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15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

Glaser Weil

17 LEGALZOOM.COM, INC.,

18 Plaintiff,

19 v.

20 ROCKET LAWYER INC.,

21 Defendants.

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

**DECLARATION OF FRED
 HEATHER RE
 LEGALZOOM.COM, INC.'S
 OPPOSITION TO NON-PARTY
 GOOGLE INC.'S MOTION FOR
 ATTORNEY FEES PURSUANT TO
 FRCP(45)(D)(1)**

Before: Hon. Nathanael M. Cousins

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Glaser Weil

DECLARATION OF FRED D. HEATHER

I, FRED D. HEATHER, declare 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 LegalZoom.com, Inc.'s Opposition to Non-Party Google Inc.'s Motion for Attorneys Fees Pursuant to FRCP (45)(d)(1). 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. Attached hereto as **Exhibit A** is a true and correct copy of an April 17, 2015 Order from United States Magistrate Judge John E. McDermott moving the dates to complete third party discovery by an additional 120 days.

3. Attached hereto as **Exhibit B** is a true and correct copy of an October 1, 2014 Order re: Ex Parte Application to Continue Hearing issued by United States District Court Judge Gary Feess, which speaks to the importance of the documents that Defendant Rocket Lawyer produced belatedly.

4. Attached hereto as **Exhibit C** is a true and correct copy of a December 2, 2011 email between Katherine K. of Google and Charley Moore of Rocket Lawyer.

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 April 20, 2015, at Los Angeles, California.


FRED D. HEATHER

EXHIBIT A

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 12-9942 GAF (AGRx) Date October 1, 2014

Title LegalZoom.com Inc. v. Rocket Lawyer Incorporated

Present: The Honorable **GARY ALLEN FEES**

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
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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
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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.

From: Katherine K [katherine.k@google.com]
Sent: Friday, December 02, 2011 3:59 PM
To: Charley Moore
Cc: Alisa Weiner
Subject: Re: Rocket Lawyer Follow Up

Hi Charley,

I've spoken to the policy team, but they will not give us a formal statement. I'm very sorry about this, but as I mentioned before, it really is just not something they can do.

However, I can give you an explanation of what they have communicated to me.

What I have been told is that RocketLawyer's ads currently violate our Offer Not Found policy, which falls under Advertiser Claims.

The reasons are that:

- 1) Saying something like "Incorporate for Free" does not disclose the state filing fees, so it is essentially impossible to incorporate for free.
- 2) Saying "Free Legal Document" does not disclose the contingency that a user must opt into a legal plan in order for the document to be free, which violates the FTC definition of the use of "free."

If you can send me your rebuttal, I will pass it along to Policy and ask them to re-review. It is not possible for me to put you in touch with a policy specialist directly, but I will make sure to communicate that this is of the utmost urgency.

Thanks,
Katherine

Original Message Follows:

From: Charley Moore <cm@rocketlawyer.com>
Subject: Re: Rocket Lawyer Follow Up
Date: Fri, 2 Dec 2011 11:30:16 -0800

> Ok. Cool.
>
> Will call you at 12.
>
>
>
> On Dec 2, 2011, at 11:05 AM, Katherine K <katherine.k@google.com> wrote:
>
> > Hi Charley,
> >
> > We'll discuss more on the phone, but I wanted to let you know right
away
> > that we are able to get an extension. Since I spoke with Mike
yesterday,
> > that's actually what my team and I have been negotiating with the
Policy

> > team, and they've now confirmed that we can get a week's extension,
moving
> > the deadline to Monday 12/12.
> >
> > Wanted to let you know ASAP. Talk to you soon.
> >
> > Best,
> > Katherine
> >
> > Original Message Follows:
> > -----
> > From: "Katherine K" <katherine.k@google.com>
> > Subject: Re: Rocket Lawyer Follow Up
> > Date: Fri, 02 Dec 2011 18:15:46 -0000
> >
> >> Hi Charley,
> >>
> >> Okay, just give me a call when you are available and I will be here!
> >>
> >> Thanks,
> >> Katherine
> >>
> >>
> >
>

EXHIBIT C