

EXHIBIT A

TO

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

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,)
)
vs.) No.
) 2:10-cv-04018-NKL
LEGALZOOM.COM, INC.,)
)
)
Defendant.)

DEPOSITION OF RICHARD F. WAIGAND

Taken on behalf of Defendant
July 6, 2011

Celeste D. Nicolls, CSR, RPR, CCR
CSR #084-002795

POHLMANUSA COURT REPORTING (877) 421-0099

EXAMINATION BY MR. WICKS

Page 10

1 A. Until June, well, May of 2005.
2 Q. Were you a partner in the firm eventually?
3 A. I became a partner in the firm in January of
4 2004.
5 Q. And then, where did you go in May or
6 June 2005?
7 A. And then, in June 2005, I joined what was
8 known as Shapiro Flom & Company.
9 Q. Which is now SFC?
10 A. SFW Partners, LLC.
11 Q. And you're a principal or partner in SFW?
12 A. I'm a member. We're an LLC, so I'm a member
13 of the LLC.
14 Q. Okay. You mentioned that you, you have been
15 deposed three times?
16 A. Yes.
17 Q. Have you testified in court --
18 A. Yes.
19 Q. -- as well?
20 A. Yes.
21 Q. How many times?
22 A. One time in court.
23 Q. Was that the Carpenter case?
24 A. It was.
25 Q. And have you ever been a consulting expert,

Page 11

1 nontestifying?
2 A. For a litigation case?
3 Q. Uh-huh.
4 A. Yes. One time with, it was an existing
5 client of mine. It was a pretrial, or not even
6 pretrial. It was in preparation for, I guess, a
7 settlement or mediation.
8 Q. Uh-huh. So, there was --
9 A. A contract dispute.
10 Q. Was there no court case to testify in, in
11 other words?
12 A. Correct.
13 Q. But you would have, had it gone to trial?
14 A. I don't know if I would have been used as the
15 expert witness in that case because it was, I was their
16 independent auditor.
17 Q. I see. And the three cases you, you have
18 been deposed in, were provided in your --
19 A. Yes.
20 Q. Can you remind me what their names were?
21 Carpenter was one. Do you refer to it by Carpenter?
22 A. That's how I do it.
23 Q. Or by the defendant?
24 A. Carpenter v. Countrywide.
25 Q. Yeah.

Page 12

1 A. And then Raley v. Chase.
2 Q. And then, Schwab was the third?
3 A. Yes. Schwab v. National Dealers Warranty.
4 Q. What was, what was the, how would you -- the
5 case where you were a consulting expert, how would you
6 identify that case, by the client's name? If we talk
7 about it for a few minutes, is there a shorthand we can
8 use?
9 A. I'd rather not use the client's name.
10 Q. Sure.
11 A. So, if we used -- I mean, it was a contract
12 dispute.
13 Q. Okay. Did you testify for the plaintiff, or
14 were you an expert for the plaintiff in all four of
15 these cases?
16 A. In the three cases that I did deposition
17 testimony, it was all for the plaintiff. The, the other
18 case that was for my client, which wasn't testimony at
19 all, it was just -- oh, sorry. It was, that was related
20 to just trying to interpret accounting language in a
21 contract. Definition of a contract.
22 Q. Was there a lawsuit?
23 A. No.
24 Q. Okay. So, it was didn't even get that far?
25 A. Well, I guess actually there was a lawsuit

Page 13

1 filed, but then it was immediately mediated. And --
2 Q. And was your client the plaintiff or the
3 defendant?
4 A. I guess plaintiff.
5 Q. Have you ever, well, I can deduce the answer
6 -- you haven't testified for a defendant, have you?
7 A. No.
8 Q. What percentage of your accounting practice
9 would you say is made up of your serving as an expert?
10 A. I mean, no more than 5 percent for me
11 personally. I have a partner that does more. So, as a
12 practice, we, probably it's under 10 percent.
13 Q. What's your partner's name?
14 A. Richard Flom.
15 Q. And do you know any of the cases he's
16 testified in?
17 A. I'm not familiar with them.
18 Q. So, the, my understanding of the Carpenter
19 case was that there were also claims of unauthorized
20 practice of law in that case, is that right?
21 A. Yes.
22 Q. So, you've done a damages valuation for
23 unauthorized practice of law claims before?
24 A. Yes.
25 Q. And you've done that in a class action,

Page 42

1 Q. So, the treble damages are claims, claims
 2 after two days -- I'm sorry. Strike that. And I'll
 3 start over. Claims -- strike that.
 4 The window for treble damages begins two
 5 years before the date of filing, correct?
 6 A. That's my understanding.
 7 Q. That's your understanding, okay. And damages
 8 for the two year period up until the date of filing are
 9 eligible for treble damages?
 10 A. Can you repeat that?
 11 Q. Could you read it back, Cindy?
 12
 13 (Thereupon, the court reporter read back the
 14 last question.)
 15
 16 A. Is there a question?
 17 Q. (By Mr. Wicks) Yeah. Go ahead. I'm just
 18 getting water.
 19 A. I wasn't sure what the question was though.
 20 It was a statement.
 21 Q. Okay. Are damages -- do you want water? Are
 22 damages, are transactions that were entered into two
 23 years before the date of the filing eligible for treble
 24 damages?
 25 MR. SIMERI: Objection. Calls for a legal

Page 43

1 conclusion, and it's beyond the scope of his opinion.
 2 But you can go ahead and answer if you can answer.
 3 A. Okay. Well, my calculations make that
 4 assumption. So, I'm not, I don't know what the legal
 5 standing is, but my calculations make that assumption.
 6 Q. (By Mr. Wicks) Okay. So, one of the
 7 assumptions underlying your calculations is that treble
 8 damages are only available for claims in a two year
 9 window prior to filing the suit?
 10 MR. SIMERI: Objection. Misstates his prior
 11 testimony.
 12 Q. (By Mr. Wicks) Can you answer?
 13 A. That, that, that's not what I said.
 14 Q. Okay. What am I missing?
 15 A. Because I think you said only include that
 16 window two years prior to the filing. This calculation
 17 includes those fees paid two years prior to the filing
 18 plus any of those subsequent to the filing through May
 19 the 20th.
 20 Q. I see. And this is based on, this
 21 assumption, I guess, is based on what you were told by
 22 plaintiffs' counsel?
 23 A. Yes.
 24 Q. So, you don't have an independent opinion on
 25 whether treble damages are available for transactions

Page 44

1 entered into after the filing of the lawsuit?
 2 A. No. I believe that's a judge's --
 3 Q. Let's go on to your third point on Page 3?
 4 A. Okay.
 5 Q. And that's interest, I believe?
 6 A. Yes. For the fees that were calculated in
 7 Number 2, that we just described, I calculated simple
 8 interest at 9 percent from the date the fees were paid
 9 through August 22nd, 2011, which is the anticipated date
 10 of the trial.
 11 Q. All right. Do you know, I think it's going
 12 to be simpler if I kind of just let you go --
 13 A. Okay.
 14 Q. -- and come back to my points at the end, so
 15 just go on.
 16 A. The next step I took was I calculated treble
 17 damages for those fees paid subsequent to 12-17 of 2007
 18 through May 20th, which is the date of the last data
 19 provided by counsel, and I multiplied those net fees by
 20 three.
 21 Q. All right. And then, the next step?
 22 A. I summed the gross fees, the refunds, the
 23 filing fees, shipping charges, the simple damages, the
 24 interest on the simple damages and the treble damages by
 25 service types provided.

Page 45

1 Q. All right. Can you explain that to me?
 2 A. So, in the spreadsheets that were provided by
 3 counsel, included a list of services for what the fees
 4 were being charged.
 5 Q. Just give me an example.
 6 A. One example would be LLCs.
 7 Q. I see. So, by service, you mean a LegalZoom
 8 sale or product?
 9 A. Yes.
 10 Q. Okay. All right. Go ahead.
 11 A. So, everything was sorted by service. I
 12 sorted the information that was summed up in Number 5 by
 13 service in a class, and by class of those included and
 14 excluded from the lawsuit. And is defined in Exhibit A
 15 with the following modifications.
 16 Exhibit A was provided by counsel. So, I
 17 followed, so it said product types included in claim. I
 18 included them in my calculation. It said product types
 19 excluded from the claim. I still did the calculation so
 20 that you were available to compare that it was all the
 21 data, that none of the data had been removed or --
 22 Q. Uh-huh.
 23 A. -- so we knew we were dealing with the same
 24 amount of data. I went ahead and put them on the
 25 spreadsheet, but I subtotaled the items that were

EXAMINATION BY MR. WICKS

Page 46

1 included in the claim.
 2 Q. Okay. So, let's go through the, the eight or
 3 nine you list here.
 4 A. Yeah.
 5 Q. The first is incorporation? Inc.?
 6 A. Inc.
 7 Q. And counsel instructed you to include that?
 8 A. Yes.
 9 Q. Do you know on what basis? And do you have
 10 an opinion why that was included?
 11 A. No.
 12 Q. Limited partnership, you were instructed to
 13 include?
 14 A. Yes.
 15 Q. And you don't have an opinion as to why that
 16 was included?
 17 A. No.
 18 Q. LLP, you were instructed to include?
 19 A. Yes.
 20 Q. Okay. Just --
 21 MR. SIMERI: We can stipulate that he doesn't
 22 have any opinion on why any of these were included or
 23 excluded, if that's okay. You can still ask, but we can
 24 stipulate to that.
 25 Q. (By Mr. Wicks) Sure. So, when you were,

Page 47

1 when you were provided a list of documents that, that
 2 plaintiffs' counsel told you to include or exclude in
 3 your calculations, you don't have an independent opinion
 4 why those, why those products or services were included
 5 or excluded, that is correct?
 6 A. Correct.
 7 Q. All right. Let's move on to your Point 7;
 8 what did you, what did you do next then?
 9 A. In Step 7, I obtained the list, which
 10 contained 33 customers and identified where they were
 11 located within the spreadsheet and excluded those from
 12 the damage calculations. So, I put them with the other
 13 excluded services.
 14 Again, the purpose for keeping them in the
 15 total calculation is that, that you could verify that,
 16 you know, that the damages matched the numbers you
 17 already provided us.
 18 Q. Right. I understand. And some of the
 19 customers who opted out of the class purchased more than
 20 one product, and that accounts for your 55?
 21 A. Yes.
 22 Q. All right. Let's go through your conclusions
 23 here. Is that what you would describe what starts at
 24 the bottom of Page 3 and carries on over to Page 4?
 25 A. Yes.

Page 48

1 Q. All right. Explain your, and these are,
 2 these are your core opinions in the case, correct?
 3 A. Yes.
 4 Q. Okay. Would you explain those to me? Tell
 5 me what they are --
 6 A. Yes.
 7 Q. -- and what the basis for them is?
 8 A. Okay. The, the first procedure that was
 9 performed was, in summary, was to calculate the damages
 10 by accumulating all fees that counsel instructed me to
 11 consider for the period of December 18, 2008 through the
 12 present period. And that present period being
 13 identified as May 20th, 2011.
 14 Q. I understand.
 15 A. The fees paid, the fees paid from that period
 16 forward were two million nine-o-nine seven twenty-three
 17 ninety-six.
 18 Q. Can you get that?
 19
 20 (Whereupon, a discussion was held off the
 21 record.)
 22
 23 Q. (By Mr. Wicks) Okay.
 24 A. So, and these are the net fees related to
 25 that period. So, not gross fees. It was, this was the

Page 49

1 net fee.
 2 Q. I understand that takes out refunds, filing
 3 fees?
 4 A. Yes.
 5 Q. Shipping fees, I think was the third?
 6 A. Yes.
 7 Q. Okay.
 8 A. And that number is \$2,909,723.96.
 9 Q. And then you trebled that?
 10 A. We trebled those damages.
 11 Q. And what number did you get?
 12 A. And that is \$8,729,171.88.
 13 Q. Okay. And then, did you do a calculation for
 14 the, for the transactions that took place between
 15 December 18th, 2004 and December 17th, 2007.
 16 A. I did.
 17 Q. And what number did you get for that?
 18 A. And those net fees paid for that period were
 19 \$984,788.06.
 20 Q. And you did an interest calculation as well?
 21 A. I did. The interest on those fees paid
 22 during the period December 18th, 2004 through December,
 23 through December 17th, 2007, the interest was
 24 \$428,410.20. That interest was calculated through
 25 August 22nd, 2011, which is the anticipated date of

EXAMINATION BY MR. WICKS

Page 50

1 trial.
2 Q. And is that, is that prejudgment interest, as
3 we call it?
4 A. Yes.
5 Q. Does that term mean anything to you?
6 A. I've heard that term before.
7 Q. Do you know if it's based on a statutory
8 provision?
9 A. It's, I was instructed to use a statutory
10 rate of 9 percent. I couldn't cite the actual
11 provision.
12 Q. Were you given the provision?
13 A. The 9 percent.
14 Q. But were you given the provision?
15 A. If I was, I didn't take notes to that effect.
16 Q. Okay. All right. Do you, do you have an
17 opinion on why statutory prejudgment interest is not
18 available on the transactions from December 18th, 2007
19 through May 20, 2011?
20 A. It's just my understanding that the treble
21 damages take the place of the prejudgment interest.
22 Q. So, your, your, another of your assumptions
23 is that prejudgment interest at 9 percent is not
24 available on transactions that are eligible for treble
25 damages, correct?

Page 51

1 A. Yes.
2 Q. And that prejudgment interest is available on
3 transactions that are not eligible to be trebled
4 correct? Am I --
5 A. It was, it was my understanding that interest
6 should be calculated on those transactions without
7 definition of treble damages or not but of those damages
8 that were calculated up through December 17th, 2007.
9 Q. Well, and what's the basis for that
10 understanding?
11 A. That is what I was instructed by counsel to
12 do.
13 Q. So, this is an assumption based on what you
14 were told by counsel?
15 A. Yes.
16 Q. Okay. Let's go through Exhibit A and talk
17 about the -- well, yeah. I think we'll go through the
18 list of products. Was there a product called attorney
19 prepared provisional patents? Did that show up on one
20 of the spreadsheets that you were provided?
21 A. Yes.
22 MR. SIMERI: If you look a Page 2 of Exhibit
23 A, it says provisional patent.
24 Q. (By Mr. Wicks) But look at Page 2 of 5 of
25 Exhibit B, I think -- is this marked Exhibit B anywhere?

Page 52

1 A. It is on the top. It's probably stapled in
2 there.
3 Q. Yeah. Yep. Do you see page, where does the
4 actual transaction show up? Here we go, Page 4 of 5.
5 On the excluded column, the first excluded product is
6 attorney prepared provisional patent?
7 A. Yes.
8 Q. Do you see that?
9 A. Yes.
10 Q. So, can I assume because it's in the excluded
11 section that you were instructed to exclude it? I'm
12 sorry. Did you, did you answer?
13 A. No.
14 Q. Oh.
15 A. I didn't answer. Okay. My -- I do have it
16 in the excluded Category 6F.
17 Q. I see that on Page 3?
18 A. Yeah. On Page 3, I have that legal counsel
19 instructed me to include this category. I think, can I
20 refer to an Email that I got?
21 Q. Yeah, sure.
22 A. Because I think it was supposed to be.
23 Q. Is this an Email from counsel?
24 A. Yes.
25 Q. So, I can't see that, can I? Didn't we

Page 53

1 agree?
2 MR. SIMERI: I'm not sure.
3 A. It's not. It was a simple include, don't
4 include, include. It's, I have a note from David Butsch
5 that says, "For damage calculation purposes, I would
6 exclude attorney prepared provisional patent and utility
7 patent." So, I, I would like to correct what I wrote on
8 6F.
9 Q. (By Mr. Wicks) I think what you may want to
10 do, Jim, is provide us with an amended report? I would
11 guess we'll probably come across one or two other things
12 that you might want to amend?
13 A. Okay.
14 Q. You're talking about Item 6F in procedures on
15 Page 3?
16 A. Yes.
17 Q. And if I, if I heard you correctly, when you
18 were reading that Email, 6G, the utility patent, you
19 were instructed to exclude that?
20 A. Yes.
21 Q. And it does say here legal counsel instructed
22 me to include this category --
23 A. Yes.
24 Q. -- so you may want to change that one, too?
25 A. Yeah.

EXAMINATION BY MR. WICKS

Page 58

1 was engaged to do. So, I didn't take the time to, to go
2 through LegalZoom's catalog of services and determine
3 what they were.
4 Q. Okay.
5 A. It was my understanding that counsel had
6 already deposed LegalZoom and determined which products
7 were the practice of law, and they told me which ones to
8 include and which ones to exclude, and I did my
9 calculations from that point.
10 Q. All right. If plaintiffs' counsel are wrong
11 about any of these, what effect would that have on your
12 calculations?
13 A. It would change them.
14 Q. I don't, I'm not going to go through every
15 product and ask you how it would change your
16 calculations, but are you in a position to be able to do
17 a few calculations?
18 A. Right now?
19 Q. Yeah.
20 A. Sure.
21 Q. Okay. Well, I don't think we'll do it right
22 away, but I think there will be a few later. Do you
23 know, if I ask you if plaintiffs' counsel made a demand
24 to LegalZoom prior to filing the lawsuit, would you know
25 what I meant?

Page 59

1 A. (At this point in the proceeding, the witness
2 shook his head in the negative.)
3 Q. Do you know if plaintiffs' counsel made a
4 demand?
5 A. I don't.
6 MR. SIMERI: Object. It's beyond the scope
7 of his expert opinion. He's just computing damages.
8 Q. (By Mr. Wicks) You don't know?
9 A. I'm not aware of the full case, no.
10 Q. Okay. Correct me if I'm wrong, let's go back
11 to Exhibit 4, your preliminary witness statement; were
12 you asked to calculate attorneys' fees?
13 A. No.
14 Q. And is there any indication in either your
15 initial report or your, the report you produced today
16 that you'll be calculating attorneys' fees?
17 A. I have not been asked to calculate attorneys'
18 fees at this point.
19 Q. Have you been told that you may in the
20 future?
21 A. No.
22 Q. Do you, have you, in your prior testimony in
23 other cases, have you calculated attorneys' fees?
24 A. No.
25 Q. What about punitive damages, were you

Page 60

1 retained to --
2 A. No.
3 Q. Were you told that you might be asked to
4 calculate punitive damages at some point?
5 A. In this case?
6 Q. In this case.
7 A. No.
8 Q. In other cases?
9 A. No.
10 Q. The spreadsheets you were given contained
11 more, contained a number of columns for various charges
12 LegalZoom made, and you mentioned that you deducted for
13 filing fees and shipping fees, and what was the third?
14 Remind me.
15 A. Refunds.
16 Q. Yeah, refunds, of course. Did you notice a
17 column marked registered agent in the spreadsheets?
18 A. There was, yeah, I recognize there was
19 columns, numerous columns across the top.
20 Q. Right. And, and there were some, some of the
21 cells in the spreadsheet were populated with numbers
22 under the registered agent column, correct?
23 A. I don't believe so.
24 Q. Really. Let's have you pull up the --
25 A. Okay.

Page 61

1 Q. Well, let me ask a question before you do
2 that -- when you took the spreadsheets you were given by
3 counsel, did you do the calculations in the
4 spreadsheets, or did you create a second set of your
5 own?
6 A. I used the very first spreadsheet that was
7 provided as the basis --
8 Q. That big thing from December or --
9 A. The big one.
10 Q. -- or January of what, 2005, through
11 February 28th, 2011?
12 A. Yes. The one I received on May 3rd.
13 Q. Okay.
14 A. That was the spreadsheet that I, I re-saved
15 that spreadsheet, and I started my calculations in
16 there.
17 Q. Okay. Let's pull up that spreadsheet.
18 A. Okay.
19 Q. I may have to stand and look over his
20 shoulder; will you be able to follow us? Should we go
21 off the record for a minute?
22
23 (Whereupon, a discussion was held off the
24 record.)
25