

THE HONORABLE ROBERT S. LASNIK

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5 **UNITED STATES DISTRICT COURT**
6 **WESTERN DISTRICT OF WASHINGTON**
7 **AT SEATTLE**

8 LEGALZOOM.COM, INC., a Delaware
9 corporation,

10 Plaintiff,

11 v.

12 ROCKET LAWYER INCORPORATED, a
13 Delaware corporation,

14 Defendant.

CASE NO.: 2:15-MC-0010-RSL

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16 **NONPARTY MICHAEL MARGOLIS'S OPPOSITION TO MOTION TO COMPEL**
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MARGOLIS OPP. TO MOTION TO COMPEL
CASE NO.: 2:15-MC-0010-RSL

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1 **I. INTRODUCTION**

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

10 From what Google and Mr. Margolis have gleaned about the case, Legal Zoom alleges that
11 Rocket Lawyer has misleadingly advertised “free” legal services on Google’s advertising service.
12 Legal Zoom further alleges that Rocket Lawyer was on notice that these advertisements were
13 allegedly misleading because Google Ventures employees, including Mr. Margolis, conducted a
14 usability analysis of the Rocket Lawyer website that, among other things, expressed concern with
15 the use of the term “free” not in Rocket Lawyer’s advertising but on the Rocket Lawyer website.

16 It seems reasonable to assume that any relevant documents relating to Google Ventures’
17 analysis and resulting report could be obtained from Rocket Lawyer directly. But Legal Zoom
18 demanded “all” those documents in separate subpoenas sent to Mr. Margolis (the subpoena at
19 issue here), Google Inc., and Google Ventures. This, despite the fact that the analysis is at best
20 indirectly related to Rocket Lawyer’s disputed advertising.

21 Google and Mr. Margolis repeatedly explained during the meet-and-confer process that
22 they are outsiders to Legal Zoom’s years’ long litigation with Rocket Lawyer, but Legal Zoom
23 expressed no interest in a meaningful meet-and-confer process. When Google and Mr. Margolis
24 questioned why Legal Zoom could not obtain the requested information directly from Rocket
25 Lawyer, Legal Zoom had no response. And when Google and Mr. Margolis offered as a
26 compromise to produce all documents related to the usability test if Legal Zoom would withdraw
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28 ¹ One of these subpoenas revised the compliance date of an earlier subpoena.

1 its demand for Mr. Margolis's deposition, Legal Zoom ignored the proposal for almost three
2 weeks, then rejected it without explanation and filed separate motions to compel against Google
3 and Mr. Margolis.

4 Even in its motion, Legal Zoom offers no real explanation for why Mr. Margolis should
5 produce documents and testimony as to information that is undoubtedly in Rocket Lawyer's
6 possession, such as information regarding correspondence between Google Ventures and Rocket
7 Lawyer and materials Google Ventures provided to it. In point of fact, Mr. Margolis does not
8 even own or control the documents Legal Zoom seeks. They belong to his employer, Google
9 Ventures, and its parent company Google Inc., and are already the subject of an earlier-filed
10 motion to compel pending in the U.S. District Court for the Northern District of California.
11 Lastly, Legal Zoom makes no attempt to explain why it requires both an extensive production of
12 "all documents" relating to the usability analysis conducted by Google Ventures and live
13 testimony by Mr. Margolis on the same subject.

14 Mr. Margolis respectfully requests that the Court deny Legal Zoom's Motion to Compel
15 and direct it to seek this information through party discovery, if at all.

16 **II. BACKGROUND**

17 **A. The Underlying Litigation**

18 On November 20, 2012, Legal Zoom filed suit in the U.S. District Court for the Central
19 District of California against Rocket Lawyer Inc., a competitor in the online legal services
20 industry. *See LegalZoom.com Inc. v. Rocket Lawyer Inc.*, No. 12-cv-9942 (C.D. Cal.). Although
21 Mr. Margolis is not a party to that litigation, he understands that Legal Zoom has accused Rocket
22 Lawyer of false advertising. Specifically, Legal Zoom alleges that Rocket Lawyer displayed
23 messages through Google's advertising platform that misleadingly suggest that various legal
24 services provided by Rocket Lawyer are "free." *See id.*, dkt. # 14 ¶¶ 10-17.

25 **B. Mr. Margolis's Relationship to the Litigation**

26 Mr. Margolis is an employee of Google Ventures, a subsidiary of Google Inc. *See*
27 Declaration of Jacob T. Veltman ("Veltman Decl.") ¶ 3. In 2011, Rocket Lawyer asked Google
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1 Ventures to conduct a usability analysis of Rocket Lawyer's website in an attempt to improve the
2 visitor experience. Mr. Margolis worked on the resulting usability analysis. Users were asked for
3 their impressions of the site, and Google Ventures created a report for Rocket Lawyer setting forth
4 the results, including user input regarding the use of the term "free" on the site. *Id.* ¶ 7.²

5 Although the analysis conducted by Google Ventures related to Rocket Lawyer's website,
6 and not the Rocket Lawyer advertisements that are the subject of the litigation, Legal Zoom
7 contends that the analysis is relevant because it bears on Rocket Lawyer's use of the word "free."

8 C. Legal Zoom's Subpoenas

9 After an extended discovery period in their case closed, Legal Zoom and Rocket Lawyer
10 were given two more months to seek additional discovery from each other and several third
11 parties. Mot. at 2. Given this new life, Legal Zoom has focused extensively on Google, serving
12 deposition and document subpoenas on Google Inc., Google Ventures, Mr. Margolis and
13 Katherine Kramer (a former Google employee whom Legal Zoom claims corresponded with
14 Rocket Lawyer regarding matters unrelated to the usability analysis). Veltman Decl. ¶¶ 2-3 &
15 Exs. 1 & 2. The subpoenas seek "all documents" relating to Rocket Lawyer's use of the word
16 "free" in any advertising and "all documents" relating to the Google Ventures report. *Id.*, Ex 1 at
17 6 & Ex. 2 at 6.

18 Legal Zoom's subpoena to Mr. Margolis (the only one at issue in this motion) was served
19 the day before Thanksgiving and purported to require him to attend a deposition and produce

21 ² Legal Zoom intimates that Mr. Margolis is "not a neutral third party" and biased against
22 Legal Zoom due to certain connections between Google Ventures and Rocket Lawyer. Mot. at 6.
23 Legal Zoom cites no authority suggesting that a subpoenaed entity must have no connections to
24 either party in order to be treated as a nonparty for purposes of Rule 45(d) (indeed, subpoenas are
25 typically issued to a nonparty *because* of its connections to one of the parties). Further, the
26 seeming impetus of the discovery Legal Zoom seeks – correspondence from Google Ventures
27 telling Rocket Lawyer that its website was misleading – demonstrates that Google and Rocket
28 Lawyer operate at arms' length. In point of fact, Google has treated Legal Zoom and Rocket
29 Lawyer no differently in discovery. Google objected to both parties' subpoenas and made itself
30 available to both to meet and confer. Google and Rocket Lawyer were able to reach an
31 agreement regarding Rocket Lawyer's subpoena because Rocket Lawyer acted reasonably in the
32 meet-and-confer process. In contrast to Legal Zoom, Rocket Lawyer did not impose artificial
33 deadlines, it explained why it could not obtain the documents it was seeking from its adversary,
34 and it ultimately agreed to withdraw its request for deposition and the majority of its document
35 requests in exchange for a reasonable production from Google. Veltman Decl. ¶ 17.

1 documents four business days later. *Id.* ¶ 2. Similarly, the subpoena directed to Google was served
2 on November 17, 2014, and called for Google to produce documents and attend a deposition the
3 day after Thanksgiving weekend, seven working days later. *Id.* ¶ 3 & Ex. 2.

4 Google and Mr. Margolis promptly served objections to both subpoenas. *Id.* ¶¶ 4-5 & Exs.
5 3-4. Rocket Lawyer also served objections to the Margolis subpoena, objecting that it sought
6 documents relating to advertisements not at issue in the litigation, that it was overbroad as to time,
7 and that documents created and received by Mr. Margolis relating to Rocket Lawyer belong to his
8 employer, Google Ventures. *Id.* ¶ 5 & Ex. 5.

9 On December 3, Legal Zoom's counsel requested that counsel for the parties meet
10 telephonically as soon as possible, and counsel for Google and Mr. Margolis agreed to do so that
11 same day. *Id.* ¶¶ 6-7. During that initial call and in a subsequent email, counsel for Google and
12 Mr. Margolis explained their objections, but said they would confer with Google and Mr. Margolis
13 about what documents might be available to be produced if Legal Zoom would provide a copy of
14 the Google Ventures report in question.³ *Id.* ¶¶ 7-11. On Friday December 5, Legal Zoom's
15 counsel provided a copy. *Id.* ¶ 11.

16 On December 11, 2014, Legal Zoom demanded that the parties meet and confer a second
17 time. *Id.* ¶ 12. Counsel for Google and Mr. Margolis agreed, and the parties' counsel met
18 telephonically on December 18, 2014. *Id.* ¶ 13. While Google and Mr. Margolis came prepared
19 with an offer of compromise on the subpoenas, it was immediately apparent that Legal Zoom was
20 treating the call only as a procedural hurdle to a motion to compel. *Id.* Legal Zoom's counsel did
21 not address any of Google and Mr. Margolis's objections during the call, nor make any productive
22 suggestions or concessions, merely demands. *Id.* When Google and Mr. Margolis's counsel
23 became frustrated by the one-sided nature of the call, Legal Zoom's counsel demanded that
24 Google and Mr. Margolis submit their compromise offer in writing. *Id.* Google and Mr. Margolis
25 complied with the demand and submitted a proposal later that same day, offering to produce

26 ³ Because the subpoena to Mr. Margolis sought documents that belonged to Google and that were
27 also the subject of Legal Zoom's subpoena to Google, it was appropriate, indeed sensible and
28 necessary, to meet and confer about both subpoenas at once.

1 documents in their possession relating to the Google Ventures' report on the Rocket Lawyer
2 website. *Id.*, ¶ 15 & Ex. 7. Legal Zoom did not respond for almost three weeks. It then rejected
3 the proposal without explanation, and without counter, stating only that it would be moving to
4 compel. *Id.*, ¶ 16 & Ex. 8.

5 On January 5, 2015, Legal Zoom moved to compel against Google Inc. in the U.S. District
6 Court for the Northern District of California. *See LegalZoom.com, Inc. v. Rocket Lawyer, Inc.*,
7 No. 5:15-mc-80003-NC (N.D. Cal., filed Jan. 5, 2015). Legal Zoom's motion seeks an order
8 compelling Google to produce, *inter alia*, all documents in its possession, custody or control
9 regarding the usability analysis performed by Google Ventures for Rocket Lawyer. That motion is
10 fully briefed and is scheduled to be heard by Judge Nathanael Cousins on February 25, 2015.

11 Nevertheless, on February 2, 2015, Legal Zoom filed this separate motion against Mr.
12 Margolis.

13 **III. ARGUMENT**

14 **A. Legal Zoom Can Obtain the Information It Seeks from Rocket Lawyer**

15 In the discovery context, "there is simply no reason to burden nonparties when the
16 documents sought are in possession of the party defendant." *Nidec Corp. v. Victor Co. of Japan*,
17 249 F.R.D. 575, 577 (N.D. Cal. 2007). Parties must "obtain discovery from one another before
18 burdening non-parties with discovery requests." *Soto v. Castlerock Farming & Transp., Inc.*, 282
19 F.R.D. 492, 505 (E.D. Cal. 2012); *cf.* Fed. R. Civ. P. 26(b)(2)(C)(i) (court "must" limit discovery
20 if the discovery sought "can be obtained from some other source that is more convenient, less
21 burdensome, or less expensive"). Subpoenas to nonparties seeking information that could be
22 provided by a party are quashed routinely. *See, e.g., Arista Records LLC v. Lime Grp. LLC*, No.
23 10-cv-2074, 2011 U.S. Dist. LEXIS 22426, at *6 (W.D. Wash. Feb. 9, 2011) ("Because
24 information contained in the licensing agreements and associated communications are available
25 from Plaintiffs directly, the requests to Amazon are duplicative."); *Harris v. Kim*, No. 05-cv-
26 00003, 2013 WL 636729, at *2 (E.D. Cal. Feb. 20, 2013); *Dibel v. Jenny Craig, Inc.*, No. 06-cv-
27 2533, 2007 WL 2220987, at *2 (S.D. Cal. Aug. 1, 2007).

1 This sensible limit on the use of subpoenas squarely applies here. Legal Zoom seeks
2 information about analysis performed by Google Ventures for Rocket Lawyer. To the extent that
3 information has any relevance to the underlying case, it is readily obtainable from Rocket
4 Lawyer. At no time during the meet-and-confer process did Legal Zoom provide any
5 explanation for why it is seeking this information from Mr. Margolis. And that failure continues
6 in its motion.

7 Legal Zoom does not dispute that information regarding communications between Rocket
8 Lawyer and Mr. Margolis and materials delivered by Mr. Margolis to Rocket Lawyer are in the
9 possession of Rocket Lawyer. *See* Mot. at 10. Nor does Legal Zoom assert that Rocket Lawyer
10 has lost relevant documents or has refused to make knowledgeable Rocket Lawyer employees
11 available for deposition. Instead, Legal Zoom states only that “Mr. Margolis’ internal documents
12 relating to Rocket Lawyer’s free advertisements cannot be obtained from any other source.”
13 Mot. at 10. However, any information Mr. Margolis may have about internal communications
14 that were never shared with Rocket Lawyer are especially lacking in relevance. Mr. Margolis
15 and his coworkers are not expert witnesses. Their “interpretation of the results” of the analysis
16 constitutes inadmissible lay testimony. *See, e.g., Evangelista v. Inlandboatmen’s Union of the*
17 *Pac.*, 777 F.2d 1390, 1398 n.3 (9th Cir. 1985). Nor is Mr. Margolis’s “impression[s] of Rocket
18 Lawyer’s reactions” useful or admissible. *See Arista Records LLC v. Lime Grp. LLC*, No. 10-cv-
19 2074, 2011 U.S. Dist. LEXIS 22426, at *6 (W.D. Wash. Feb. 9, 2011) (refusing to order
20 production of “internal Amazon documents” purportedly bearing on the Plaintiffs’ “attitude and
21 conduct” as those documents had “little relevance to the underlying case”). And Legal Zoom
22 makes no attempt to identify what further information concerning the methodology underlying
23 the analysis it desires, or why that information would be useful. Mot. at 10.

24 If Legal Zoom has a quarrel with the documents and witnesses provided by Rocket Lawyer
25 in discovery, its recourse lies in a motion against its adversary, not in a discovery campaign
26 against a nonparty. Legal Zoom’s efforts to obtain that same information from Mr. Margolis
27 should be rejected.

1 **B. Documents Received by Mr. Margolis in the Course of His Work for Google**
2 **Belong to Google and Are the Subject of a Pending Motion to Compel**

3 The portion of Legal Zoom’s motion addressed to the production of documents is also a
4 waste of the Court’s time. Legal Zoom has already moved to compel Google Inc. to produce
5 documents regarding Google Ventures’ work for Rocket Lawyer. That motion was filed almost a
6 month before the instant motion, and is scheduled to be heard on February 25, 2015 by the
7 Honorable Nathanael M. Cousins of the U.S. District Court for the Northern District of California.
8 Judge Cousins’ ruling will dispose of the issue. If Judge Cousins denies Legal Zoom’s Motion,
9 his decision will be entitled to issue preclusive effect here,⁴ or, at a minimum, significant
10 deference. If Judge Cousins grants that motion, Legal Zoom’s requests to Mr. Margolis for the
11 same documents will be mooted. The Court should deny Legal Zoom’s motion to compel with
12 respect to the production of documents in deference to the earlier-filed motion already pending
against Google.

13 Even if Legal Zoom had not separately moved to compel against Google, its attempt to
14 compel Mr. Margolis to produce documents created and received during the course of his
15 employment should be rejected. As Legal Zoom has recognized in moving to compel against
16 Google Inc., employers own documents created by their employees, their employees do not. Mr.
17 Margolis should not be compelled to produce corporate documents that are outside of his control.
18 *See, e.g., Schaaf v. Smithkline Beecham Corp.*, 233 F.R.D. 451, 455 (E.D.N.C. 2005) (“the
19 subpoena is quashed because plaintiff should seek . . . documents from GSK via the discovery
20 process in the Northern District of Georgia, and *not* by issuing third-party subpoenas for GSK
21 documents to GSK employees”); *Am. Maplan Corp. v. Heilmayr*, 203 F.R.D. 499, 502 (D. Kan.
22 2001) (to compel employee to produce documents of the corporation would “effectively ignore[]
23 the distinction between a corporation, on the one hand, and its officers and shareholders, on the
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25 ⁴ *See, e.g., Hous. Bus. Journal v. Comptroller*, 86 F.3d 1208, 1212 (D.C. Cir. 1996) (district court
26 denied motion to compel on grounds that another court had already granted motion to quash a
27 similar subpoena; Court of Appeals affirmed without reaching preclusion issue); *Salerno v. Lecia,*
28 *Inc.*, No. 97-cv-973S(H), 1999 U.S. Dist. LEXIS 7169, at *4-9 (W.D.N.Y. Mar. 23, 2009) (motion
to compel was barred by collateral estoppel where another court had already refused to order
production of subject documents).

1 other hand.”); *Invesco Int’l, Inc. v. Paas*, 244 F.R.D. 374, 377 n.5 (W.D. Kentucky 2007)
2 (“Sheller, in his individual capacity, has none of the requested documents in his possession. The
3 documents, or portions thereof, are instead in the possession, custody and control of his current
4 and former law firms[.]”).

5 **C. Testimony by Mr. Margolis Would Be Cumulative of the Documents Sought**

6 Even if the Court determines that the information sought by Legal Zoom is relevant and
7 unavailable through party discovery, Mr. Margolis should not be compelled to attend a
8 deposition. His testimony would only be repetitive of the documents sought by Legal Zoom in
9 the instant motion and in its motion against Google Inc. Although Mr. Margolis’s counsel has
10 repeatedly questioned the need for live testimony during the meet-and-confer process, Legal
11 Zoom has refused to explain its demand for both an extensive document production and a
12 deposition covering the same ground, and it does not do so in its Motion. Instead it merely states
13 that Mr. Margolis’s testimony would be relevant. Mot. at 7-8. However, even if relevant,
14 whatever Mr. Margolis can recall regarding events that happened more than three years ago
15 would be “unreasonably cumulative or duplicative” of the documents Legal Zoom has requested.
16 Fed.R.Civ.P. 26(b)(2)(C)(i); *see also, e.g., Janki Bai Sahu v. Union Carbide Corp.*, No. 04-cv-
17 8825, 2010 U.S. Dist. LEXIS 23860, at *10 (S.D.N.Y. Mar. 15, 2010) (refusing to compel
18 deposition as “the requested deposition would be ‘unreasonably cumulative or duplicative’ of
19 documentary evidence”). Legal Zoom has not shown good cause for burdening a nonparty by
20 forcing him to give duplicative testimony of little or no relevance.

21 **CONCLUSION**

22 For these reasons, Legal Zoom’s Motion to Compel should be denied.

23 Dated: February 16, 2015

24 Respectfully submitted,

25 /s/ Barry M. Kaplan

26 Barry M. Kaplan, WSBA #8661

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