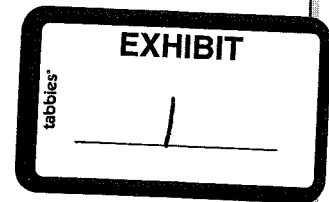


IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

TODD JANSON, et al, on)	
behalf of themselves)	
and on behalf of all)	
others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
vs.)	No.2:10-CV-040180-NKL
)	
LEGALZOOM.COM, INC.,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION OF JOHN SMALLWOOD,
produced, sworn and examined on the 14th day of
July, 2011, between the hours of nine o'clock in the
forenoon and twelve o'clock in the afternoon of that
day, at the offices of Cook, Vetter, Doerhoff &
Landwehr, 231 Madison Street, Jefferson City, Missouri,
before Kim D. Murphy, Certified Court Reporter,
within and for the State of Missouri.



APPEARANCES

For the Plaintiffs:

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Also appeared: The videographer

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IT IS HEREBY STIPULATED AND AGREED, by and
between counsel for the Plaintiffs and counsel for the
Defendant, that this deposition may be taken in
shorthand by Kim D. Murphy, CCR, and afterwards
transcribed into typewriting; and the signature of the
witness is expressly reserved.

* * * * *

JOHN SMALLWOOD,

of lawful age, produced, sworn and examined on behalf
of the Defendant, deposes and says:

THE VIDEOGRAPHER: We are on the record.
This is the videotaped deposition of John Smallwood.

Today's date is July 14, 2011. The time is
9:08 a.m.

This is the case of Todd Janson, et al,
versus LegalZoom.com, Inc.

The case number is 2:10-CV-040180-NKL
pending in the U.S. District Court for the Western
District of Missouri.

Counselors, will you state your appearance?

MR. CLEMENT: Matt Clement and Kari Schulte
for the Plaintiffs.

MR. WICK: And Jim Wicks of Bryan Cave for
LegalZoom. And we'll be joined by Bob Thompson at some
point, also with Bryan Cave.

(The witness was sworn.)

MR. CLEMENT: Jim, before we get started,
I just want to make one statement on the record.

Before the deposition, I handed Mr. Wicks
documents with Bates numbers P375 through P389.

These are documents that Mr. Smallwood
recently received from LegalZoom and supplements our
Rule 26 disclosures.

MR. WICKS: Okay. Thanks, Matt.

DIRECT EXAMINATION BY MR. WICKS:

Q. Mr. Smallwood, we met a minute ago. I'm
Jim Wicks, and I'm representing LegalZoom in this case.

Have you ever been deposed before?

A. No, sir.

Q. Were you involved in any litigation as a
plaintiff in Meadows Place? Does that ring a bell?

A. Yes.

Q. Was that you? And your deposition was
noticed in that case, but never taken?

A. I never went through a proceeding like this
in that case.

Q. You don't remember being noticed?

A. I'm not sure what that means.

Q. Were you ever informed that your deposition
was required?

1 A. I'm more of a hands-on person.
 2 Q. Did you ever do anything else with
 3 programming when you got back in in '98?
 4 A. No. No.
 5 Q. Now, does your company -- well, let me mark
 6 an exhibit here.
 7 (Deposition Exhibit No. 1 was marked for
 8 identification.)
 9 BY MR. WICKS:
 10 Q. Is this -- do you recognize this,
 11 Mr. Smallwood?
 12 A. Uh-huh. I do.
 13 Q. You're welcome to look at it. This is --
 14 tell me what this is.
 15 A. This is the home page of our current
 16 website.
 17 Q. And your company does do some work with
 18 software; right? I mean, if a customer has a software
 19 problem, you'll fix it?
 20 A. We'll either fix it, or we'll call that
 21 software technical support department and work with
 22 them to resolve the problem.
 23 Q. And flip to the last page of that. The
 24 support links, does that say support links for
 25 Windows XP, Mac, Windows Vista, and 7, and Linux?

1 Q. And do you have any other, you know,
 2 professional certifications or licensing?
 3 A. No.
 4 Q. Can you tell me about Smallwood
 5 Technologies itself? When did you start it?
 6 A. April 1st, I think -- somewhere around
 7 there -- March 27th of 2002. That's when I started the
 8 business.
 9 Q. All right. What year did you tell me you
 10 graduated from college?
 11 A. '89.
 12 Q. Can you take me through your work history
 13 from '89 up till 2002?
 14 A. It's complicated.
 15 Q. We have time.
 16 A. I'm an active guy. After I graduated
 17 college, I was going to go into the Peace Corps. While
 18 I was waiting, I worked at the Dillard's here in
 19 Jefferson City. And they wanted to call me in on the
 20 day that my sister was getting married. And I opted to
 21 go to her wedding, and they dropped me because I didn't
 22 take the dead date.
 23 Q. Let me ask what you did at Dillard's.
 24 A. Sold men's underwear and ties.
 25 Q. So I guess Dillard's didn't end well;

1 A. Linux.
 2 Q. I never heard it pronounced.
 3 A. What that is is, those are links. Those
 4 are shortcuts. If you click on that, it allows us to
 5 initiate a remote connection to remotely take over your
 6 computer.
 7 And the way that each one of those
 8 applications are written, they're specific for that
 9 operating system. So just to make it easier on our
 10 customers, they can click on one of those four,
 11 depending on what type of computer they're working on,
 12 and it would initiate a process that would allow us,
 13 through the Internet, to take over their computer.
 14 Q. Okay.
 15 A. And then we can resolve problems without
 16 having to drive over there.
 17 Q. Okay. Do you have any certifications in
 18 the computer field?
 19 A. No, I do not.
 20 Q. Are you licensed to do anything?
 21 I understand you can be certified on Microsoft programs
 22 and that sort of thing.
 23 A. You can be.
 24 Q. But you're not?
 25 A. No.

1 what was next?
 2 A. Oh, Dillard's ended fine. I just -- that
 3 was just a filler while I was waiting to go into the
 4 Peace Corps.
 5 Q. All right.
 6 A. I went out to Indianapolis, where a friend
 7 of mine worked for an engineering firm, and got hired
 8 as a CAD draftsman for a company called Frates
 9 Engineering (ph sp.)
 10 Q. Explain what CAD is.
 11 A. Computer-aided drafting. I was an
 12 Intergraph and AutoCAD drafter.
 13 Mainly, my first part of the job with them
 14 is, we tickled with development plates from GM. They
 15 were all the auto parts, and we converted them over to
 16 digital.
 17 So I just sat there and drank soda and
 18 gained five pounds a day drawing pictures all day long.
 19 Q. And the drawing pictures was done on a
 20 computer?
 21 A. Correct. Correct. I replicated the paper
 22 chart over to -- the paper drawing over to the
 23 computer.
 24 They subcontracted me over to Everett
 25 Architects and Engineers, which was another drafting

1 that, so look at the screen captures enough to be
2 familiar with your answer to tell me if the answers in
3 the right-hand column of the suitcase are the answers
4 you gave to the questionnaire on the website.

5 MR. CLEMENT: Objection; lacks foundation,
6 calls for speculation.

7 You can go ahead and answer.

8 THE WITNESS: The entries underneath the
9 "Response" column appear to be what was put into the
10 questionnaire -- what was entered in the questionnaire.

11 BY MR. WICKS:

12 Q. I'm going to hand you Exhibit 20, which is
13 the Trademark documents you provided me this morning --
14 or your counsel -- or Matt did this morning.

15 Flip to page P378 at the bottom.

16 A. Okay. (The witness complied.)

17 Q. And do you see basically the information
18 you entered in the questionnaire showing up here?
19 I assume at some point you sent in a J-PEG of --

20 A. Yes.

21 Q. -- of what you were trying to have
22 trademarked?

23 A. Yes.

24 Q. And otherwise do you remember the answers
25 showing up in the application there on 378 and the

1 following pages?

2 MR. CLEMENT: Objection; calls for
3 speculation, lacks foundation.

4 THE WITNESS: To the best of my knowledge,
5 yes.

6 BY MR. WICKS:

7 Q. I was talking to Bob on a sidebar. I'm
8 trying to remember the name of this function -- this
9 function in Windows.

10 You have a Word document and you want to
11 change one word every time it appears to a different
12 word. And I'm just blanking on it. It's a universal
13 something.

14 A. It's a universal substitute, I believe is
15 what's it's called.

16 Q. Explain to me how that works.

17 A. You have a document open that you would
18 identify one word. Let's say "red" and you wanted to
19 change every word in that document -- every word of
20 "red" to blue. You would highlight that word of "red"
21 and tell it to search for every instance of that and
22 change it to blue.

23 Q. Okay. And how does the -- can you describe
24 to me how the microprocessor does that operation? Or
25 is that an hour lecture?

1 A. No. The Word program would use letter
2 recognition to find those three letters together. And
3 every time it found those three, it would substitute
4 the four letters that were in the word "blue" for that
5 instance.

6 Q. All right. Can you -- I mean, you have
7 seen -- we've gone through all these documents, and
8 you've seen how the answers you enter into the
9 questionnaire find their way into spots in your final
10 document, correct?

11 A. Correct.

12 Q. Explain to me how the software does that.

13 MR. CLEMENT: Objection; that lacks
14 foundation. It calls for an expert opinion in which he
15 has not been designated as an expert on, and I don't
16 think it's appropriate for him to answer the question
17 without having seen the LegalZip software.

18 I guess, subject to my objections, if you
19 can answer ...

20 BY MR. WICKS:

21 Q. Can you answer how the software --

22 A. In a general term, you would have a
23 template created, either through a database -- I'm
24 assuming this is not a Word document -- a database --
25 and/or Excel-type of power in size. That these

1 templates are made with -- I don't mean a template like
2 a Word template -- an electronic wording is created
3 with blanks that are designated with each one of these
4 answers in the column.

5 Q. I'm sorry. Were you finished?

6 A. Yes. I mean, you have your column with
7 your answers, and line number 1 is whatever was put in
8 there. You can put in any word. And it would enter
9 into that corresponding blank in the verbiage.

10 Q. So the template would be a form of a --
11 of a document with blanks in it?

12 A. In a general term, yes.

13 Q. And the software would take the answers
14 that you enter and plug them into spots in that
15 template?

16 A. That is correct.

17 Q. And does this sort of thing occur elsewhere
18 in computing?

19 MR. CLEMENT: Objection; that question is
20 vague and ambiguous.

21 THE WITNESS: Elsewhere in computing?
22 Explain.

23 BY MR. WICKS:

24 Q. You can certainly do it in a Word document?

25 A. You could. It wouldn't be very easy.

1 It would be easier to do it in a different type of
2 document, but you could.

3 Q. What other type of document would you do it
4 in? A word-processing function at some point, wouldn't
5 it?

6 A. Your word-processing is a general term.
7 Yes. I guess I'm probably thinking into it too much,
8 Jim. I mean, it would be unlikely to me that with the
9 volume that LegalZoom creates, that they would have a
10 Word document. It would be more of a database that
11 these documents are created in. They would just have
12 holes that are filled in by these answers.

13 Q. Okay. You've been around computers for a
14 long time, but have they -- have we reached the point
15 where computers can think?

16 A. Not to my opinion.

17 Q. Okay.

18 A. At least not mainstream. I'm sure
19 somebody's lab somewhere has some good artificial
20 intelligence built into it.

21 It boils down to yes and no. Yes, it has
22 something to do, or, no, it doesn't have something to
23 do. And it's going to respond one way or another.

24 Q. Can a computer exercise judgment as it's
25 commonly understood?

1 intelligent advice. It might be logical advice, but
2 that would be based upon what kind of information and
3 answers are put in by somebody in the first place to
4 give you your answer back.

5 BY MR. WICKS:

6 Q. Okay. We're about done. I just had a
7 couple of other questions that probably should have
8 been put at the beginning.

9 But let's -- if you can find in that pile
10 in front of you -- you have it right on top there --
11 your Declaration, which is Exhibit 2, paragraph 3, in
12 February of 2011. It's on the first page.

13 A. Okay.

14 Q. "I was asked to purchase four documents
15 from LegalZoom and record my experience."

16 Do you see that?

17 A. Yes, I do.

18 Q. And is that true?

19 A. Yes, it was.

20 Q. Who asked you to do that?

21 A. Matt Clement.

22 Q. And when you did this, when you logged on
23 to LegalZoom, was anyone with you?

24 A. No.

25 Q. You did this on your own? I mean --

1 A. No.

2 Q. So if I wanted to ask a computer, you know,
3 what's a better university, the University of Missouri
4 or the University of Kansas, could I get an answer?

5 A. It would depend on how that answer was put
6 into the computer.

7 Q. How the question was put into the computer?

8 A. The question, as well as how the data --
9 the computer would pull from. You know, what its pool
10 of information is. That could be skewed on how the
11 person wrote it.

12 Basically, my thinking is that would be a
13 statistical answer: 50,000 people that go here,
14 there's 50,000 people that go here. These offer these
15 courses compared to what you're asking for, and it
16 would just compare to give you the best answer.

17 Q. So you'd want to know what was best for me?
18 I mean --

19 A. Correct.

20 Q. You'd want to know what I consider best?

21 A. Correct.

22 Q. Can a computer give advice?

23 MR. CLEMENT: Objection; vague and
24 ambiguous.

25 THE WITNESS: I wouldn't consider it

1 A. Sat in my office by myself and did this,
2 yes.

3 Q. Did you -- so you were asked to do this in
4 connection with this case?

5 I mean, Matt asked you to do this; were you
6 looking -- do you need a will? Did you need an LLC?

7 A. No.

8 Q. You -- in fact, you had a will, or you have
9 a will in place now?

10 A. Yes.

11 Q. And not this one?

12 A. Yes, sir.

13 Q. So you didn't execute the will you received
14 from LegalZoom?

15 A. I have not.

16 Q. And does -- was it Red Hot Technology
17 Consulting or something -- is that an existing LLC?
18 Did you register that with Missouri?

19 A. No.

20 Q. Did you apply for the trademark for the
21 logo for Smallwood Technologies?

22 A. Yes, I did.

23 Q. With the LegalZoom documents, or
24 previously?

25 A. With the LegalZoom website.

1 CONTINUED DIRECT EXAMINATION BY MR. WICKS:

2 Q. All right. Mr. Smallwood, we had documents
3 that you just produced today, the Trademark documents.

4 Is it your understanding that the
5 trademark application is different than the answers to
6 your questions -- the answers you entered into the
7 questions on the LegalZoom website are entered directly
8 into a Trademark application online?

9 MR. CLEMENT: Objection; calls for
10 speculation. Do you know?

11 THE WITNESS: I have no idea.

12 MR. WICKS: That's it. Go ahead, Matt.

13 MR. CLEMENT: John, I just have a couple of
14 real quick questions.

15 CROSS-EXAMINATION BY MR. CLEMENT:

16 Q. You mentioned that your wife is employed
17 as -- in the Probation and Parole office of the federal
18 government; is that right?

19 A. Yes.

20 Q. Do you know what her title is?

21 A. U.S. Probation Officer.

22 Q. She's not employed by Judge Laughrey's
23 office, as far as you know?

24 A. No.

25 Q. Does she sometimes testify before Judge

1 Laughrey in cases?

2 A. Yes.

3 Q. All right. But you don't personally know
4 Judge Laughrey?

5 A. I wouldn't recognize her if I stood next to
6 her.

7 Q. Does your wife have any social relationship
8 with Judge Laughrey?

9 A. I think she went to her secretary's wedding
10 shower. But I think that's about the only social --
11 Christmas parties, which I've never been to.

12 Q. Christmas parties in connection with the
13 federal courthouse?

14 A. Yeah.

15 Q. They're not close friends, as far as you
16 know?

17 A. No.

18 Q. Mr. Wicks was asking you some questions
19 about the LegalZoom process; do you remember that?

20 A. I believe so.

21 Q. Have you ever seen the LegalZoom software?

22 A. That LegalZip software?

23 Q. Yes.

24 A. No, I have not.

25 Q. So you don't have any knowledge about how

1 that works?

2 A. Huh-uh.

3 Q. You have to say no.

4 A. No.

5 Q. Or "yes" if your answer is yes.

6 A. No, I do not.

7 MR. CLEMENT: I think that's all the
8 questions I have.

9 Thank you.

10 MR. WICKS: I might want to follow up on
11 that. I'll get my remaining two questions in.

12 REDIRECT EXAMINATION BY MR. WICKS:

13 Q. From what you've seen today, can you tell
14 that the LegalZip software takes answers to the
15 questionnaire and populates them into the final
16 document, into blanks in a template?

17 MR. CLEMENT: Objection; calls for
18 speculation, lacks foundation.

19 If you know, you can answer.

20 THE WITNESS: Well, I mean, you just
21 answered it. I'm going to go on assumption, of how I
22 understand software works, that it's filling in blanks,
23 yes.

24 MR. WICKS: Okay. Nothing more for me.
25 That's all the questions I have.

1 THE VIDEOGRAPHER: Off the record at
2 11:46 a.m.

3 MR. CLEMENT: Do you want to sign? You
4 have the option to read the transcript and make any
5 corrections, John, that the court reporter may have
6 made.

7 THE WITNESS: Okay.

8 MR. CLEMENT: I think it would be a good
9 idea for you to read and sign the document, the
10 deposition transcript, after she completes it.

11 THE WITNESS: Okay.

12 MR. CLEMENT: If you want to, get it to me.
13 I'll make sure he gets it.

14 (Presentment waived; signature requested.)
15
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