

**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

**SUGGESTIONS IN OPPOSITION TO PLAINTIFFS'
MOTION IN LIMINE (DOC. NO. 147) REGARDING ANY EVIDENCE FROM
LEGALZOOM.COM THAT THEY ARE NOT DAMAGING ANYONE AND ANY
EVIDENCE REGARDING THE VALIDITY OF LEGALZOOM.COM'S DOCUMENTS**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine Regarding Any Evidence from LegalZoom.com That They Are Not Damaging Anyone and Any Evidence Regarding the Validity of LegalZoom.com's Documents ("Motion 147," Doc. 147), states as follows:

Plaintiffs correctly note that evidence that is irrelevant is inadmissible. Fed. R. Evid. 402. Relevant evidence, of course, is admissible. *Id.* Relevant evidence is "evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401 (emphasis added). As Plaintiffs acknowledge, the court has broad discretion in determining the admissibility of evidence. *See United States v. Levine*, 477 F.3d 596, 603 (8th Cir. 2007). However, the Federal Rules of Evidence favor admissibility. *Levine*, 477 F.3d at 603.

Generally, under Rule 403, courts should favor admission. *Id.*; *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1244 (8th Cir. 1983).

In arguing that LegalZoom should be barred from presenting relevant evidence related to whether the company's forms are valid or have damaged anyone, Plaintiffs cite an Arkansas case regarding a personal injury claim in connection with a railroad accident. *Wright v. Ark. & Mo. R.R. Co.*, 574 F.3d 612, 614 (8th Cir. 2009). The case Plaintiffs cite has little application to the case at bar. Further, the case Plaintiffs cite actually supports LegalZoom's position. In *Wright*, the Eighth Circuit held that the district court did not abuse its discretion when it admitted relevant evidence. 574 F.3d at 619.

Here, as in *Wright*, the trial court should admit the relevant evidence in question. One of the central facets of this case is the "duty to strike a workable balance between the public's protection and the public's convenience." *In re First Escrow, Inc.*, 840 S.W.2d 839, 844 (Mo. banc 1992), *citing Hulse v. Criger*, 247 S.W. 2d 855 (Mo. 1952).

Indeed, in the Court's Order granting in part and denying in part LegalZoom's Motion for Summary Judgment ("Order"), the Court cited the "risk of the public being served in legal matters by 'incompetent or unreliable persons'" as a consideration in weighing whether LegalZoom engages in the unauthorized practice of law. Order at 20 (*quoting Hulse*, 247 S.W.2d at 858). The Court indicated that the very purpose of unauthorized practice of law statutes is "to make sure that legal services required by the public, and [e]ssential to the administration of justice, will be rendered by those who have been found by investigation to be properly prepared to do so" *Id.*

Given the weight the Court placed on the public policy underlying Missouri's UPL statute, and given that the public policy in question is the "risk . . . of 'incompetent or unreliable

persons”” selling legal documents, evidence that the validity of LegalZoom’s documents is not — and has not been — challenged is highly relevant. Further, evidence that no individuals are claiming they were damaged by LegalZoom’s documents strikes at the heart of the question of whether LegalZoom is “incompetent or unreliable.” *Hulse*, 247 S.W.2d at 858.

In addition to this motion in limine, Plaintiffs also have filed motions to exclude evidence or argument that LegalZoom’s customers are satisfied and that LegalZoom’s products are not defective (Doc. 163) and a motion seeking to bar LegalZoom customers who have opted out of the class action lawsuit from testifying (Doc. 160). Plaintiffs’ shotgun approach underscores their focus on a hyper-literal interpretation of the UPL statute. But the interpretation of Missouri’s UPL statute does not stop, dictionary in hand, with the literal text. Rather, “[s]uch statutes are merely in aid of, and do not supersede or detract from, the power of the judiciary to define and control the practice of law.” *Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 338-39 (Mo. banc 2007). Given the public policy underlying the state’s UPL statute in the first place, it is critical that evidence of LegalZoom’s *lack* of harm be included in the record of this case.

CONCLUSION

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs’ Motion in Limine Plaintiffs’ Motion in Limine Regarding Any Evidence from LegalZoom.com That They Are Not Damaging Anyone and Any Evidence Regarding the Validity of LegalZoom.com’s Documents.

Respectfully submitted,

BRYAN CAVE LLP

By: s/ James T. Wicks

Robert M. Thompson MO #38156

James T. Wicks MO #60409

Christopher C. Grenz MO #62914

One Kansas City Place

1200 Main Street, Suite 3500

Kansas City, MO 64105

Tel.: (816) 374-3200

Fax: (816) 374-3300

John Michael Clear MO #25834

Michael G. Biggers MO #24694

One Metropolitan Square – Suite 3600

211 North Broadway

St. Louis, MO 63102

Tel.: (314) 259-2000

Fax: (314) 259-2020

Attorneys for LegalZoom.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 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/ James T. Wicks