rocket Lawyer for these same  
16 communications. [it has received] no assurance that Rocket Lawyer has produced all of the  
17 communications.” Mot. at 10.

18 Idle speculation that a litigation adversary has failed to produce all the documents it has  
19 cannot justify subjecting a nonparty to the substantial expense and burden of producing that same  
20 discovery. Any party in any case could speculate as LegalZoom does here. And if that were  
21 enough to justify these subpoenas, the doctrine shielding non-parties from similar discovery  
22 demands would be meaningless.

23 If LegalZoom has a quarrel with Rocket Lawyer’s production, its recourse lies in a  
24 motion against its adversary, not in a discovery campaign against a nonparty. In the absence of  
25 any showing that Rocket Lawyer has failed to produce or does not possess copies of relevant  
26 documents, efforts to obtain those same documents from nonparty Google should be rejected.<sup>7</sup>

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27 <sup>7</sup> LegalZoom suggests in its motion that Google may possess documents that Rocket Lawyer  
28 does not, such as internal Google communications about Rocket Lawyer’s use of the term “free”  
in its advertising or on its web site. But despite repeated requests from Google, LegalZoom has  
(continued...)



### 1 III. LegalZoom's Requests Are Facially Overbroad and Unduly Burdensome

2 The demand for "all documents" is the bane of modern discovery practice. A demand  
 3 that a multi-national corporation with tens of thousands of employees produce "all documents"  
 4 on some general topic is invariably overbroad. *See, e.g., D.R. Horton L.A. Holding Co. v. Am.*  
 5 *Safety Indem. Co.*, No. 10-cv-443, 2011 U.S. Dist. LEXIS 107090, at \*10-11 (S.D. Cal. Sept. 21,  
 6 2011) (requests for "[a]ll documents" relating to various subjects were "inherently overbroad")  
 7 *Morgan v. Napolitano*, No. 12-cv-1287, 2013 U.S. Dist. LEXIS 76295, at \*9 (E.D. Cal. May 30,  
 8 2013) ("The Court finds plaintiff's discovery request, specifically the use of the phrase 'all  
 9 documents relating to,' to be both overbroad and unduly burdensome."); *Harrison v. Adams*, No.  
 10 08-cv-1065, 2014 U.S. Dist. LEXIS 115524, at \*13 (E.D. Cal. Aug. 19, 2014) ("In seeking 'all  
 11 documents' that contain the Defendants' first and middle names, the request is overly broad and  
 12 burdensome."); *J&M Assocs. v. Nat'l Union Fire Ins. Co.*, No. 06-cv-903, 2008 U.S. Dist.  
 13 LEXIS 97542, at \*10-11 n.2 (request for "all documents . . ." was "on its face, overbroad").  
 14 And so it is here. A demand that Google produce "any and all documents" related to "ROCKET  
 15 LAWYER FREE ADVERTISEMENTS" is deceptively complex, particularly when the supplied  
 16 definition of "ROCKET LAWYER FREE ADVERTISEMENTS" is layered in:

17 any marketing, advertising and/or promotion of ROCKET LAWYER and/or  
 18 ROCKET LAWYER PRODUCTS AND SERVICES, in which the term "free"  
 19 appears in the marketing, advertisement and promotion and/or in which the term  
 20 "free" is used as a keyword or other search term to trigger the marketing,  
 21 advertisement and/or promotion of ROCKET LAWYER and/or ROCKET  
 22 LAWYER PRODUCTS AND SERVICES.

21 Veltman Decl., Ex. 1 at 4.

22 The problem is magnified by Google's nonparty status. After several years of litigation,  
 23 LegalZoom knows enough about its case to have *specific* incidents or *specific* people or both in  
 24

25 (...continued from previous page)  
 26 never explained why those documents would be at all relevant to its case. While LegalZoom  
 27 says that it seeks to show Rocket Lawyer was on notice of its improper use of the term "free,"  
 28 documents constituting such notice would necessarily be in Rocket Lawyer's possession.  
 Internal discussion at Google would not bear on that question and would constitute the  
 inadmissible opinion of a lay witness. *See, e.g., Evangelista v. Inlandboatmen's Union of the*  
*Pac.*, 777 F.2d 1390, 1398 n.3 (9th Cir. 1985).

1 mind that could help Google focus its search to relevant information. But Google does not have  
 2 the benefit of that litigation history. It does not know which people to talk to, what search terms  
 3 to use, or what time periods are of interest. And despite Google's repeated requests, it was  
 4 unable to get that specificity and limitation from LegalZoom.

5 As they stand, LegalZoom's demands would call upon Google to search far and wide –  
 6 through multiple customer service databases, account records and correspondence, employee  
 7 email and more – to find material that LegalZoom undoubtedly is not interested in. That is not  
 8 what Rule 45 contemplates. *Mattel, Inc. v. Walking Mt. Prods.*, 353 F.3d 792, 813 (9th Cir.  
 9 2003) (affirming order quashing subpoena where “no attempt had been made to try to tailor the  
 10 information request to the immediate needs of the case”).

11 LegalZoom's other demand – for “all documents” relating to the report that Google  
 12 Ventures prepared on the Rocket Lawyer website – is marginally easier because LegalZoom  
 13 focused Google's search by providing a copy of the report. Even still, “all documents” relating  
 14 to the report, without custodial or meaningful time limitation, is too broad, as it could be read to  
 15 sweep in discussions about aspects of the report having nothing to do with use of the term “free,”  
 16 as well as mundane documents such as permission and payment slips for participants.

17 LegalZoom's decision to ignore Google's offer of December 18 for almost three weeks  
 18 and then to reject it without explanation or counter-proposal does not satisfy the Court's meet-  
 19 and-confer requirements. Google submits that LegalZoom should be directed to meet and confer  
 20 again with Google, this time in good faith, to seek appropriate, reasonable limitations on the  
 21 discovery it has demanded.

## 22 CONCLUSION

23 For these reasons, LegalZoom's Motion to Compel should be denied.

24 Respectfully submitted,

25 Dated: January 20, 2015

WILSON SONSINI GOODRICH & ROSATI  
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26 By: s/ David H. Kramer  
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**TAB 5**

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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 LEGALZOOM.COM, INC.,  
17 Plaintiff,  
18 v.  
19 ROCKET LAWYER INC.,  
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21 CASE NO.: 5:15-mc-80003-NC  
22 DECLARATION OF JACOB T.  
23 VELTMAN IN SUPPORT OF  
24 NONPARTY GOOGLE INC.'S  
25 OPPOSITION TO  
26 LEGALZOOM.COM, INC.'S  
27 MOTION TO COMPEL  
28 COMPLIANCE WITH SUBPOENA

Before: Hon. Nathanael M. Cousins

1 I, Jacob Veltman, declare as follows:

2 1. I am an attorney at Wilson Sonsini Goodrich & Rosati (“WSGR”), counsel for  
3 nonparty Google Inc. (“Google”) in this case. I make this Declaration in support of Google’s  
4 Opposition to Plaintiff LegalZoom.com, Inc.’s (“LegalZoom”) Motion to Compel Compliance  
5 with Subpoena. I have personal knowledge of the facts set forth in this Declaration. If called as a  
6 witness, I could and would testify competently to the matters set forth herein.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of a subpoena from  
8 LegalZoom to Google in connection with its litigation against a company called Rocket Lawyer  
9 Inc. (“Rocket Lawyer”) served on or about November 17, 2014.

10 3. On November 26, 2014, LegalZoom served a similar subpoena on Michael  
11 Margolis, a Seattle-based employee of Google Ventures, a Google subsidiary. The subpoena  
12 purported to require Mr. Margolis to produce documents and attend a deposition on December 4,  
13 2014. On December 8, 2014, LegalZoom served a second subpoena on Michael Margolis  
14 renoting the deposition noticed in the November 26 subpoena. On December 16, 2014,  
15 LegalZoom served a similar subpoena on Google Ventures.

16 4. On November 26, 2014, I served Google Inc.’s response to the subpoena it  
17 received, a copy of which is attached as Exhibit 2, via email and my assistant served a copy via  
18 mail. Mr. Margolis served responses to his subpoena that same day.

19 5. I did not hear back from LegalZoom’s counsel regarding Google’s objections until  
20 December 3, 2014. That day, Aaron Allan, counsel for LegalZoom, contacted my colleague  
21 David Kramer and asked to speak about the subpoenas as soon as possible.

22 6. I called Mr. Allan back later that afternoon to inquire about the underlying lawsuit  
23 and why Google and a Google Ventures employee had been subpoenaed and specifically why  
24 LegalZoom was broadly demanding that Google produce all documents relating to Rocket  
25 Lawyer’s use of the word “free” in any advertising activity. Mr. Allan told me LegalZoom had  
26 learned in discovery that employees of Google Ventures (specifically, Mr. Margolis), had  
27 conducted a usability analysis for Rocket Lawyer of its website and that Google Ventures had  
28 created a report for Rocket Lawyer setting forth the results (which included discussion of the use

1 of the term “free” on the site). He also said that employees of Google Inc. had corresponded with  
2 Rocket Lawyer regarding possible violations by Rocket Lawyer of Google advertising policies  
3 over use of the word “free.”

4 7. During the December 3 call, I highlighted several objections to the subpoenas,  
5 specifically noting that (a) the documents sought by the subpoenas were presumptively in the  
6 possession of Rocket Lawyer; and (b) absent mention of specific issues, specific individuals and  
7 specific time periods, it would be extremely burdensome for Google to search throughout the  
8 company for “any and all” documents in its possession relating any use by Rocket Lawyer of the  
9 word “free” in its advertisements.

10 8. Mr. Allan was unhelpful. He could not or would not explain why the documents  
11 were being sought from Google instead of Rocket Lawyer and did not propose any meaningful  
12 limitations on the subpoena’s demands by, for example, identifying specific custodians, or  
13 locations to be searched.

14 9. At the end of the call, I told Mr. Allan that I needed to confer with Google  
15 regarding the subpoenas and determine what documents were available to be produced and what  
16 the associated burden and cost would be before committing to anything further.

17 10. The next day, December 4, 2014, I emailed Mr. Allan and requested that he provide  
18 a copy of the report in question so that I could determine what relevance it had, if any, to the  
19 litigation and what documents Google and Mr. Margolis might possess relating to the study.

20 11. I received a copy of the report the next day. A few hours later, I received a  
21 voicemail from Mr. Allan insisting that I provide a final answer as to what documents and  
22 testimony Google and Mr. Margolis were willing to provide. As I had just received the material I  
23 requested, I did not yet have an answer for him. I therefore responded to Mr. Allan via email:

24  
25 Thanks for sending over the study. I received your voicemail. I don’t have an  
26 update for you right now other than that we’re still discussing this internally. I  
understand that you’re in somewhat of a hurry to wrap up discovery, and will get  
back to you with a substantive response as soon as I can.

27 A true and correct copy of this email is attached hereto as Exhibit 3.  
28

1           12.     On December 9, 2014 (two business days later), Mr. Allan sent a letter to me in  
2 which he demanded “confirmation from your office that the production is proceeding” within 24  
3 hours. A true and correct copy of that letter is attached hereto as Exhibit 4. I replied that I  
4 thought LegalZoom was being unreasonable. At this point only seven business days had elapsed  
5 since the Margolis Subpoena had been served, and I had only received the report in question two  
6 business days earlier. I explained that while I had conferred extensively with Google’s legal  
7 department in the short period between the December 3 and December 9,

8           Google is an extremely large corporation and ascertaining what documents are  
9 available to be produced, what the burden associated with that production would  
10 be, and whether there are privacy or confidentiality concerns relating to those  
11 documents takes time, particularly given that Google is a third party and had no  
12 familiarity with this dispute until our conversation last week. . . . [W]e will  
13 respond to you as soon as possible, and within a reasonable time frame.

14 A true and correct copy of my letter to Mr. Allan is attached hereto as Exhibit 5.

15           13.     Rather than afford Google a few additional days to evaluate LegalZoom’s  
16 requests, Mr. Allan responded with a letter demanding that we conduct a formal meet-and-confer  
17 call required under the Central District of California’s local rules as a precursor to a motion to  
18 compel.

19           14.     Although the Central District of California’s rules were inapplicable given  
20 Google’s residence here, Mr. Kramer and I met with Mr. Allan telephonically on December 18 at  
21 his insistence. I attempted to discuss Google’s remaining objections and what Google was  
22 willing to produce, but Mr. Allan would not address our objections or offer any compromise. It  
23 felt as if Mr. Allan was only participating in the call as a procedural prerequisite to filing a  
24 motion to compel. When Mr. Kramer expressed our frustration at the one-sided nature of the  
25 discussion, Mr. Allan demanded that we submit a proposal detailing the information Google was  
26 willing to provide, and then ended the call. He followed immediately with an email containing a  
27 slanted summary of the call, again offering no substantive response to the concerns we had  
28 raised.

          15.     I responded that day with a letter in which I rejected Mr. Allan’s summary of the  
call. A true and correct copy of that letter is attached hereto as Exhibit 6.

1           16.       Several hours later, I sent a second letter to Mr. Allan containing the proposal he  
2 demanded. A true and correct copy of that letter is attached hereto as Exhibit 7. I explained that  
3 although we believed the Subpoenas were objectionable for numerous reasons, Google would be  
4 willing to search for documents relating to the Google Venture report if it would resolve the  
5 subpoenas and avoid motion practice. I also explained that Google would provide the contact  
6 information for the person using the <katherine.k@google.com> email address (without any  
7 corresponding concession from LegalZoom) once it was able to confirm the identity of that  
8 person. Although Mr. Allan had constantly imposed deadlines and demanded immediate  
9 responses from Google, he ignored our proposal for nearly three weeks.

10           17.       On January 5, 2015, Mr. Allan informed me via a terse email that our proposed  
11 compromise was rejected. He did not provide any explanation for the rejection, nor did he  
12 submit a counter-proposal. A true and correct copy of that email is attached hereto as Exhibit 8.  
13 Later that day, Mr. Allan filed this motion to compel.

14           18.       On January 8, 2015, Mr. Allan's colleague Barak Vaughn suggested via email  
15 that we meet and confer regarding yet another subpoena LegalZoom had served, this time to  
16 Google Ventures. I responded via email that given the prior meet and confer, we believed it  
17 would be helpful if Messrs. Allan and Vaughn addressed Google Ventures' core objections in  
18 writing before having another call. A true and correct copy of that email is attached hereto as  
19 Exhibit 9. To date, LegalZoom's counsel has not responded.

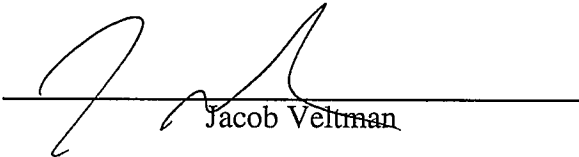
20           19.       On January 9, 2015, I provided the name and contact information to Mr. Allan via  
21 email of Katherine Kramer, the former Google employee who had communicated with Rocket  
22 Lawyer using the email address <katherine.k@google.com>. Due to privacy considerations, a  
23 copy of that email is not attached hereto. On January 13, 2015, LegalZoom's counsel served me  
24 with a copy of a subpoena addressed to Ms. Kramer.

25           20.       LegalZoom's adversary, Rocket Lawyer, also served a subpoena on Google in  
26 this matter. Like LegalZoom, Rocket Lawyer asked for information about the advertising by its  
27 counterpart on Google's service. In response to similar objections from Google regarding  
28 overbreadth and burden, Rocket Lawyer's counsel narrowed the requests, specified what it was



1 seeking and agreed to a compromise resolution. In its motion, LegalZoom insinuates that  
2 Google is “stonewalling” LegalZoom because of connections between Google Ventures and  
3 Rocket Lawyer. That is baseless. Rocket Lawyer has received no more favorable treatment  
4 from Google in this process than that available to LegalZoom. Any difference in outcome is  
5 owing to Rocket Lawyer’s good faith effort to meet and confer, contrasted with LegalZoom’s  
6 refusal to do so.

7 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th  
8 day of January 2015 at Palo Alto, California.

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11 Jacob Veltman

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**EXHIBIT 1**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the
CENTRAL District of CALIFORNIA

LEGALZOOM.COM, INC.

Plaintiff

v.

ROCKET LAWYER INCORPORATED

Defendant

Civil Action No. 2:12-CV-09942-GAF-AGR

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

GOOGLE, INC. c/o CSC Lawyers Incorporating Service, 2710 Gateway Oaks, Suite To: 150N, Sacramento, CA 95833.

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: Custodian of Records to authenticate the documents requested.

Table with 2 columns: Place and Date and Time. Place: Veritext-San Francisco, 101 Montgomery Street, Suite 450, San Francisco, CA 94104. Date and Time: December 1, 2014; 3:00 p.m.

The deposition will be recorded by this method: Stenographically and Videotaped

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Attachment "1"

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 11/14/14

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

Barak Vaughn

The name, address, e-mail address, and telephone number of the attorney representing (name of party) LegalZoom.com,

Inc., who issues or requests this subpoena, are: Fred Heather; GLASER WEIL, 10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067; (310)553-3000

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**ATTACHMENT 1**

**DEFINITIONS**

1  
2  
3       A.    “YOU,” “YOUR” and “GOOGLE” mean Google, Inc. located at 1600  
4 Amphitheatre Way, Mountain View California 943043, and its current and former  
5 parents, subsidiaries, affiliates, predecessors, successors, employees, managers,  
6 officers, directors, partners, agents, representatives, attorneys, or anyone acting or  
7 purporting to act on its behalf or under its control.

8       B.    “LEGALZOOM” and “PLAINTIFF” mean and refer, without limitation,  
9 to Plaintiff LegalZoom.com, Inc., its attorneys, agents and all PERSONS, as defined  
10 below, acting on its behalf.

11       C.    “ROCKET LAWYER” and “DEFENDANT” mean and refer, without  
12 limitation, to Rocket Lawyer Incorporated, its employees, attorneys, agents,  
13 independent contractors, officers, directors, shareholders, representatives, and all  
14 PERSONS or entities acting on its behalf.

15       D.    “ROCKET LAWYER FREE ADVERTISEMENTS” mean and refer to  
16 any marketing, advertising and/or promotion of ROCKET LAWYER and/or  
17 ROCKET LAWYER PRODUCTS AND SERVICES, in which the term “free”  
18 appears in the marketing, advertisement and promotion and/or in which the term  
19 “free” is used as a keyword or other search term to trigger the marketing,  
20 advertisement and/or promotion of ROCKET LAWYER and/or ROCKET LAWYER  
21 PRODUCTS AND SERVICES.

22       E.    “COMMUNICATION” includes, without limitation, communications  
23 by whatever means transmitted (i.e., whether oral, written, electronic, or other  
24 methods are used), as well as any note, memorandum, or other document record  
25 thereof.

26       F.    “DOCUMENT” has the full meaning ascribed to it by the Federal Rules  
27 of Civil Procedure and the Federal Rules of Evidence, and includes without limitation  
28 any writing, COMMUNICATION, correspondence or tangible thing on which

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Howard Avchen & Shapiro LLP

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Howard Avchen & Shapiro LLP

1 information can be stored or from which information can be retrieved, whether signed  
2 or unsigned, in draft or final form, an original or a copy, including electronic formats.

3 G. "CONSTITUTING," "CONCERNING," "REFERRING TO,"  
4 "RELATED TO," and "RELATING TO," whether used alone or in conjunction with  
5 one another, are used in their broadest sense and shall mean and refer to, without  
6 limitation, constituting, summarizing, memorializing, or directly or indirectly  
7 referring to, discussing, pertaining to, regarding, evidencing, supporting,  
8 contradicting, containing information regarding, embodying, comprising, identifying,  
9 stating, reflecting, dealing with, commenting on, responding to, describing, analyzing,  
10 or in any way pertinent to the subject matter of the type of DOCUMENTS sought.

11 H. "PERSON" means an individual, firm, partnership, corporation,  
12 proprietorship, association, governmental body, or any other organization or entity.

13 I. "Each" and "any" include both "each" and "every" whenever  
14 appropriate. The terms "and" as well as "or" shall be construed either disjunctively or  
15 conjunctively as necessary to bring within the scope of the inquiry or request any  
16 information which might otherwise be construed to be outside of the scope.

17 J. "Or," "and," and "and/or" shall be interpreted both conjunctively and  
18 disjunctively, so as to be inclusive rather than exclusive, and each term shall include  
19 the other whenever such construction will serve to bring within the scope of a request  
20 documents, information or tangible things which would not otherwise be within its  
21 scope, and these terms shall not be interpreted to exclude any information, documents  
22 or tangible things otherwise within the scope of a request.

23 K. The present tense of any verb shall include the past tense, and vice versa,  
24 whenever such construction will serve to bring within the scope of a request  
25 documents, information or tangible things which would not otherwise be within its  
26 scope.

27 L. The singular shall include the plural and vice versa, and words in one  
28 gender shall include the other gender.

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**REQUEST TO PRODUCE DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 34 *et seq.*, YOU are obligated to produce at the time and place identified above, on the designated date, those DOCUMENTS or COMMUNICATIONS responsive to the requests listed below:

**REQUEST TO PRODUCE DOCUMENTS NO. 1**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 2**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 3**

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

**REQUEST TO PRODUCE DOCUMENTS NO. 4**

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

Glaser Weil Fink Jacobs  
Howard Avchen & Shapiro LLP



**SACRAMENTO LEGAL SUPPORT, INC.  
SACRAMENTO FIELD ACCOUNT**

1814 I STREET  
SACRAMENTO, CA 95814

FRAUD ARMOR

45392

11-35/1210

11-14 2d

Pay to the Order of Google, Inc.  
Fortey \$ 00/100

\$ 40<sup>00</sup>

Dollars

Security features are included. Details on back.

**BANK OF AMERICA  
CALIFORNIA**

NOT TO EXCEED \$1,000  
FOR DEPOSIT ONLY

For 8850816 W/F

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MP

W/F

⑈045392⑈ ⑆121000358⑆ 000373273124⑈

**EXHIBIT 2**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

1 DAVID H. KRAMER, State Bar No. 168452  
JACOB T. VELTMAN, State Bar No. 247597  
2 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
3 650 Page Mill Road  
Palo Alto, CA 94304-1050  
4 Telephone: (650) 493-9300  
Facsimile: (650) 565-5100  
5 Email: dkramer@wsgr.com  
Email: jvelmtan@wsgr.com

6 Attorneys for Nonparty  
7 Google Inc.

8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10  
11 LEGALZOOM.COM, INC.,

12 Plaintiff,

13 v.

14 ROCKET LAWYER INC.,

15 Defendant.  
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CASE NO.: 2:12-cv-09942-GAF-AGR

RESPONSES AND OBJECTIONS OF  
NONPARTY GOOGLE INC. TO  
PLAINTIFF'S SUBPOENA TO  
TESTIFY AT A DEPOSITION IN A  
CIVIL ACTION

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1 Pursuant to Federal Rule of Civil Procedure 45 (“Rule 45”), nonparty  
2 Google Inc. (“Google”) makes the following objections to the subpoena served by  
3 Plaintiff Legalzoom.com, Inc. (“LegalZoom”) dated November 14, 2014 (the  
4 “Subpoena”) and the requests for production (“Requests”) therein.

5 **GENERAL OBJECTIONS**

6 1. Google objects to the Subpoena on the grounds that the specified date  
7 of compliance – December 1, 2014 – is unreasonable. If Google produces  
8 documents in response to the Subpoena, it will produce them at a later, more  
9 reasonable, date.

10 2. Google objects to the Subpoena on the grounds that the Requests are  
11 overbroad and unduly burdensome. Compliance with Plaintiff’s repeated requests  
12 for “any and all” documents would impose a substantial burden on Google in  
13 contravention of Rule 45(c)(1)’s mandate that parties “must take reasonable steps  
14 to avoid imposing undue burden or expense on a [non-party] subject to a  
15 subpoena.”

16 3. Google objects to the Subpoena under Rule 45(d)(2)(B)(ii) because  
17 the cost of complying with the subpoena is estimated to exceed \$15,000 and would  
18 thus impose a “significant expense” on nonparty Google.

19 4. Google will not produce information in response to the subpoena  
20 unless Plaintiff first agrees to reimburse the costs and fees incurred by Google to  
21 comply with the subpoena.

22 5. Google objects to the Subpoena because it seeks information beyond  
23 the limitations of non-party discovery imposed by Rule 45, as the requested  
24 information may be obtained from sources, such as parties to the action, from  
25 whom production would be less burdensome.

26 6. Google objects to the Subpoena to the extent that it seeks information  
27 protected from disclosure applicable privileges (hereinafter “Privileged  
28 Information”). Any inadvertent disclosure of such information shall not be

1 deemed a waiver of any such privilege, and Google expressly requests that the  
2 receiving party(ies) immediately return and do not make use of any inadvertently  
3 produced Privileged Information.

4 7. Google objects to the Subpoena to the extent it seeks electronically  
5 stored information that is not reasonably accessible by Google because of undue  
6 burden or cost.

7 8. Google objects to the Subpoena to the extent it seeks confidential,  
8 trade secret, or proprietary information belonging to Google or a third party  
9 (“Confidential Information”). Google has not been provided with a copy of any  
10 protective order that may have been entered in this action and cannot evaluate  
11 whether sufficient restrictions on the disclosure and use of Confidential  
12 Information requested to be produced by Google are in place. Google will not  
13 produce documents containing Confidential Information in the absence of those  
14 restrictions.

15 9. Google objects to the Subpoena to the extent it seeks the disclosure of  
16 information that is neither relevant to the subject matter of the action nor  
17 reasonably calculated to lead to the discovery of admissible evidence.

18 10. Google reserves the right to assert additional objections as appropriate  
19 and to supplement these objections and responses if Google deems necessary.

### 20 **OBJECTIONS TO DEFINITIONS**

21 1. Google objects to the definition of “You,” “Your,” and “Google” on  
22 the grounds that those terms are defined to include Google’s “subsidiaries,  
23 affiliates, predecessors, successors, employees, managers, officers, directors,  
24 partners, agents, representatives, attorneys, or anyone acting or purporting to act on  
25 its behalf or under its control.” These definitions render the Requests overbroad,  
26 unduly burdensome, and unintelligible. Google also objects to these definitions  
27 on the grounds that they call for a legal conclusion.

28

1           2.     Google objects to the definition of “Rocket Lawyer” and “Defendant”  
2 on the grounds that those terms are defined to include Rocket Lawyer’s  
3 “employees, attorneys, agents, independent contractors, officers, directors,  
4 shareholders, representatives, and all Persons or entities action on its behalf.” This  
5 definition renders the Requests overbroad, unduly burdensome, and unintelligible.  
6 Google also objects to these definitions on the grounds that they call for a legal  
7 conclusion. In objecting and responding to the Requests, Google will construe the  
8 terms “Rocket Lawyer” and “Defendant” to refer solely to Rocket Lawyer  
9 Incorporated.

### 10                   OBJECTIONS TO AUTHENTICATING DEPOSITION

11           Google objects to the deposition sought by the Subpoena of a “Custodian of  
12 Records to authenticate the documents requested.” To the extent Google produces  
13 documents in response to the Subpoena, those documents may be authenticated  
14 with much less burden and inconvenience to Google through an authenticating  
15 declaration. Google will provide such a declaration upon request.

### 16                   SPECIFIC OBJECTIONS AND RESPONSES

17           Google hereby incorporates by reference each of the foregoing objections  
18 into each specific response that follows. A specific response may repeat an  
19 objection for emphasis or some other reason. The failure to include any of the  
20 foregoing objections in any specific response shall not be interpreted as a waiver of  
21 any objection to that response.

#### 22           REQUEST NO. 1:

23           Any and all DOCUMENTS RELATING TO ROCKET LAWYER FREE  
24 ADVERTISEMENTS between January 1, 2008 and present.

#### 25           RESPONSE TO REQUEST NO. 1:

26           Google objects to this Request on the grounds that it seeks irrelevant  
27 information and is overbroad and unduly burdensome, especially given that Google  
28 is a non-party. The demand for “any and all” documents relating to Rocket

1 Lawyer Free Advertisements is particularly burdensome, as it may encompass a  
2 substantial amount of information, most of which is cumulative and/or irrelevant to  
3 the claims and defenses asserted in this lawsuit. The specified relevant period of  
4 almost seven years renders the Request particularly overbroad and oppressive  
5 given that the claims and defenses asserted in this lawsuit relate to events  
6 beginning in late 2011.

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

13 Subject to the foregoing objections, Google responds to this Request as  
14 follows:

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

19 **REQUEST NO. 2:**

20 Any and all COMMUNICATIONS between YOU and ROCKET LAWYER  
21 RELATING TO ROCKET LAWYER FREE ADVERTISEMENTS between  
22 January 1, 2008 and present.

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

24 Google objects to this Request on the grounds that it seeks irrelevant  
25 information and is overbroad and unduly burdensome, especially given that Google  
26 is a non-party. The demand for “any and all” communications is particularly  
27 burdensome, as it encompasses information that is cumulative and/or irrelevant to  
28 the claims and defenses asserted in this lawsuit. The specified relevant period of

1 almost seven years renders the Request particularly overbroad and oppressive  
2 given that the claims and defenses asserted in this lawsuit relate to events  
3 beginning in late 2011.

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

10 Subject to the foregoing objections, Google responds to this Request 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  
15 and narrowed.

16 **REQUEST NO. 3:**

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

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

21 Google objects to this Request on the grounds that it seeks irrelevant  
22 information and is overbroad and unduly burdensome, especially given that Google  
23 is a non-party. The demand for “any and all” documents is particularly  
24 burdensome, as it may encompass a massive amount of information that is  
25 cumulative and/or irrelevant to the claims and defenses asserted in this lawsuit.  
26 The failure to specify a relevant time period renders the Request particularly  
27 overbroad and oppressive given that the claims and defenses asserted in this  
28 lawsuit relate to events that did not begin until late 2011.



1 Google further objects to this Request on the grounds that many of the  
2 documents encompassed by the Request (to the extent any such studies were  
3 managed or performed by Google Ventures for Rocket Lawyer) are necessarily in  
4 the possession, custody or control of Rocket Lawyer. As a nonparty, Google  
5 should not be subjected to the burden and expense of searching for and producing  
6 these documents until LegalZoom has exhausted reasonable means of obtaining  
7 them directly from Rocket Lawyer.

8 Subject to the foregoing objections, Google responds to this Request as  
9 follows:

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

14 **REQUEST NO. 4:**

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

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

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

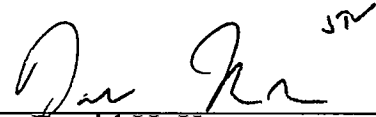
23 Google will not produce documents in response to this Request due to the  
24 issues identified above. It is, however, open to a meet and confer process with  
25 LegalZoom to discuss whether this Request can be appropriately revised, clarified  
26 and explained.

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Dated: November 26, 2014

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:  David H. Kramer

Attorneys for Nonparty  
Google Inc.

**CERTIFICATE OF SERVICE**

I, Deborah Grubbs, declare:

I am employed in Santa Clara County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

On this date, I served:

**1. RESPONSES AND OBJECTIONS OF NONPARTY GOOGLE INC. TO PLAINTIFF'S SUBPOENA TO TESTIFY ATA DEPOSITION IN A CIVIL ACTION**

By placing the document(s) in a sealed envelope for collection and mailing with the United States Postal Service on this date to the following person(s):

Mr. Fred Heather  
Glaser Weil  
10250 Constellation Blvd.  
Suite 1900  
Los Angeles, CA 90067

By forwarding the document(s) by electronic transmission on this date to the Internet email address listed below:

Fred Heather      Email: fheather@glaserweil.com

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the United States of America foregoing is true and correct. Executed at Palo Alto, California on November 26, 2014.

  
Deborah Grubbs

**EXHIBIT 3**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

**From:** Veltman, Jacob  
**Sent:** Friday, December 05, 2014 6:40 PM  
**To:** Aaron Allan  
**Subject:** LegalZoom v. Rocket Lawyer

Aaron,

Thanks for sending over the study. I received your voicemail. I don't have an update for you right now other than that we're still discussing this internally. I understand that you're in somewhat of a hurry to wrap up discovery, and will get back to you with a substantive response as soon as I can.

Best,

Jake

**EXHIBIT 4**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

# Glaser Weil

10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067  
310.553.3000 TEL  
310.556.2920 FAX

Aaron P. Allan

December 9, 2014

**Direct Dial**  
310.282.6279  
**Direct Fax**  
310.785.3579

**Email**  
aallan@glaserweil.com

## VIA FACSIMILE & EMAIL

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Re: **LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google**

Dear Counsel:

I write in response to your November 26, 2014 Responses and Objections regarding the deposition subpoena served on Google, Inc., and further to the various communications that I have had with Jacob Veltman to meet and confer regarding those objections.

United States District Judge Gary Feess has ordered in the above matter that LegalZoom be permitted to take third party discovery from Google, Inc. on a limited basis, and we have a limited amount of time by which to complete this and other discovery in the case. By an email sent on December 3, 2014, I provided you with a copy of Judge Feess' order. The subjects for production identified in our subpoena conformed to the narrow parameters of the Court's order. We also provided, at your request, a copy of the protective order entered in this case.

Notwithstanding that any denial by Google of the requested information would be inconsistent with the Court's Order, we agreed as part of a meet and confer effort to limit the scope of the production to 1/1/10 – 12/31/13, and we also agreed to provide you with some information that you requested to assist your search: (a) the Rocket Lawyer email addresses associated with the subject Google adwords account; and (b) the customer ID number, bank reference number or URL transfer number/address associated with the adwords account. In reviewing our documents, we have found the following responsive emails addresses:

cm@rocketlawyer.com

aweiner@rocketlawyer.com

svolkov@rocketlawyer.com

David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
December 9, 2014  
Page 2

mike@ppcassociates.com

We were unable to locate any customer ID number, bank reference number or URL transfer number/address associated with the adwords account, but I offered to “work with” Google to help alleviate any burden associated with locating and producing responsive documents. For example, we agreed to accept a declaration from a custodian of records in lieu of live testimony for authenticating any responsive documents produced. We are open to considering other proposals.

In my email dated December 3, 2014, I made clear our desire that Google adhere to the December 17, 2014, date for production, if possible. Part of the reason for our need to expedite the production is that we have a January 16, 2015, deadline to complete all discovery in the case, including a deposition of “Katherine K” who was a Google employee (based on emails communications with Rocket Lawyer) that we have requested be identified by Google. Katherine K. was an instrumental party regarding some of the Rocket Lawyer advertisements that are at issue in this lawsuit and that violated Google’s Offer Not Found Policy. Katherine K’s knowledge, understanding, and actions taken with regards to Rocket Lawyer’s violation of Google’s Offer Not Found Policy are not within the possession of Rocket Lawyer, and are matters that we may appropriately inquire about from her at a deposition once her identity has been produced to us.

We remain willing to work with your firm and with Google to extend out the December 17 production date, but only if I receive some confirmation from your office that the production is proceeding and that Google is not intending to rely upon its objections to avoid producing responsive documents and information. During our December 3 telephone call, Mr. Veltman agreed to get back to me on this subject by December 5. On December 5, Mr. Veltman emailed me to tell me that he had no update, and that he was still discussing the issue internally and would respond “as soon as [he] can.”

Given our January 16, 2015, deadline to complete all discovery, we must insist upon a response by close of business tomorrow, December 10, 2014, confirming Google’s intentions with respect to the subpoena, or we will have no alternative but to begin the process to pursue a motion to compel. Because the original subpoena provided adequate notice under the rules, and was limited in scope to the subjects allowed by the Court order, we would move with respect to that original subpoena and would not have a need to serve any new subpoena (as I mistakenly indicated we planned to do in my email earlier today). We would also seek monetary sanctions based on the legal fees required to bring the motion.

As I previously indicated, we greatly prefer to work this out with Google on a consensual basis rather than to involve the Court with expensive motion practice. But absent hearing from



David H. Kramer  
Jacob T. Veltman  
Wilson Sonsini Goodrich & Rosati  
December 9, 2014  
Page 3

you by tomorrow on this subject, you leave us with no alternative but to proceed with motion practice. I look forward to hearing from you as soon as possible on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Allan', with a long horizontal flourish extending to the right.

AARON P. ALLAN  
of GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

APA:cc

**EXHIBIT 5**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

December 11, 2014

*Via E-Mail*

Aaron P. Allan  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067

**Re: LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google**

Dear Aaron:

I write in response to your letter dated December 9, 2014. I frankly do not appreciate the false urgency and unreasonable, artificial deadlines you and your colleagues continue to inject in this routine discovery process.

Although the Court authorized additional discovery on November 10, you waited until the day before Thanksgiving to serve Mr. Margolis with a subpoena, and that subpoena demanded his appearance at a deposition only four business days later despite the fact that discovery does not close until January 16, 2015. You similarly waited a week to serve Google with a second subpoena yet demanded that it produce documents the day after Thanksgiving weekend. After Google timely asserted objections despite your unnecessarily compressed time frame, you waited a week before communicating further with my office, at which point you insisted that we call you back that afternoon. After I complied and discussed the subpoena with you that day, you provided a copy of the study necessary for us to evaluate your requests on Friday, December 5. Then on December 9, you demanded that I “confirm[] that the production is proceeding.”

As I communicated to you on Friday, we are continuing to discuss your subpoena with Google and will provide you with a substantive response regarding which documents we are willing to produce as soon as possible. Your insistence that we conclude this process within three business days of having received the study at issue is simply unreasonable. Google is an extremely large corporation and ascertaining what documents are available to be produced, what the burden associated with that production would be, and whether there are privacy or confidentiality concerns relating to those documents takes time, particularly given that Google is a third party and had no familiarity with this dispute until our conversation last week.

Although your subpoenas seek documents that are largely in the possession of Rocket Lawyer Inc. and that therefore should have been sought from Rocket Lawyer, I assure you that they have not been forgotten or ignored and that we will respond to you as soon as possible, and

Aaron P. Allan  
December 11, 2014  
Page 2

within a reasonable time frame. I realize you would prefer to receive Google's production by December 17, but that may not be practicable. Yours are certainly not the only subpoenas currently being processed by Google at this time, and any firm expectation that discovery from Google would be concluded in less than a month from the service of your subpoenas is, again, unreasonable. This case has been pending for more than two years. If there is any urgency in your discovery demands, it is due to your decision to wait until the eleventh hour to seek discovery from Google.

You may opt to short-circuit the meet and confer process and move to compel as you seem to threaten. Doing so, however, will not get you the discovery you seek any faster, and Google will seek redress for your failure to abide by Rule 45's mandate to avoid undue burden on non-parties.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

Jacob Veltman

**EXHIBIT 6**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

**W&GR** Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

650 Page Mill Road  
Palo Alto, CA 94304-1050  
PHONE 650.493.9300  
FAX 650.493.6811  
[www.wsgr.com](http://www.wsgr.com)

December 18, 2014

*Via E-Mail*

Aaron P. Allan  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067

**Re: LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942 – Subpoena to Google**

Dear Aaron:

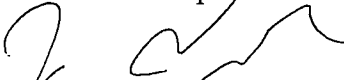
Thank you for speaking with us today regarding your subpoenas in the above-referenced matter. We received your one-sided and inaccurate email purporting to summarize our call today. I am not going to spend time correcting your attempt to manufacture a record. I do note that the letter is accurate insofar as it reflects that you made no effort during the call to address Google's objections to your subpoena campaign or to seek a compromise in any way.

As we said on the call, we will put a proposal together to conclusively resolve this matter. We did not say we could do it today, as your email demands, but we will endeavor to do so.

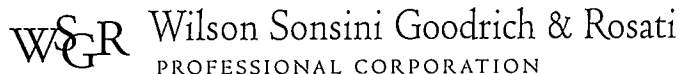
We do not, however, understand your reference to "drafting a joint stipulation for purposes of moving to compel." You appear to be under the misimpression that a motion to compel or a motion for protective order would be litigated in the Central District of California. That is not consistent with Rule 45. Should you choose to move to compel against Michael Margolis, any motion would need to be brought in the U.S. District Court for the Western District of Washington, where he resides, as that is the district where performance is demanded. Similarly, any motion to compel against Google Inc. must be brought in the U.S. District Court for the Northern District of California.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

  
Jacob Veltman

**EXHIBIT 7**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**



650 Page Mill Road  
Palo Alto, CA 94304-1050  
PHONE 650.493.9300  
FAX 650.493.6811  
www.wsgr.com

December 18, 2014

*Via E-Mail*

Aaron P. Allan  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd.  
19th Floor  
Los Angeles, CA 90067

**Re: LegalZoom.com, Inc. v. Rocket Lawyer Incorporated – USDC Case No. 2:12-CV-09942**

Dear Aaron:

As we explained in our objections to your subpoenas and during our call today, your subpoenas are problematic in a number of respects.<sup>1</sup> They are both overbroad and unduly burdensome in their repeated requests for “any and all documents,” particularly given that Mr. Margolis, Google Inc. and Google Ventures are non-parties. Google employs many thousands of people and you have not suggested how it could efficiently search for “any and all documents relating to Rocket Lawyer free advertisements” (which is defined in an overly expansive way). Nor have you offered to pay for any of the discovery costs you seek to impose.

Your subpoenas also seek irrelevant information. The study by Google Ventures pertained to Rocket Lawyer’s website, not its use of AdWords. Furthermore, many of the documents you seek, including communications with Rocket Lawyer and work product delivered to Rocket Lawyer, are necessarily in the possession of Rocket Lawyer, and should not be sought through third-party discovery. Any internal Google or Google Ventures documents not in the possession of Rocket Lawyer are of especially questionable relevance.

Your proposal on today’s call that we produce documents in exchange for a vague promise to reevaluate your request for Mr. Margolis’s deposition and additional documents once you have received the production is not acceptable for obvious reasons. However, notwithstanding the problems with the subpoenas and the burdens and costs associated with searching for and producing documents, if you will agree not to seek any additional discovery from Mr. Margolis, Google Ventures and Google Inc., we will agree to conduct a reasonably diligent search for documents relating to Google Ventures’ study of the Rocket Lawyer website’s use of the word “free” in October 2011 and to provide an authenticating declaration for those documents.

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<sup>1</sup> The subpoenas to Mr. Margolis and Google Inc. were also procedurally improper. The former was served the day before Thanksgiving and demanded Mr. Margolis’s appearance at a deposition four business days later. The latter demanded a deposition and production of documents the day after Thanksgiving weekend.



Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

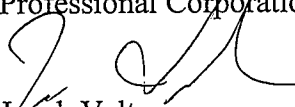
Aaron P. Allan  
December 18, 2014  
Page 2

Separately, we would agree to provide the name and last known address of "Katherine K." and would not object to a limited deposition of her relating to Rocket Lawyer's use of the word "free" in its AdWords advertising.

Please let me know at your earliest convenience whether this proposal is satisfactory.

Sincerely,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Jacob Veltman

**EXHIBIT 8**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

**From:** Aaron Allan <aallan@glaserweil.com>  
**Sent:** Monday, January 05, 2015 12:02 PM  
**To:** Veltman, Jacob  
**Cc:** Barak Vaughn; Fred Heather; Kramer, David  
**Subject:** RE: LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Jake,

LegalZoom is rejecting your proposal, and we will be pursuing a motion to compel.

**Aaron P. Allan** | Partner  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

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**From:** Veltman, Jacob [mailto:jveltman@wsgr.com]  
**Sent:** Monday, January 05, 2015 11:54 AM  
**To:** Aaron Allan  
**Cc:** Barak Vaughn; Fred Heather; Kramer, David  
**Subject:** RE: LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Aaron,

Pursuant to your request, we sent you a written proposal that would have conclusively resolved your various subpoenas almost three weeks ago. We have yet to hear back from you. We stand by our objections to Mr. Margolis's deposition and will not be appearing on January 9. However, our offer of December 18 is still open.

Best,

Jake

---

**From:** Aaron Allan [mailto:aallan@glaserweil.com]  
**Sent:** Monday, January 05, 2015 10:32 AM  
**To:** Veltman, Jacob  
**Cc:** Barak Vaughn; Fred Heather; Kramer, David  
**Subject:** RE: LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Jake,

Based on my email of December 18, 2014 (below), and your letter in response, it is my understanding that Michael Margolis will not be appearing to be deposed on January 9, 2015, as commanded by the subpoena that we served. If there has been any change, or if my understanding is incorrect, please let me know by the close of business today so that we can make suitable travel arrangements to Washington to take the deposition.

**Aaron P. Allan** | Partner  
Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

---

**From:** Veltman, Jacob [<mailto:jveltman@wsgr.com>]  
**Sent:** Thursday, December 18, 2014 2:23 PM  
**To:** Aaron Allan  
**Cc:** Barak Vaughn; Fred Heather; Kramer, David  
**Subject:** RE: LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Aaron,

Please see the attached.

Best,

Jake

---

**From:** Aaron Allan [<mailto:aallan@glaserweil.com>]  
**Sent:** Thursday, December 18, 2014 10:56 AM  
**To:** Veltman, Jacob; Kramer, David  
**Cc:** Barak Vaughn; Fred Heather  
**Subject:** LegalZoom v. Rocket Lawyer - Subpoenas to Google, Google Ventures and Michael Margolis

Dear Counsel,

This will confirm that we had a telephonic meet and confer discussion this morning that lasted approximately 15 minutes. During our discussion, you revealed the following:

1. Google is unwilling to produce communications with Rocket Lawyer because Google takes the position that such documents are already in Rocket Lawyer's possession, and there is no evidence that Rocket Lawyer engaged in spoliation of evidence. When I asked about the burden associated with producing such materials, you refused to provide me with any answer (or to even engage) on that subject. Instead you stated that the issue of burden would be addressed by you only in opposing a motion to compel, and that this was "not a deposition." When I attempted to further meet and confer on that subject, you refused to engage.

2. As part of a compromise, Google would be willing to make a production of all documents relating to the study performed by Michael Margolis and Google Ventures, but would be unwilling to produce any other documents in response to our subpoena (i.e., documents relating to Rocket Lawyer's free advertisements or communications with Rocket Lawyer concerning such advertisements). Google would also be willing to provide the last known contact information for "Katherine K," but is not willing to produce any witness for deposition and would reserve the right to object to the taking of any deposition of Katherine K. You also stated that Mr. Margolis would not be appearing for deposition.

3. You were uncertain whether any of Katherine K's emails or documents remain available at Google, but were told this was "very unlikely" because she was terminated in 2012, well prior to the subpoena. You were therefore unwilling to search for, or produce, Katherine K's emails or other documents.

4. You agreed to put your proposal into written form so that it may be considered by LegalZoom.

Please provide me with Google's written proposal today, or you may alternatively confirm that this email accurately states that proposal. Absent hearing from you by the close of business today, we will assume that Google is are refusing to cooperate in discovery and we will proceed with drafting a joint stipulation for purposes of moving to compel.

**Aaron P. Allan** | Partner

Glaser Weil Fink Howard Avchen & Shapiro LLP  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067  
Main: 310.553.3000 | Direct: 310.282.6279 | Fax: 310.785.3579

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**EXHIBIT 9**  
**TO THE DECLARATION OF**  
**JACOB T. VELTMAN**

**From:** Veltman, Jacob  
**Sent:** Thursday, January 08, 2015 7:17 PM  
**To:** Barak Vaughn  
**Subject:** RE: LegalZoom adv. Google Ventures - Meet and Confer

Barak,

We felt that the last meet and confer call was treated like a box to be checked off by your colleagues rather than an opportunity to address our objections and reach a compromise. We would prefer that you address our objections in writing before we have another call. Specifically, what is your position regarding:

- (a) why documents relating to the study are relevant given that the study did not relate to Rocket Lawyer advertisements;
- (b) why internal Google Ventures documents that were never seen by Rocket Lawyer are relevant;
- (c) why communications between Google Ventures and Rocket Lawyer cannot be obtained from Rocket Lawyer;
- (d) what documents you are seeking through Requests 2 & 3 (i.e., do you have any reason to believe that Google Ventures possesses documents relating to Rocket Lawyer Free Advertisements unrelated to the study)
- (e) whether and to what extent you are willing to share some or all of the cost Google Ventures would incur in searching for and producing the documents requested; and
- (f) how you believe Google Ventures could effectively search for “all documents” relating to Rocket Lawyer Free Advertisements.

Jake

---

**From:** Barak Vaughn [<mailto:bvaughn@glaserweil.com>]  
**Sent:** Thursday, January 08, 2015 2:49 PM  
**To:** Veltman, Jacob  
**Subject:** LegalZoom adv. Google Ventures - Meet and Confer

Jacob:

I would like to meet and confer with you regarding LegalZoom’s Subpoena to Google Ventures as well as Google Ventures Responses and Objections to the Subpoena. Do you have any available time to have a telephonic meet and confer conference on either Monday or Tuesday? Please let me know any available times you may have.

Respectfully,

# Glaser Weil

**Barak Vaughn**  
10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067

Main: 310.553.3000 | Direct: 310.999.9999 | Fax: 310.999.9999

E-Mail: [bvaughn@glaserweil.com](mailto:bvaughn@glaserweil.com) | <http://www.glaserweil.com/>



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**TAB 6**

1 PATRICIA L. GLASER - State Bar No. 55668  
 pglaser@glaserweil.com  
 2 FRED D. HEATHER - State Bar No. 110650  
 fheather@glaserweil.com  
 3 AARON P. ALLAN - State Bar No. 144406  
 aallan@glaserweil.com  
 4 GLASER WEIL FINK HOWARD  
 AVCHEN & SHAPIRO LLP  
 5 10250 Constellation Boulevard, 19th Floor  
 Los Angeles, California 90067  
 6 Telephone: (310) 553-3000  
 Facsimile: (310) 556-2920  
 7

8 Attorneys for Plaintiff  
 LegalZoom.com, Inc.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11

Glaser Weil

12 LEGALZOOM.COM, INC.,

13 Plaintiff,

14 v.

15 ROCKET LAWYER INC.,

16 Defendants.  
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**CASE NO: 5:15-mc-80003-NC**

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

Before: Hon. Nathanael M. Cousins

Glaser Weil

1 Had Google invested as much time and energy in the meet and confer process  
 2 as it has in preparing its opposition papers, the parties would have had a chance at  
 3 resolving their disputes and avoiding this Motion. Instead, despite multiple attempts  
 4 to compromise made by LegalZoom, Google's counsel failed to confirm that it would  
 5 produce any responsive documents, refused to discuss the burdens of compliance, and  
 6 ultimately provided an ultimatum offer: Google would make a very limited  
 7 production conditioned on LegalZoom making an agreement to not take the  
 8 deposition of their separate client, Michael Margolis (a deposition which was also  
 9 specifically authorized by the court), and only agreed to produce documents related to  
 10 a single study Mr. Margolis conducted. Because that ultimatum was wholly  
 11 unacceptable, and because LegalZoom was faced with a January 16, 2015, deadline to  
 12 complete third party discovery, LegalZoom was forced to pursue this motion (and to  
 13 pursue in the district court a further delay of the underlying trial date).

14 Google has no viable defense to this motion or to its conduct. The discovery  
 15 requests were approved by the District Court, were appropriately narrow, and were  
 16 further narrowed by extensive (albeit unilateral) efforts to meet and confer. In  
 17 addition, Google's opposition brief is replete with inaccurate statements about the  
 18 meet and confer process, which a review of the underlying correspondence can  
 19 readily confirm.

- 20 ➤ Google argues LegalZoom ignored the duty to avoid burdens on nonparties.  
 21 (Opp. at 1:7-10). But the record reflects: (1) that LegalZoom stated its  
 22 willingness to provide information and to work with Google to address any  
 23 financial or other burden associated with compliance (see Exhs. D & E<sup>1</sup>); and  
 24 (2) Google's counsel was repeatedly asked to discuss the burden, and they  
 25 refused (see *id.*, Exh. I, Veltman Exh. 7, and Declaration of Aaron Allan  
 26

27  
 28 <sup>1</sup> All exhibit references (unless otherwise indicated) are to the original motion to  
 compel, attached to the Declaration of Aaron Allan in support of that motion.

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1 (“Allan Decl.”) ¶ 2). Google’s brief is the first time Google attempts to detail  
 2 some of the burden associated with compliance, and that should have been  
 3 done in the context of the parties’ efforts to meet and confer. If Google had  
 4 identified and asked for costs associated with the production, LegalZoom  
 5 would have negotiated any reasonable request. Google did not.

- 6 ➤ Google argues that their usability analysis is “unrelated to Rocket Lawyer’s  
 7 disputed advertising, and that Rocket Lawyer would have those documents.”  
 8 Opp. at 1:16-19. But Google has no basis for making that statement, and in  
 9 fact LegalZoom repeatedly explained how and why the analysis and Google’s  
 10 documents would help LegalZoom to demonstrate that Rocket Lawyer  
 11 continued to run “free” advertisements with intent to deceive consumers. See  
 12 Exh. D & Allan Decl. ¶ 3. Moreover, LegalZoom provided Google with a  
 13 copy of the court order which specifically authorized this limited discovery in  
 14 the context of moving a trial date. See Exh. A. Obviously, the district court  
 15 judge found that the information being sought was both relevant and related.
- 16 ➤ Google argues that LegalZoom “had no response” when asked why it could not  
 17 get the documents directly from Rocket Lawyer, and that any relevant  
 18 information would be “readily obtainable from Rocket Lawyer.” Opp. at 1:22-  
 19 23. This is incorrect on both accounts. During the meet and confer process,  
 20 LegalZoom informed Google’s counsel that the Rocket Lawyer production  
 21 appeared to have significant gaps, and that there had been irregularities in the  
 22 production which led to the court order to obtain the discovery directly from  
 23 Google. Allan Decl., ¶ 4. Also, there is no indication that Google’s internal  
 24 communications on this topic were ever shared with Rocket Lawyer. See Exh.  
 25 E, p.2.
- 26 ➤ Google argues that LegalZoom “had no response” when asked for guidance to  
 27 focus Google’s search on specific exchanges and people. Opp. at 1:23-25.  
 28 This is again belied by the record. In correspondence dated December 9, 2015,

1 LegalZoom’s counsel provided Google with the Rocket Lawyer email  
 2 addresses associated with the Google adwords account, and also expressed an  
 3 openness to consider any other ways to help alleviate the burden of Google’s  
 4 search efforts. Exh. E.

- 5 ➤ Google argues that LegalZoom made no response to their proposal for almost  
 6 three weeks, and never made a counteroffer. Opp. at 1:25 – 2:2. But  
 7 Google’s ultimatum proposal was made on December 18, 2014, right before  
 8 the Christmas and New Year’s holidays, and LegalZoom responded on the  
 9 Monday following those holidays, once counsel had been able to discuss the  
 10 matter with the appropriate client representative. Allan Decl. ¶ 5. No counter  
 11 was made for at least two reasons: (1) it was made very clear during the final  
 12 meet and confer telephone call that this offer was a “final” offer and an  
 13 ultimatum; and (2) the offer was made in the context of Google’s counsel  
 14 abruptly terminating the meet and confer session by interrupting the attempts  
 15 by LegalZoom’s counsel to explore the extent of any burden associated with  
 16 the production and potential means for alleviating that burden. See *id.*
- 17 ➤ Google argues that the subject document requests are “facially overbroad and  
 18 unduly burdensome.” Opp. at 8-9. But Google ignores the significant efforts  
 19 that were undertaken by LegalZoom to meet and confer, and the proposals that  
 20 LegalZoom made to narrow the scope of the requests (e.g., Exh. D):
- 21 • LegalZoom offered to limit the scope of the subpoena to January 1, 2010,  
 22 through December 31, 2013, in response to Google’s objection that the  
 23 “specified relevant period of almost seven years renders the Request  
 24 particularly overbroad and oppressive.”
  - 25 • LegalZoom provided Google with the four email addresses of Rocket  
 26 Lawyer personnel involved in the subject communications, and produced  
 27 the usability study to which the communications pertained.
  - 28 • LegalZoom offered to rely upon a declaration of a custodian of records,

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without the need for live testimony, to authenticate any records produced.

- LegalZoom offered to extend by over two weeks the time to comply with the subpoena.

➤ Finally, Google argues that Rocket Lawyer acted reasonably in the meet and confer process and was therefore able to reach an agreement with Google. Opp. at 3, n.2. But such an argument is completely irrelevant to this motion, as Google has not even attempted to describe those meet and confer efforts, and as of January 21, 2015, one day after the opposition brief was filed, Rocket Lawyer’s counsel confirmed that there is no “written agreement with Google regarding the scope of what they will produce.” Allan Decl. ¶ 6, Exh. A. Moreover, the fact that Google’s Chief Legal Officer is also on the Board of Directors for Rocket Lawyer (and the fact that Google Ventures is a significant investor in Rocket Lawyer) should call into question Google’s uneven dealings with the parties.

This motion never should have been necessary. Any slight burden that Google would have sustained in simply locating and producing responsive documents has been significantly multiplied by the efforts that Google and its counsel have employed to refuse cooperation with this court ordered subpoena. When coupled with the burden now sustained by LegalZoom and the Court to achieve compliance, Google’s conduct should be viewed as particularly abusive, and should be a subject for sanctions in the form of reasonable attorney fees necessary to pursue this motion.

DATED: January 27, 2015

GLASER WEIL FINK HOWARD  
AVCHEN & SHAPIRO LLP

By: 

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

**TAB 7**

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 2 FRED D. HEATHER - State Bar No. 110650  
 fheather@glaserweil.com  
 3 AARON P. ALLAN - State Bar No. 144406  
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 4 GLASER WEIL FINK HOWARD  
 AVCHEN & SHAPIRO LLP  
 5 10250 Constellation Boulevard, 19th Floor  
 Los Angeles, California 90067  
 6 Telephone: (310) 553-3000  
 Facsimile: (310) 556-2920

7 Attorneys for Plaintiff  
 8 LegalZoom.com, Inc.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

Glaser Weil

12 LEGALZOOM.COM, INC. a Delaware  
 corporation,  
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 Plaintiff,  
 14  
 v.  
 15 ROCKET LAWYER INCORPORATED,  
 16 a Delaware corporation  
 ,  
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 Defendants.

**CASE NO.: 5:15-mc-80003-NC**  
**REPLY DECLARATION OF**  
**AARON P. ALLAN IN SUPPORT**  
**OF MOTION TO COMPEL**  
**COMPLIANCE WITH SUBPOENA**

Before: Hon. Nathanael M. Cousins

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**REPLY DECLARATION OF AARON P. ALLAN**

I, AARON P. ALLAN, declare and state as follows:

1. I am an attorney at law duly admitted to practice before this Court and am a Partner of the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP, attorneys of record for Plaintiff LegalZoom.com, Inc. I submit this reply declaration in support of the Motion to Compel Compliance with Subpoena brought by Plaintiff LegalZoom.com, Inc. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath.

2. I was personally involved in conducting meet and confer efforts with Google, Inc., on behalf of LegalZoom.com, Inc. ("LegalZoom"). During both telephone conversations and written communications with Google's counsel, Jacob Veltman and David Kramer of the Wilson Sonsini firm, I repeatedly brought up the issue of "burden" as it might relate to Google's compliance with the subpoena. In that regard, I made specific proposals to alleviate the burden (by narrowing the time frame for searching, by allowing a custodian declaration to authenticate records, and by providing specific persons known to have been involved for both Google and Rocket Lawyer) and I also questioned Google about the nature of the burden and whether there were other ways in which we could work to alleviate the burden. In response to my inquiries on this subject, I was never given any useful information or proposals by Google's counsel. In fact, during our final telephonic meet and confer discussion, when I again raised the subject of burden and started to ask Google how we might be able to work together to alleviate any burdens associated with the production, Google's counsel David Kramer rudely interrupted me mid-sentence by saying (in substance) this is not a deposition and we are not going to discuss burden. Mr. Kramer stated that the subject would only be addressed by Google in response to a motion to compel. Mr. Kramer then proceeded to cut short the conversation by telling me what Google was willing to do, and it was clearly understood by me that his proposal was Google's last, best and final offer, and that he was not inviting any

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1 counteroffer. Exhibit I to my original declaration in support of this motion accurately  
2 describes the conversation.

3 3. During my very first meet and confer telephone conversation with Jacob  
4 Veltman on December 3, 2014, I was asked to explain (and did explain) in great detail  
5 the nature of the dispute between LegalZoom and Rocket Lawyer, as well as how and  
6 why the subject usability analysis and other requested documents from Google would  
7 help LegalZoom to demonstrate that Rocket Lawyer continued to run “free”  
8 advertisements with intent to deceive consumers. Mr. Veltman seemed satisfied with  
9 my explanation and indicated that he would proceed to evaluate whether he could  
10 locate responsive documents and let me know when they might be able to produce  
11 them. Exhibit D to my original declaration confirms these points. I never again was  
12 asked by Google’s counsel for further details on why the requested documents were  
13 relevant.

14 4. During the same initial meet and confer telephone call, Mr. Veltman  
15 asked me why we were unable to obtain the requested documents directly from  
16 Rocket Lawyer. I informed Mr. Veltman that the Rocket Lawyer production  
17 appeared to have significant gaps, and that there had been irregularities in the  
18 production which led to the court order to obtain the discovery directly from Google.  
19 He appeared to be satisfied with that explanation at the time of our initial call.

20 5. Google’s final offer to resolve the subpoena was made on a Thursday  
21 evening at 7:02 p.m., on December 18, 2014, right before the Christmas and New  
22 Year’s holidays. I told Google’s counsel that I would communicate the offer to  
23 LegalZoom and provide a response. Based on discussions over the holidays, and with  
24 a January 16, 2015, deadline for completing the discovery looming over our heads,  
25 LegalZoom made the decision to reject the offer and pursue a motion to compel. No  
26 counteroffer was made to Google for at least two reasons: (1) it was made very clear  
27 by Google’s counsel during the final meet and confer telephone call that this offer  
28 was a “final” offer and an ultimatum; and (2) the offer was made in the context of

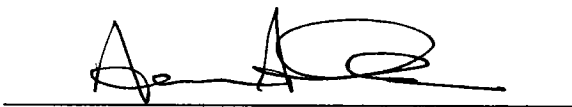
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Google’s counsel abruptly terminating the meet and confer session by interrupting the attempts by LegalZoom’s counsel to explore the extent of any burden associated with the production and potential means for alleviating that burden.

6. In Google’s opposition brief, reference is made to a compromise that Google was able to reach with Rocket Lawyer based on “good faith meet-and-confer discussions.” Attached hereto as Exhibit A is a true and correct copy of an email exchange that I had with Rocket Lawyer’s counsel on this subject which confirms that as of January 21, 2015, one day after the opposition brief was filed, there was no “written agreement with Google regarding the scope of what they will produce.”

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed on January 27, 2015, at Los Angeles, California.



AARON P. ALLAN

# **EXHIBIT A**

**Aaron Allan**

---

**From:** Vu, Hong-An <HVu@goodwinprocter.com>  
**Sent:** Wednesday, January 21, 2015 6:31 PM  
**To:** Barak Vaughn  
**Cc:** Aaron Allan; Fred Heather; Jones, Michael T  
**Subject:** RE: Follow Up Email re Deposition of Dr. Ferguson and Google Matters

Barak:

I just emailed Elizabeth Ferguson about moving the deposition to February 12. Can you please send a revised notice of deposition?

Regarding Google, I have confirmed with Mike that we do not have a written agreement with Google regarding the scope of what they will produce. Our understanding is that they are in the process of collecting/reviewing documents. Although we have an agreement about what they will produce, we have not yet received any documents.

Best,  
Hong-An

Hong-An Vu  
Goodwin Procter LLP  
601 S. Figueroa St., 41<sup>st</sup> Floor  
Los Angeles, CA 90017  
T (LA): 213-426-2557  
T (SF): 415-733-6114  
F: 213-623-1673  
[hvu@goodwinprocter.com](mailto:hvu@goodwinprocter.com)  
[www.goodwinprocter.com](http://www.goodwinprocter.com)

***Please note the change in my contact information***

**From:** Barak Vaughn [mailto:bvaughn@glaserweil.com]  
**Sent:** Wednesday, January 21, 2015 4:59 PM  
**To:** Vu, Hong-An  
**Cc:** Aaron Allan; Fred Heather  
**Subject:** Follow Up Email re Deposition of Dr. Ferguson and Google Matters

Hong-An:

It was nice to speak with you moments ago. Just to recap our conversation, here is what we discussed.

1. We are available on February 12, 2015 to conduct the deposition of Dr. Elizabeth Ferguson at Goodwin Procter, LLP in San Francisco. You informed me that you would confirm with your team that they are available for that date. If your team is available on that date, I authorized you to reach out to Dr. Ferguson, cc'ing me, and informing her that February 12, 2015 works for all parties.

2. With respect to Google, I asked if LegalZoom could receive a copy of any written agreement between Google, Inc. and Rocket Lawyer resolving issues with Rocket Lawyer's subpoena to Google. I asked for that agreement to assist LegalZoom in resolving its current discovery dispute with Google, Inc. You informed me that you were unaware if there

was a formal written agreement between Rocket Lawyer and Google with regards to the resolution of any dispute regarding Rocket Lawyer’s subpoena to Google. You would check with Michael Jones to determine if a written agreement exists and let me know.

3. We agreed that any documents received from any third-party subpoena would be shared within the three days articulated in the parties stipulation. To date, Rocket Lawyer had not received any documents from Google, according to your understanding.

Please let me know if I missed anything regarding our call, or if any of the above information is incorrect.

# Glaser Weil

**Barak Vaughn**

10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067

Main: 310.553.3000 | Direct: 310.999.9999 | Fax: 310.999.9999

E-Mail: [bvaughn@glaserweil.com](mailto:bvaughn@glaserweil.com) | <http://www.glaserweil.com/>



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\*\*\*\*\*

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 7 Facsimile: (310) 556-2920

8 Attorneys for Plaintiff  
 LegalZoom.com, Inc.

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

Glaser Weil

12 LEGALZOOM.COM, INC., a Delaware  
 13 corporation,

14 Plaintiff,

15 v.

16 ROCKET LAWYER INCORPORATED,  
 17 a Delaware corporation,

18 Defendant.

CASE NO.: CV 15-80003-MISC.

**PROOF OF SERVICE**

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**PROOF OF SERVICE**

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

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

On January 27, 2015 I served the foregoing document(s) described as:

**PLAINTIFF, LEGALZOOM.COM, INC.'S REPLY TO THE MOTION TO COMPEL COMPLIANCE WITH SUBPOENA TO GOOGLE, INC.; DECLARATION OF AARON P. ALLAN; AND**

**REPLY DECLARATION OF AARON P. ALLAN IN SUPPORT OF MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

on the interested parties to this action by delivering a copy thereof in a sealed envelope addressed to each of said interested parties at the following address(es):

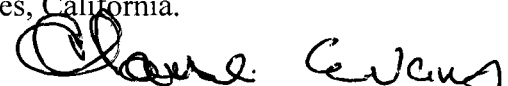
SEE ATTACHED LIST

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- (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY ELECTRONIC SERVICE) by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed on the attached mailing list.
- (BY E-MAIL SERVICE) I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the attached service list.
- (BY FACSIMILE) I caused the above-referenced document to be transmitted to the interested parties via facsimile transmission to the fax number(s) as stated on the attached service list.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the above is true and correct.

Executed on January 27, 2015, at Los Angeles, California.

  
\_\_\_\_\_  
Claire Evans



**SERVICE LIST**

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Fax: (650) 493-6811

**TAB 8**



1 Wednesday, February 25, 2015

2 1:28 p.m.

3 P R O C E E D I N G S

4 **THE CLERK:** Calling 5-15-8003, LegalZoom.com,  
5 Incorporated versus Rocket Lawyer, Incorporated.

6 **MR. HEATHER:** Good afternoon, your Honor. Fred  
7 Heather for LegalZoom.com, Inc.

8 **THE COURT:** Good afternoon, welcome.

9 **MR. HEATHER:** Thank you.

10 **MR. KRAMER:** Hi, your Honor. Dave Kramer from Wilson  
11 Sonsini for Google.

12 **THE COURT:** Good afternoon, welcome. All right,  
13 similar procedural posture here, different case, different  
14 issues presented in the cases, different subpoena, but we're  
15 talking about a third party subpoena here, and to pick up from  
16 the last case, not to distinguish it in every category, there  
17 is a threshold question here about the connection between  
18 Google and Rocket Lawyer, and I've read the briefs about what  
19 interpretation you think I should draw from that, and my  
20 tentative view is that that's -- I get that as context for the  
21 dispute, but it's not dispositive in any way.

22 I'm not going to order the discovery just because  
23 there is some connection between Rocket Lawyer and Google, nor  
24 am I going to not allow it because of the connection. It's  
25 just something that I can take into consideration, and here,

1 the fact that there are some commonality between the two and  
2 some other business connections between the two, I get that.  
3 That's not uncommon in this type of dispute. But to me, the  
4 breadth of the documents being sought, weighing the benefits  
5 and the burden of it, I was not persuaded on first read that  
6 I should give you the relief sought.

7           And let me elaborate a little more. In the moving  
8 papers there's a number of references to gaps in the production  
9 from Rocket Lawyer, that what you had from Rocket Lawyer had  
10 gaps in it, that you needed to fill those gaps, and from my  
11 perspective, I don't know what those gaps are.

12           You haven't articulated what you got from Rocket  
13 Lawyer and the things you didn't get that were asked for and a  
14 basis for me to be convinced that Google has those gaps and can  
15 fill them in without a burdensome production.

16           I could be persuaded of that, but based on the  
17 information presented, it read to me as, trust us, there are  
18 gaps, and trust us, Google can fill those gaps, and I have to  
19 go with the information I have. I can't speculate as to the  
20 conclusions, so I need more, to be convinced that this  
21 discovery is necessary, and not just that it's necessary, but  
22 that Google is the one that should be providing it.

23           So I'll start with you, as the party who my tentative  
24 view is against. Explain to me why this is relevant and  
25 proportional.

1           **MR. HEATHER:** Well, I will say that I did -- your  
2 Honor's comments to the first case did trigger something in me,  
3 and I do appreciate the openness with which your Honor shared  
4 your views, and hopefully I can address them and we can reach  
5 some compromise.

6           Let me say at the outset, one of the things that, when  
7 I saw your tentative, that I thought might be helpful to the  
8 Court is, this is a very unique discovery request, in the sense  
9 that it invokes an issue of your Honor's consideration by way  
10 of comity to the Central District of California and the trial  
11 judge, and I'd like to give a little context of how this  
12 discovery arose.

13           Judge Gary Feess was the trial judge at the time. He  
14 retired December 31. It's now in front of Magistrate Judge  
15 McDermott for trial, and just after the briefing on summary  
16 judgment by Rocket Lawyer, LegalZoom found some documents that  
17 they hadn't seen before that they had requested a year before,  
18 and the documents were kind of dumped right when the filings  
19 were due, and we made an application to Judge Feess to allow us  
20 to reopen discovery, because these documents were so important.

21           This is a case of unfair competition. These were --  
22 the basic allegation is that Rocket Lawyer advertises free, and  
23 free isn't free, and these were a series of studies by Rocket  
24 Lawyer itself that free isn't free, and in fact, an e-mail from  
25 Google saying that they found that free wasn't free, that the

1 advertising by Rocket Lawyer violated Google's policies, and  
2 Google was going shut them down before being able to advertise  
3 unless they changed their ads, and that's the last we saw of  
4 anything from Google. The ads weren't changed until 2012,  
5 after we sued. So it raised questions of, well, why did Google  
6 back off? What is their internal analysis of these  
7 advertisements?

8 They also did a study under Google Ventures, which is  
9 one of the categories of production, in which Google Ventures,  
10 a subsidiary of Google or affiliated company, concluded free  
11 isn't free.

12 And I'd like permission, because I had it faxed to me  
13 this morning, to just read a couple sentences from Judge Feess'  
14 minute order agreeing to take the summary judgment motions off  
15 calendar in order to allow this discovery, and just a couple  
16 sentences of his comments about the relevance of it, and I can  
17 certainly give the Court my copy, or Mr. Kramer my copy --

18 **THE COURT:** This is from when?

19 **MR. HEATHER:** This is a minute order from Judge Feess  
20 on October 1, 2014. It's Order Re: *Ex Parte* Application to  
21 Continue.

22 **THE COURT:** Well, you've submitted many pages of  
23 information in your motion, and that was something you had in  
24 hand. So yes, you can read it to me, but if it's new  
25 information, I'm not sure why I'm hearing it now, but go ahead.

1           **MR. HEATHER:** Well, I understand, and I'll explain why  
2 you're hearing it now as opposed to before, because it gives  
3 context to something we did give your Honor, and I think,  
4 again, as a matter of comity, your Honor would want to hear it.

5           **THE COURT:** All right, go ahead.

6           **MR. HEATHER:** Here's what he said. He said,

7                   "After review of the documents -- "  
8 and those are what I just described to you,

9                   " -- it is clear to the Court that not allowing  
10 supplement to the record would cause LegalZoom  
11 irreparable harm and potentially make it vulnerable to  
12 Rocket Lawyer's motion for summary judgment. The  
13 record suggests that Rocket Lawyer intentionally  
14 dragged its feet over a year in producing documents  
15 long after the pertinent documents had been requested.  
16 It appears that the late production contains  
17 information that is not just relevant, but may have a  
18 significant bearing on the Court's resolution of the  
19 pending motions."

20           Now, Judge McDermott did the same thing. We had --  
21 well, what Judge Feess did, and this is Exhibit A to  
22 Mr. Allan's deposition, is he granted a stipulation by the  
23 parties, pursuant to this order, to take particular discovery,  
24 and among that discovery was the deposition of Elizabeth  
25 Ferguson who had done these internal studies, the discovery of



1 document subpoenas to Google Ventures relating to their  
2 studies, and quote, "Google -- relating to Google's inquiry  
3 into Rocket Lawyer's free advertisements." And that's what led  
4 to these subpoenas.

5 **THE COURT:** Well, I get all that.

6 **MR. HEATHER:** So --

7 **THE COURT:** Of course, Google is not a party to any --  
8 that stipulation or to the comments --

9 **MR. HEATHER:** That's true.

10 **THE COURT:** -- that came to the Court before that.

11 **MR. HEATHER:** That's true, and I'm going to get,  
12 I suppose, to the things that's most important to your court,  
13 which are our willingness to so narrowly define this request  
14 that we try to eliminate, however we can, the burden on Google.

15 But there are four categories of documents. One was  
16 information about Katherine K, who is the woman who wrote this  
17 document from Google saying, we're going to -- free isn't free,  
18 and they provided that information to us.

19 The other was the information about the Google  
20 Ventures study, and they said, "we'll produce that, but only if  
21 you give up the other inquiries," and we didn't think that was  
22 fair. So there's not a burden issue as to that request.

23 That leaves two requests. One is their internal  
24 considerations as to why --

25 **THE COURT:** Let me back up. It doesn't sound like you

1 took that bargain. You're here, you've filed your motion --

2 **MR. HEATHER:** Right.

3 **THE COURT:** -- and are asking for more.

4 **MR. HEATHER:** Right, but your Honor's tentative would  
5 apply to everything, including the one that they agreed that  
6 they would produce if we gave up on the other requests. So I'm  
7 simply saying that that one, it doesn't seem to me, presents a  
8 burden issue, on that one request.

9 The two requests that I agree may present a burden  
10 problem, that I am happy to resolve -- and we have tried to  
11 compromise things. We cut the time frame. We agreed, as your  
12 Honor just indicated, that we wouldn't request a deposition,  
13 we'd take a declaration as to authenticity, and we tried to ask  
14 them what the burden was, saying, we'll try to work it out with  
15 you, and we couldn't get an understanding of that, and I'm here  
16 today to work it out.

17 But the two things that remain open, if your Honor  
18 agrees that since they agreed earlier to produce the Google  
19 Ventures thing, they should be held to that, the two things  
20 that remain open is, what happened internally which led to  
21 Google's fairly extraordinary statement to Rocket Lawyer that  
22 if you don't change your advertisements, we're not going to  
23 allow you to continue to advertise, and what happened  
24 internally at Google that caused them to back off that and not  
25 insist?

1           And that's where -- I know your Honor said the issue  
2 of the connection between Google and Rocket Lawyer on its face  
3 doesn't tell you which direction to go, but let me just say  
4 this: The chief legal officer of Google is a member of the  
5 board of Rocket Lawyer. Google invests in Rocket Lawyer. Did  
6 the chief legal officer of Google tell Katherine K, or other  
7 people, back off?

8           These are highly relevant documents. They're so  
9 relevant that now Magistrate Judge McDermott, when he got the  
10 case in order to set a trial and learned that we were  
11 litigating with Google about discovery, said, "You may be in  
12 the Ninth Circuit before you get any documents, I'm not going  
13 to set a trial date."

14           This entire case is being held up because what  
15 potentially are the most relevant documents in the case we  
16 haven't been able to get.

17           Now, to go to what your Honor's correct concern is,  
18 I'm willing to take -- and I'll articulate that in a somewhat  
19 informal way -- all I want to know is, what are the internal  
20 documents that surrounded Google's decision to advise Rocket  
21 Lawyer that they didn't think their advertisements were in  
22 accordance with their policy, and unless they were changed,  
23 they would shut them down, and what internal documents or memos  
24 may exist that caused Google not to do that?

25           We have no documents from Rocket Lawyer about any

1 exchange, written exchange with them, other than right at the  
2 time of this one memo. We have no documents showing how it was  
3 resolved, if it was resolved.

4 I will give you one example of a gap. One of the  
5 things that Judge Feess allowed us to do was take the  
6 deposition of Elizabeth Ferguson, Ph.D., who did five usability  
7 studies with small business owners about these advertisements.  
8 She probably used 50 or 60 subjects over the five studies, in  
9 total. Each of them was a 90-minute interaction. Every one of  
10 them was videotaped. The videotapes were all left with Rocket  
11 Lawyer. The IT person most knowledgeable for Rocket Lawyer  
12 said that policy is not to destroy anything, and all but three  
13 of those videotapes were destroyed. Obviously, for a juror  
14 hearing a small business owner comment on the fact that he  
15 thought the advertisements were misleading is highly probative  
16 evidence. We also have documents from Rocket Lawyer that turn  
17 up late or don't turn up at all, that are referenced in other  
18 documents.

19 So the last category of documents is Google's  
20 communications with Rocket Lawyer about the free  
21 advertisements. We only have this one. Were there others?  
22 And they say they all should be with Rocket Lawyer, but  
23 standard discovery is, what if there's notes on them by Google?  
24 What if there are internal follow-ups?

25 I communicated this to them, but here is their

1 response. These are relatively narrow, relatively narrow  
2 documents. Maybe they don't exist, but I don't see where the  
3 burden is if I define it in that narrow, narrow window.

4 Go to the Katherine K document. It's dated  
5 December 2011. See if there are other documents to or from  
6 her, or within Google, that relate to this decision to put  
7 Rocket Lawyer on notice. See if there is follow-up as to why  
8 Google isn't going to do anything.

9 I don't think that that is an overly burdensome  
10 request, and if there are communications that emanated out of  
11 that to Rocket Lawyer, then there should be a file that has  
12 those, they shouldn't be voluminous, I'll pay for the copying,  
13 and we ought to be able to get those.

14 And I would ask your Honor, too, as a matter of  
15 comity, to help us get behind this wall, because these are  
16 documents the Court has found to be critically important to a  
17 summary judgment motion that is continued to be put off until  
18 this discovery is completed.

19 **THE COURT:** My reaction -- and I'll give Mr. Kramer a  
20 chance to respond further -- is the Court in the Central  
21 District has not evaluated, has not looked at whatever  
22 documents Google actually has, and so you're saying that  
23 there's been a finding of the critical documents. I think  
24 that's not in the record.

25 **MR. HEATHER:** Sure, I agree.

1           **THE COURT:** The Court gave permission to come and --  
2 free to ask for the documents from Google without having heard,  
3 or a response from Google at all.

4           **MR. HEATHER:** Right.

5           **THE COURT:** And so it's an open question --

6           **MR. HEATHER:** Sure.

7           **THE COURT:** -- before the Court; there's no  
8 determination.

9           All right, Mr. Kramer, tell me, what do you think?

10          **MR. KRAMER:** Thank you, your Honor.

11           It will come as no surprise that Google thinks the  
12 tentative is exactly right. This, what we're hearing today  
13 from counsel, is the very first time that Google's heard any of  
14 this. It has no idea what's transpired in the District Court.  
15 It has no idea about these new theories of relevance. They're  
16 not articulated even in the motion papers.

17           So for us to try and negotiate on the fly at this  
18 point, after a motion to compel has been filed, that's not the  
19 way this Rule 45 is supposed to work. We're supposed to  
20 negotiate and hash through these issues in a meet-and-confer  
21 process, and the record is quite clear as to how that  
22 meet-and-confer process went.

23           We said, "Hey, these are burdensome, we think you can  
24 get this from Rocket Lawyer, tell us why you can't." We got no  
25 answer. We said, "You know what? We'll give you this, as long

1 as that resolves the issue." We got no answer for three weeks,  
2 and then we got a motion to compel. That's not good faith.  
3 That's not a meet and confer. Rule 45 not only prohibits that,  
4 but it actually mandates sanctions for that kind of behavior.

5 So from Google's perspective, this is not the way a  
6 meet-and-confer process should be conducted, after the parties  
7 have been put -- after Google, a non-party, has been put to the  
8 significant expense not only of the meet-and-confer process,  
9 but also the briefing process.

10 Having heard these theories of relevance about  
11 Google's internal documents now for the first time, I don't buy  
12 them. I don't think that anything Google has to say one way or  
13 another on this issue matters one whit in this case. Google is  
14 not an expert witness. If there's a document from Katherine K  
15 that speaks to this discovery that they're seeking, we've never  
16 gotten it. I don't even know what we're talking about here.

17 So saying -- sending us to go back and look for  
18 documents that relate to an e-mail that they've never provided  
19 to us is sort of the problem. We asked for -- tell us, by  
20 virtue of your litigation experience, where we should be going,  
21 who we should be talking about, and we didn't get a response.  
22 We got a motion to compel.

23 Google receives as many non-party subpoenas as  
24 virtually anyone on the planet and it routinely, I would say  
25 virtually every day, provides information in response to them,

1 and all it's asking for here is that a litigant that is seeking  
2 information not look at Google as the source of first resort,  
3 and that it instead seek that information first from its  
4 adversary, and second, that a litigant comply with Rule 45, and  
5 we don't think that LegalZoom did either of those things in  
6 this case.

7           **THE COURT:** Well, they did seek information first from  
8 the defendant in the case, and they got leave to seek  
9 additional information. The question is: In doing so, have  
10 they articulated a basis that they can't get it in the first  
11 instance, and is it based on something more than speculation  
12 that there are relevant materials that Google possesses that  
13 they don't already have access to?

14           **MR. KRAMER:** Fair enough, your Honor, but we've heard  
15 nothing from them about this, other than LegalZoom might not  
16 have made a complete production. That can't be enough, because  
17 that would swallow the rule, as we said in our papers, of the  
18 third party doctrine. Every case, the same thing could be  
19 said.

20           Here -- I don't even know what documents those orders  
21 that counsel read refer to. I don't know what videos we're  
22 talking about, and I guess I have to take his word for it here  
23 as an officer of the court, but again, this is the very first  
24 time we're hearing about it, and that's not the way the process  
25 should work.



1           **MR. HEATHER:** Your Honor, may I respond briefly?

2           **THE COURT:** You may.

3           **MR. HEATHER:** I do think that this is a classic  
4 example of how meet-and-confers should not take place, and  
5 I would -- I'm not going to go through chapter and verse, but  
6 there are e-mails after e-mails where we tried to compromise  
7 this. We told them that this was the result of a court order.  
8 We told them the case was being held up. We asked them what  
9 their burden was, and Mr. Kramer's response, quote, was, "I'm  
10 not here to give a deposition."

11           You can tell from what I've articulated here today  
12 that I want to narrow this as much as possible so it's not  
13 burdensome. This clearly -- we cannot get Google's internal  
14 documents surrounding its evaluation of Rocket Lawyer's  
15 advertising and its decision to threaten to shut them down, we  
16 cannot get those documents from Rocket Lawyer. If it's a  
17 burden to find them, he can articulate that, but he hasn't. He  
18 may be able to get those documents in 10 minutes, and they may  
19 be highly relevant.

20           The e-mail which triggered Judge Feess' vacating the  
21 trial date and the motion for summary judgment date was based  
22 on his assessment that this document related to Google could  
23 lead to the discovery not just of relevant information, as he  
24 said, but information without which it could cause irreparable  
25 harm to LegalZoom. Mr. Kramer has also not addressed the fact

1 that one of the four categories of documents he did agree to  
2 produce, and I would certainly think that that one ought to be  
3 produced.

4 The only issue, I think, is whether or not we should  
5 be entitled -- we've made a showing that we should be entitled  
6 to Google's communications to Rocket Lawyer about this issue of  
7 Google's concern as to whether or not their ads conformed to  
8 their policy. I would think those documents are going to be  
9 located in the same place that the documents in the other  
10 category about Katherine K are located.

11 My guess, having done this for almost 50 years, is  
12 this is not even close to a burdensome exercise, and if he  
13 makes the effort to find these documents and a burden arises,  
14 I will certainly do what I can to alleviate it, but I want him  
15 to try, and perhaps it will turn up nothing, and perhaps it  
16 will turn up a document that will help the case settle, and  
17 perhaps it will turn up a document that will affect summary  
18 judgment, and perhaps it will turn up a document that will  
19 affect trial.

20 And to deprive us of that, I think, deprives the Court  
21 in the Central District of continuing this case with all of the  
22 relevant information that's necessary to lead to a just result.

23 **THE COURT:** Mr. Kramer, I'll give you the final word.

24 **MR. KRAMER:** Yes, your Honor. I just have no idea  
25 what's happened in the Central District, and there's nothing

1 before the Court about what went -- what transpired there. So  
2 I can't evaluate counsel's statements on that front.

3 With respect to the one category that counsel's  
4 referring to, that was offered in a compromise, as a meet-and-  
5 confer offer that was part of a discussion, to avoid this kind  
6 of cost burden on Google. "We'll give you this if that will  
7 end this." They didn't accept. So Google hasn't provided  
8 those documents, and instead, it had to incur the costs of this  
9 motion practice, and again, this just isn't the way the  
10 meet-and-confer process is supposed to work.

11 That's all I have.

12 **THE COURT:** All right.

13 **MR. KRAMER:** Thank you.

14 **THE COURT:** I'll take the motion under submission, and  
15 we'll have a written order for you shortly.

16 **MR. HEATHER:** Thank you very much, your Honor.

17 **THE COURT:** Thank you.

18 1:51 p.m.

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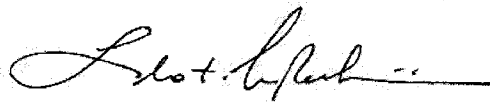
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CERTIFICATE OF TRANSCRIBER

I, Leo Mankiewicz, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



03/29/2015

Signature of Transcriber

Date

**TAB 9**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LEGALZOOM.COM,  
Plaintiff,  
v.  
ROCKET LAWYER INC.,  
Defendant.

Case No. 15-mc-80003 NC  
CDCA Case No. 12-cv-00942 GAF

**ORDER DENYING  
LEGALZOOM.COM'S MOTION TO  
COMPEL AGAINST NON-PARTY  
GOOGLE, INC.**

Re: Dkt. No. 1

In this false advertising and unfair business practices case, plaintiff LegalZoom moves to compel the production of documents subpoenaed from non-party Google. LegalZoom contends that because there were "significant gaps" in the production of documents it received from defendant Rocket Lawyer, it needs Google to fill those gaps. Under Federal Rule of Civil Procedure 45, when a party demands documents from a non-party, it must take "reasonable steps" to avoid imposing an undue burden or expense on the third party. This Court finds that LegalZoom did not take "reasonable steps" to confine its requests to Google, so the motion to compel is denied.

**BACKGROUND**

This discovery motion arises from a dispute in the U.S. District Court for the Central District of California between competitors LegalZoom and Rocket Lawyer. According to

1 LegalZoom, it is an online provider of “legal solutions.” Dkt. No. 1 at 4. LegalZoom  
2 asserts that Rocket Lawyer engaged in false advertising and unfair business practices when  
3 it used the term “free” in advertising for its services.

4 LegalZoom asserts that it learned from documents produced by Rocket Lawyer that  
5 Google had communications with Rocket Lawyer about the free advertisements. In the  
6 underlying case, on November 10, 2014, District Court Judge Gary A. Feess ordered that  
7 LegalZoom would be allowed additional time to conduct discovery, including from Google  
8 relating to Google’s inquiry into Rocket Lawyer’s free advertisements. Dkt. No. 1, Ex. A.  
9 On November 14, 2014, LegalZoom served Google with a subpoena seeking four categories  
10 of documents: (1) Any and all documents relating to Rocket Lawyer free advertisements;  
11 (2) Any and all communications between Google and Rocket Lawyer relating to Rocket  
12 Lawyer free advertisements; (3) Any and all documents relating to studies managed or  
13 performed by Google Ventures for Rocket Lawyer, to the extent those studies examine or  
14 concern Rocket Lawyer free advertisements; and (4) Any and all documents sufficient to  
15 identify contact information for a specified Google employee.

16 As to the first three categories, Google objected that the requests were overly broad  
17 and unduly burdensome and should be demanded from Rocket Lawyer in the first instance.  
18 When served by LegalZoom, the subpoenas sought documents for the time period January  
19 1, 2008, to present. After Google objected to the scope of the subpoenas, LegalZoom  
20 agreed to modify the requests to the four-year period of January 1, 2010, through December  
21 31, 2013. Dkt. No. 1 at 6. As to the fourth category, Google provided information to  
22 LegalZoom and the parties resolved their dispute before the hearing.

23 After a meet and confer process, full briefing, and a tentative ruling did not resolve  
24 the motion to compel, this Court held a hearing on February 25, 2015. Dkt. No. 9.

### 25 **LEGAL STANDARD**

26 Federal Rules of Civil Procedure 26 and 45 govern discovery from non-parties. Rule  
27 26 allows a party to obtain discovery concerning any nonprivileged matter that is relevant to  
28 any party’s claim or defense. Fed. R. Civ. P. 26(b)(1). Information is relevant when it will

1 be admissible at trial or when the evidence is “reasonably calculated to lead to the discovery  
2 of admissible evidence.” *Id.* The Rule 26 relevancy standard also applies to subpoenas to  
3 non-parties. *Beinin v. Ctr. for Study of Popular Culture*, No. 06-cv-02298 JW (RS), 2007  
4 WL 832962, at \*2 (N.D. Cal. Mar. 16, 2007). Rule 45, in turn, provides that a party may  
5 command a non-party to testify at a deposition and “produce designated documents,  
6 electronically stored information, or tangible things in that person’s possession, custody, or  
7 control.” Fed. R. Civ. P. 45(a)(1)(A)(iii).

8 Even if a subpoena to a non-party seeks relevant information, the Court must limit  
9 discovery if “the discovery sought . . . can be obtained from some other source that is more  
10 convenient, less burdensome, or less expensive” or if “the burden or expense of the  
11 proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 45(d)(1); Fed. R. Civ. P.  
12 26(b)(2)(C)(i); *see Nalco Co. v. Turner Designs, Inc.*, No. 13-cv-02727 NC, 2014 WL  
13 1311571, at \*1 (N.D. Cal. Mar. 31, 2014) (denying motion to compel because subpoenaing  
14 party failed to take reasonable steps to avoid imposing undue burden); *In re NCAA Student-*  
15 *Athlete Name & Likeness Licensing Litig.*, No. 09-cv-01967 CW (NC), 2012 WL 629225, at  
16 \*1 (N.D. Cal. Feb. 27, 2012) (“[B]ecause antitrust plaintiffs did not make reasonable  
17 attempts to avoid imposing an undue burden on the nonparties, sanctions against antitrust  
18 plaintiffs are warranted under Rule 45.”); *Convolve, Inc. v. Dell, Inc.*, No. 10-cv-80071  
19 WHA, 2011 WL 1766486, at \*2 (N.D. Cal. May 9, 2011) (quashing subpoena and noting  
20 exhaustive definitions to words such as “documents” and “identify” serve to further broaden  
21 the subpoena scope unnecessarily). A party or lawyer responsible for issuing a subpoena  
22 therefore must take “reasonable steps to avoid imposing undue burden or expense on a  
23 person subject to the subpoena.” Fed. R. Civ. P. 45(c)(1). In turn, the court “must protect a  
24 person who is neither a party nor a party’s officer from significant expense resulting from  
25 compliance.” Fed. R. Civ. P. 45(d)(2)(B)(ii).



**DISCUSSION**

1  
2 For each of the three categories of information requested, LegalZoom has not met its  
3 burden of establishing that it took “reasonable steps” to avoid imposing an undue burden on  
4 non-party Google. Fed. R. Civ. P. 45(d)(1).

5 LegalZoom asserts that it needs documents from Google because it believes there  
6 were “significant gaps” and “irregularities” in the production of documents from the  
7 defendant, Rocket Lawyer. Dkt. No. 6 at 3. Yet to fill these gaps, LegalZoom demands for  
8 a four-year period “any and all documents” relating to Rocket Lawyer free advertisements,  
9 “any and all communications” between Google and Rocket Lawyer relating to Rocket  
10 Lawyer free advertisements, and “any and all documents” relating to studies managed or  
11 performed by a Google entity, Google Ventures, concerning Rocket Lawyer free  
12 advertisements. Despite extensive conferring and briefing, LegalZoom has not specified the  
13 parameters of the “gaps” that Google needs to fill. What documents did Rocket Lawyer  
14 provide? Is there a basis to assert that for specific persons, in specific time periods, Rocket  
15 Lawyer did not produce its communications with Google about the free advertisements?  
16 Google, and the Court, are left to guess. “There is simply no reason to burden nonparties  
17 when the documents sought are in possession of the party defendant.” *Nidex Corp. v.*  
18 *Victor Co. of Japan*, No. 05-cv-0686 SBA (EMC), 249 F.R.D. 575, 577 (N.D. Cal. 2007)  
19 (quashing subpoena to non-party where same documents possessed by party).

20 LegalZoom next contends that it “should be entitled to review documents in Google’s  
21 possession as a cross-check against any production previously made by Rocket Lawyer.”  
22 Dkt. No. 1 at 13. There is no such entitlement in the Federal Rules of Civil Procedure. To  
23 the contrary, the Rules require the requesting party to take “reasonable steps” to minimize  
24 burden. Here, that would include assuring that Google was not reproducing significant  
25 materials already produced by the party defendant. LegalZoom did not show that it took  
26 these reasonable steps.

27 Finally, LegalZoom asserts that Google’s alleged ties to Rocket Lawyer make it “less  
28 than a third party” to the underlying dispute. Dkt. No. 1 at 8. Specifically, LegalZoom

1 states that Google is a “significant investor” in Rocket Lawyer, that Google’s Chief Legal  
2 Officer is on the Board of Directors of Rocket Lawyer, and that the same Officer was  
3 formerly a partner in the law firm representing Google. *Id.* Yet LegalZoom cites no  
4 authority for the proposition that Rules 45 and 26 only protect a non-party like Google if it  
5 is a neutral to the underlying case. In sum, the Court determines that LegalZoom’s  
6 obligation to be reasonable is not excused by its allegations of connections between Google  
7 and Rocket Lawyer.

8 **CONCLUSION**

9 For the reasons described, the Court denies LegalZoom’s motion to compel.

10 Under Rule 45(d)(1), the Court must impose an appropriate sanction on a party or  
11 attorney responsible for issuing a subpoena that violates Rule 45. If Google seeks such a  
12 sanction, it must move within 14 days of this order.

13 Any party may object to this order, but must do so within 14 days. Fed. R. Civ. P.  
14 72(a). Any objection must be directed to District Court Judge Lucy H. Koh, as she was the  
15 general duty judge in this Division on the day the motion to compel was filed.

16  
17 IT IS SO ORDERED.

18 Date: March 23, 2015

19   
20 Nathanael M. Cousins  
21 United States Magistrate Judge  
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