

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

TODD JANSON, GERALD T. ARDREY, CHAD M.  
FERRELL, and C & J REMODELING LLC, on behalf of  
themselves and on behalf of all others similarly situated,

Plaintiffs,

v.

LEGALZOOM.COM, INC.,

Defendant.

Case No. 2:10-cv-04018-NKL

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**DEFENDANT LEGALZOOM.COM, INC.'S MOTION IN LIMINE TO  
EXCLUDE EVIDENCE CONCERNING PREJUDGMENT INTEREST**

Defendant LegalZoom.com, Inc. (“LegalZoom”) hereby moves to exclude evidence concerning prejudgment interest. LegalZoom requests that the Court prohibit plaintiffs from presenting at trial any documentary evidence, factual or expert testimony, or argument suggesting that they are entitled to prejudgment interest calculated from a date earlier than the filing of the Petition on December 17, 2009. In support of this Motion, LegalZoom states as follows:

1. Testimony of plaintiffs’ damages expert indicates that plaintiffs intend to seek an award of prejudgment interest in the amount of \$428,410.20. This sum represents interest on the calculation of class members’ purchases from LegalZoom made from December 18, 2004 through December 17, 2007, calculated from the date of the transaction through August 22, 2011, the anticipated date of trial, at the rate of 9% per annum.

2. In a federal diversity action, the availability of prejudgment interest is a matter of state law. *Weitz Co. v. MH Washington*, 631 F.3d 510, 528 (8th Cir. 2011), citing *Berglund v.*

*State Farm Mut. Auto. Ins. Co.*, 121 F.3d 1225, 1230 (8th Cir. 1997); *Swope v. Siegel-Robert, Inc.*, 243 F.3d 486 (8th Cir. 2001).

3. Under Missouri law, those seeking treble damages for the unauthorized practice of law are not entitled to prejudgment interest. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697, 704-05 (Mo. banc 2008).

4. Prejudgment interest on a claim for money had and received is governed by § 408.020, which requires a demand. That requirement is strictly construed, with prejudgment interest beginning to accumulate only from the date of the demand. *Cox v. Ripley County*, 2010 WL 2944428, at \*5 (Mo. App. July 27, 2010).

5. Where no demand is made prior to the filing of a lawsuit, the petition itself may constitute a demand under Missouri law. *Graybar Elec. Co., Inc. v. Federal Ins. Co.*, 567 F. Supp. 2d 1116, 1128-29 (E.D. Mo. 2008). Where the only demand made is the Petition, prejudgment interest accumulates only from the date of filing of the lawsuit. *Cox*, 2010 WL 2944428, at \*5.

6. Here, because Plaintiffs made no demand of LegalZoom prior to filing their Petition, calculation of prejudgment interest under section 408.020 can begin no earlier than the filing of plaintiffs' Petition on December 17, 2009.

WHEREFORE, for all the foregoing reasons and for all the reasons stated in LegalZoom's Suggestions in Support of Motion in Limine to Exclude Evidence Concerning Prejudgment Interest, Plaintiffs should be prohibited at trial from offering evidence or argument suggesting that they are entitled to prejudgment interest calculated prior to the filing of the Petition.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2011, I electronically filed the above and foregoing with the clerk of court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

s/ Robert M. Thompson