

**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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**SUGGESTIONS IN OPPOSITION TO PLAINTIFFS’  
MOTION IN LIMINE (DOC. NO. 158) REGARDING STATEMENTS  
OR DECLARATIONS MADE BY THE FEDERAL TRADE COMMISSION**

Defendant LegalZoom.com, Inc. (“LegalZoom”), for its Suggestions in Opposition to Plaintiffs’ Motion in Limine Regarding Statements or Declarations Made by the Federal Trade Commission (“Motion 158,” Doc. 158), states as follows:

In its motion for summary judgment, LegalZoom directed the Court to two letters submitted by the Federal Trade Commission (“FTC”) to the ABA Task Force on the Model Definition of the Practice of Law and to the Rule Committee of the Superior Court of Connecticut. *See* Doc. 101 (sealed) at 21 and 22 of 49. Relying on *Firemen’s Fund Insurance Co. v. Thien*, 63 F.3d 754 (8th Cir. 1995), Plaintiffs argue that the statements of the FTC will serve only to confuse the jury. Motion 158 at 2-3. However, *Thien* is inapposite. The Court in *Thien* upheld the district court’s decision to exclude evidence where the evidence was likely to confuse the issues, prejudice the jury, *and* lead to litigation of collateral issues. There, in a wrongful death action where the issue before the jury was whether the defendants’ potential liability was covered by insurance — and not whether the defendants were *in fact* liable for the

plaintiff's death — the court excluded evidence of one defendant's alleged falsification of records. *Id.* at 758. Because actual liability was not before the jurors, and the proffered evidence pertained “directly to a collateral issue in th[e] case,” was “very likely” to cause the jury to feel hostility toward the defendant, *and* would confuse the jury and waste time, the Eighth Circuit upheld the lower court's ruling. *Id.* at 758-59.

Plaintiffs cannot make — and indeed do not even try to make — the showing that was made in *Thien*. Plaintiffs fail to offer any plausible explanation of how the jury would be confused other than to say that the FTC declarations could “mislead the jury into possibly thinking that the FTC is the standard by which they must view this evidence as compared to Missouri law.” Motion 158 at 2. This concern is without basis. As set forth in LegalZoom's Suggestions in Opposition to Plaintiffs' effort to strike the FTC comments, LegalZoom does not contend that the declarations are legal authority or that they have the force and effect of law. (*See* Doc. 120, p. 10). Rather, these documents are properly regarded as, and admissible as, factual evidence of the views of relevant industry and regulatory offices as to the history of UPL statutes and legal self-help tools like those central to this case.

Further, Plaintiffs fail to establish that any prejudice would result or that presentation of the FTC letters would waste the jury's or the Court's time.

### **CONCLUSION**

For the reasons set forth above, LegalZoom respectfully requests that the Court deny Plaintiffs' Motion in Limine Regarding Statements or Declarations Made by the Federal Trade Commission.

Respectfully submitted,

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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