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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
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

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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 & E¹); 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
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28 ¹ 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.

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

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By: 

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