

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 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,
 13
 Plaintiff,
 14
 v.
 15 ROCKET LAWYER INCORPORATED,
 16 a Delaware corporation
 ,
 17
 Defendants.
 18

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

28

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

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.

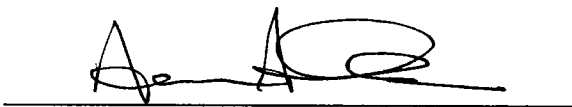
20 5. Google’s final offer to resolve the subpoena was made on a Thursday
21 evening at 7:02 p.m., on December 18, 2014, right before the Christmas and New
22 Year’s holidays. I told Google’s counsel that I would communicate the offer to
23 LegalZoom and provide a response. Based on discussions over 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

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

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., 41st Floor
Los Angeles, CA 90017
T (LA): 213-426-2557
T (SF): 415-733-6114
F: 213-623-1673
hvu@goodwinprocter.com
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 | <http://www.glaserweil.com/>



This message and any attached documents may contain information from the law firm of Glaser Weil Fink Howard Avchen & Shapiro LLP that is confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

This message is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to the attorney-client privilege or other confidentiality protections. If you are not a designated recipient, you may not review, copy or distribute this message. If you receive this in error, please notify the sender by reply e-mail and delete this message. Thank you.
