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 7 Google Inc.

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

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

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

Before: Hon. Nathanael M. Cousins

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **PRELIMINARY STATEMENT**

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  
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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  
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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.

1 **ARGUMENT**

2 LegalZoom’s motion disregards the significant limits that the Federal Rules place on  
3 nonparty discovery. *See* Fed. R. Civ. P. 45(c)(1) (“A party or attorney responsible for issuing  
4 and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense  
5 on a person subject to the subpoena.”); *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646,  
6 649 (9th Cir. 1980); *High Tech Med. Instrumentation, Inc. v. New Image Indus., Inc.*, 161 F.R.D.  
7 86, 88 (N.D. Cal. 1995) (“nonparties subject to discovery requests deserve extra protection from  
8 the courts”). “A court keeps this distinction between a party and nonparty in mind when it  
9 determines the propriety of a nonparty’s refusal to comply with a subpoena by balancing the  
10 relevance of the discovery sought, the requesting party’s need, and the potential hardship to the  
11 party subject to the subpoena.” *Beinin v. Ctr. for the Study of Popular Culture*, No. C 06-2298,  
12 2007 WL 832962, at \*6 (N.D. Cal. Mar. 16, 2007) (internal quotation marks omitted). Here, that  
13 balance tips decisively against LegalZoom. The documents LegalZoom seeks are in the  
14 possession of a party to the litigation and production by Google would be burdensome.  
15 LegalZoom’s bid to compel such discovery should be rejected.

16 **I. LegalZoom’s Request No. 4 Is Moot**

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

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

25 In the discovery context, “there is simply no reason to burden nonparties when the  
26 documents sought are in possession of the party defendant.” *Nidec Corp. v. Victor Co. of Japan*,  
27 249 F.R.D. 575, 577 (N.D. Cal. 2007). Parties must “obtain discovery from one another before  
28 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  
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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  
Professional Corporation

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28 *Attorneys for Nonparty Google Inc.*