

**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. 153) REGARDING THE ATTORNEY CLIENT
RELATIONSHIP BETWEEN THE PLAINTIFFS AND PLAINTIFFS' COUNSEL**

Defendant LegalZoom.com, Inc. ("LegalZoom"), for its Suggestions in Opposition to Plaintiffs' Motion in Limine Regarding the Attorney Client Relationship Between the Plaintiffs and Plaintiffs' Counsel ("Motion 153," Doc. 153), states as follows:

In Motion 153, plaintiffs represent to the Court that LegalZoom intends "to introduce evidence of the nature of the attorney[-]client relationship between Plaintiffs and Plaintiffs' counsel." Motion 153 at 1. Specifically, plaintiffs suggest that LegalZoom intends to present evidence concerning plaintiffs' fee arrangement with their lawyers.

Despite the fact that case law cited by plaintiffs themselves denied multiple motions in limine when the movant failed to describe or disclose to the court "with sufficient particularity" the material sought to be excluded, *see Pro batter Sports, LLC v. Joyner Technologies, Inc.*, No. 05-CV-2045-LRR, 2007 WL 3285799, at *5, *9 (N.D. Iowa Oct. 18, 2007), plaintiffs here cite to no deposition testimony or prior argument anywhere in the record where LegalZoom has inquired into any plaintiff's fee agreement with his attorneys. LegalZoom can only speculate

that plaintiffs must be referring to the following innocuous exchange from the deposition of Todd Janson — in which *LegalZoom’s own counsel* actually stopped Janson before he could reveal information about his fee agreement with his counsel, despite Janson’s counsel’s failure to object or silence his client:

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6 Q. Do you -- for instance, do you -- in your
7 current relationship with your lawyers, do you have
8 a written fee arrangement?

9 A. I believe they're advancing me right
10 now --

11 Q. I don't want to know --

12 A. Right.

13 Q. I don't want to know the nature, but do
14 you have a written agreement by which they are
15 providing you services as lawyers? That's kind of a
16 complicated way --

17 A. Yeah.

18 Q. Did you sign anything with -- did you
19 receive anything in writing from your lawyers about
20 them becoming your lawyers?

21 A. I believe so, yes.

22 Q. Did you receive anything like that from
23 LegalZoom?

24 A. Not to my knowledge. I don't know.

Janson Depo. 49:6-24, attached hereto as Exhibit 1.

In denying LegalZoom summary judgment, the Court held that Missouri law distinguishes between selling legal forms that others prepare and preparing legal forms for them. Doc. 145 at 18-19. As the Court noted, a seller of legal forms falls within the safe harbor of *In re Thompson*, which held that the sale of legal forms and instructions for filling them out “does not constitute the unauthorized practice of law so long as the respondents and other[s] similarly situated refrain from giving personal advice as to legal remedies or the consequences flowing therefrom.” 574 S.W.2d 365, 369 (Mo. banc 1978).

Although the Court held that a reasonable juror could conclude that LegalZoom prepares documents for customers, LegalZoom is entitled to and intends to present evidence at trial and argue to the jury that it does not prepare legal documents but rather that customers prepare their documents themselves using LegalZoom's software. If LegalZoom does not prepare documents for customers, it is entitled to safe harbor under *In re Thompson* so long as it did not give class representatives "personal advice as to legal remedies or the consequences flowing therefrom." *Id.*

In denying LegalZoom summary judgment, the Court focused on the representations made in LegalZoom's advertising, *see* Doc. 145 at 2-3, 18, clearly recognizing that what class members believed about the operation of their relationship with LegalZoom is a crucial factual issue in the case. What class members believed about the formation of their business relationship with LegalZoom is relevant to whether LegalZoom gave them personalized legal advice. What class members understand about the process of engaging a lawyer is therefore relevant both to the factual determination in the case and to testing the credibility of plaintiffs' ultimate claim that they believe LegalZoom to be engaged in the practice of law. And thus, whether plaintiffs understand the difference between retaining a lawyer, as they did with their counsel in this case, and purchasing legal forms online through a (literally) impersonal and automated website is relevant to the ultimate issues in this case.

Plaintiffs correctly observe that "[a] district court is given broad discretion to determine the relevance of evidentiary matters." *See* Motion 153 at 2, citing *Wright v. Ark. & Mo. R.R. Co.*, 574 F.3d 612, 619 (8th Cir. 2009). They fail to point out, however, that the Federal Rules of Evidence favor admissibility, and that the balance under Rule 403 should generally be struck in favor of admission. *United States v. Levine*, 477 F.3d 596, 603 (8th Cir. 2007); *Block v. R.H.*

Macy & Co., 712 F.2d 1241, 1244 (8th Cir. 1983). Any question as to the admissibility of evidence of plaintiffs' understanding of what is entailed in engaging a lawyer should be resolved in favor of admission.

As is evident from the careful questions of LegalZoom's counsel in Janson's deposition, LegalZoom has no intention of probing at trial into the details of plaintiffs' fee arrangement with their counsel. LegalZoom is, however, entitled to probe plaintiffs' understanding of whether retaining an attorney is different from buying legal forms online. LegalZoom therefore is entitled to inquire what plaintiffs know, from their own personal experience, about the process of engaging a lawyer, including whether plaintiffs have entered into a written agreement when retaining lawyers, including their present lawyers.

Plaintiffs' Motion 153 therefore should be denied.

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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