

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

TODD JANSON, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 10-04018-CV-C-NKL
)	
LEGALZOOM.COM, INC.,)	
)	
Defendant.)	

**PLAINTIFFS’ SUGGESTIONS IN SUPPORT OF PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AGREEMENT**

Plaintiffs, individually and on behalf of the Settlement Class (as defined in the Settlement Agreement and stated below), submit the following Suggestions in Support of the parties’ Joint Motion for Preliminary Approval of Class Action Settlement, Dissemination of Notice of the Settlement, and Setting a Final Fairness Hearing and related dates. In support thereof, Plaintiffs state as follows:

I. THE LITIGATION

On December 17, 2009, Plaintiff Todd Janson commenced this action by filing a Petition against LegalZoom.com, Inc. (“LegalZoom”) in the Circuit Court of Cole County, Missouri, captioned *Todd Janson on behalf of Himself and all Missourians similarly Situated v. LegalZoom, Inc.*, No. 09AC-CC00737. On January 15, 2010, Mr. Janson and Plaintiffs Gerald T. Ardrey and Chad M. Ferrell filed an Amended Class-Action Petition captioned *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 v. Legalzoom.com, Inc.*, No. 09AC-CC00737 (“Amended Petition”). On February 5, 2010, LegalZoom removed the case to the United States District Court for the Western District of Missouri, Central Division (“the Court”).

The Amended Petition contains four counts. Count I asserts a claim for unlawful practice of law pursuant to Missouri law, including Mo. Rev. Stat. §§ 484.010-.020. Count II asserts a claim for money had and received on the theory that the money paid by Plaintiffs to LegalZoom was not used for their benefit because LegalZoom was not authorized to engage in the lawful practice of law in the State of Missouri. Count III asserts a claim under the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.020, and sought monetary damages, related to the alleged unauthorized practice of law by LegalZoom in the state of Missouri, while Count IV asserts a Missouri Merchandising Practices Act claim seeking injunctive relief. The Amended Petition sought class action status on behalf of a class consisting of “[a]ll persons or entities in the state of Missouri that paid fees to LegalZoom for the preparation of legal documents from December 18, 2004 to the present.”

On December 14, 2010, this Court certified the case as a class action, and approved a class consisting of “All persons and other entities resident within the State of Missouri who were charged and paid fees to LegalZoom for the preparation of legal documents from December 17, 2004 to the present.” Pursuant to a later order, the class period was agreed to be from December 17, 2004 to May 20, 2011 (the “Class”). *See* Document #82.

Defendant asserts that it has violated no laws and believes it has meritorious defenses. Likewise, Plaintiffs believe they will prevail should the case go to trial. Both parties recognize a risk if this lawsuit proceeds. Therefore, the parties have agreed to resolve the alleged violations of the Missouri Unauthorized Practice of Law statutes, the Missouri Merchandising Practices Act, and other related causes of action, through their proposed settlement which is set forth more specifically below and in the Settlement Agreement attached to the Joint Motion for Preliminary Approval of Settlement as Exhibit 1. The

proposed settlement includes economic benefits available to the Class in the amount of Six Million Dollars (\$6,000,000) before assessments for costs and fees, as well as substantial changes in the future business practices of LegalZoom in the state of Missouri.

II. THE SETTLEMENT

The parties engaged in extensive and arm's length negotiations to reach this settlement. The parties, and their respective counsel, participated in two formal mediations, the first on September 30, 2010 with Professor James Levin, Associate Director of the Center for the Study of Dispute Resolution at the University of Missouri School of Law, and the second on August 11, 2011 with John R. Phillips, Esq. of the Husch Blackwell firm. The settlement was reached on August 11, 2011 after more than twelve (12) hours of mediation and negotiation that day between the parties. The Settlement Agreement provides valuable and important benefits for the Class in a timely manner and avoids further delay in getting the benefits to the Class that might result from trial and further appeals and litigation. The proposed settlement readily meets the standard for preliminary approval—that is, it is well within the required range of being fair, reasonable, and adequate. *Roberts v. The Source for Public Data LP*, no. 08-04167-CV-C-NKL, 2010 WL 2195523 at *1 (W.D. Mo. May 28, 2010); *Manual for Complex Litig.* § 30.41, at 237 (explaining the standard for preliminary approval); *see also, In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997).

The Settlement Agreement provides that each member of the Class will receive individual notice by way of e-mail (the way the vast majority of the Class communicated with LegalZoom in purchasing their respective document(s)) or by regular mail notifying them of

the proposed settlement. Each notice will include instructions on how each Class member may make a claim for their benefits and include a claim form for doing so.

The proposed settlement provides for two groups of class members to receive compensation. The first group consists of those Class members who purchased documents from LegalZoom from December 18, 2007 through May 20, 2011 (“Group 1”). This Group 1 includes only those persons who would be entitled to relief under § 484.020, RSMo, which allows for treble damages if the case were successful at trial.¹ The second group consists of those class members who purchased documents from LegalZoom from December 18, 2004 to December 17, 2007 (“Group 2”). This Group 2 would not be entitled to treble damages under § 484.020, RSMo and is left with common law remedies if the case were successful at trial.

A. ECONOMIC RELIEF

Under the proposed settlement, LegalZoom will make available Five Million, Two Hundred Thousand and Two Hundred Dollars (\$5,200,200), before attorneys’ fees and other costs, for the payment of claims for Group 1, and Seven Hundred Ninety Nine Thousand and Eight Hundred Dollars (\$799,800), before attorneys’ fees and other costs, for the payment of claims for Group 2. As set forth in more detail below, Class Counsel anticipates applying for an award of attorneys’ fees of thirty percent (30%) of the total available settlement amounts, up to Sixty Thousand Dollars (\$60,000) for re-imbursement of out-of-pocket case expenses and for a service fee award of Eight Thousand Dollars (\$8,000) for each of the three appointed class representatives. If these amounts are approved by the Court, Group 1 claimants would be entitled to One Hundred, Sixty-Three and Two Tenths percent (163.2%) of the net amount they

¹ §§ 484.010-020, RSMo provides for a two-year statute of limitations. Thus, only those Class members that purchased documents within the two-year period prior to the case being filed are included in this group.

paid LegalZoom for their legal document.² By way of illustration, this means that if a Group 1 member paid \$100 to LegalZoom for a legal document and makes a claim, that person would be entitled to a payment of \$163.20 from the settlement – more than the class member actually paid for the document. Class Members in Group 2, assuming the requested fees and expenses are awarded, would be entitled to Fifty-Four and Four Tenths percent (54.4%) of the net amount they paid LegalZoom for their documents. This is roughly one-third of the compensation to which those Class Members in Group 1 are entitled to under the settlement, as treble damages were not available under the law to Class Members in Group 2.

B. CHANGE IN BUSINESS PRACTICES

In addition to the economic relief summarized above, the settlement also provides that LegalZoom will make changes to its future business practices in Missouri. These changes are important and substantial. One of the most significant changes is the opportunity, at no additional charge, for the Missouri resident purchaser of each future LegalZoom document to receive a consultation with a Missouri licensed attorney regarding the legal product purchased through LegalZoom. The proposed changes to LegalZoom's business practices are as follows:

- a. LegalZoom will make available on the LegalZoom.com website to customers who select a Missouri Class Product (defined at Settlement Agreement, pp. 8-9 attached as Exhibit 1 to Joint Motion for Preliminary Approval) a Missouri-specific sample of that document in .pdf or other format that shows blanks or sample information where information entered by the customer is to be populated into the document template;

² The “net amount” paid by the customer is the amount they paid for the product less any refunds previously paid to them by LegalZoom or additional fees for ancillary items such as registered agent services.

b. Prior to the date of implementation of these changes in business practices, an attorney or attorneys licensed in Missouri will have reviewed all templates for Missouri Class Products offered by LegalZoom to customers;

c. LegalZoom will remove the following references from the LegalZoom.com website and from its advertising, including advertising conducted through internet search engines:

(i) References to “we will take care of the rest” from the phrase “simply answer a few questions and we will take care of the rest;”

(ii) References that state “LegalZoom takes over” after a customer answers online questions;

(iii) References that compare, directly or by implication, the costs of LegalZoom’s self-help products with services provided by an attorney without, in close proximity to such comparison, clearly and conspicuously disclosing that LegalZoom is not a law firm and is not a substitute for an attorney or law firm.

d. The description of the LegalZoom Peace of Mind Review on the LegalZoom.com website, if any, will note, on the same page and in the same size font as the description of the LegalZoom Peace of Mind Review, that this service is “Not Available in Missouri” unless it is performed by an attorney licensed in Missouri;

e. LegalZoom will make available to customers who select a Missouri Class Product on the LegalZoom.com website a prominent offer for an individual consultation with an attorney licensed in Missouri through a minimum free five-day enrollment in the Legal Advantage Plus Program (for individuals) or the

Business Advantage Pro Program (for businesses), which is not subject to any automatic renewal. The offer will specifically state that the customer may consult with a Missouri attorney free of charge and explicitly state how long the customer has to take advantage of the offer. Customers' participation in the Legal Advantage Plus or Business Advantage Pro Program is subject to LegalZoom's Supplemental Terms of Service for Legal Plans, current as of their time of their enrollment, presently available at <http://www.legalzoom.com/subscription-terms-of-service.html>. Currently included in the benefits to which customers will be entitled under such free enrollment in the Legal Advantage Plus and Business Advantage Pro Programs are telephone consultations with a participating law firm of up to one half (1/2) hour for each new legal matter (for example, a customer could receive a one half (1/2) hour consultation concerning the customer's living trust, a one half (1/2) hour consultation concerning the customer's durable power of attorney, and a one half (1/2) hour consultation concerning articles of incorporation). No change or amendment to the Supplemental Terms of Service will substantively change or abridge this benefit to Class Members during the twenty-four (24) month term of this Prospective Relief.

See, Settlement Agreement pp. 15-18, attached as Exhibit 1 to the Joint Motion for Approval of Settlement.

C. SERVICE AWARDS AND ATTORNEYS' FEES

The Settlement Agreement further provides that Class Counsel may apply for service awards for the class representatives of up to \$8,000 each. The Class Representatives were instrumental in prosecuting this case. Each of them employed counsel, reviewed the Petitions, responded to information requested by Class Counsel throughout the litigation, responded to

written discovery propounded by LegalZoom, produced documents, gave depositions and actively participated in trial preparation as the case settled eleven (11) days before trial was to begin. LegalZoom has agreed not to oppose this request. Given the level of participation and how close to trial the case was when it settled, Class Counsel believes this request is fair and reasonable.

In addition, Class Counsel, on behalf of all Plaintiffs' counsel who participated in this action, will request an award of attorneys' fees not to exceed One million, Eight Hundred Thousand Dollars (\$1,800,000) in compensation for the services provided by all counsel. This is Thirty percent (30%) of the funds available for claims under the Settlement Agreement. In addition, Class Counsel will apply for reimbursement of litigation related expenses not to exceed Sixty Thousand Dollars (\$60,000) that have been advanced by the various firms prosecuting this action. LegalZoom has agreed to these fees and has agreed not to oppose such an application to the Court.

There were five (5) separate law firms involved in the prosecution of this action and significant time and money were expended, given the case was so close to trial. As such, Class Counsel believes this request is fair and reasonable.

III. ARGUMENT

A. THE STANDARD

The law favors settlement, especially in class action cases and other complex matters where significant resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See, Little Rock School Dist. v. Pulaski County Special School Dist.*, 921 F.2d 1371 (8th Cir. 1990). “[S]ettlement agreements are presumptively valid.” *Id.* at 1391. Review is for abuse of discretion. *Id.* In reviewing decisions approving such settlements, the appellate courts

simply ask “whether the District Court considered all relevant factors, whether it was significantly influenced by an irrelevant factor, and whether in weighing the factors it committed a clear error of judgment.” *Id.* (internal citation omitted.)

The Manual for Complex Litigation (Fourth) provides that prior to final approval, the Court must make a preliminary fairness decision. *See* Manual for Complex Litigation, Fourth, § 21.632. At the preliminary approval stage, the Court should make a “preliminary evaluation” of the proposed terms and if that evaluation “does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval” the settlement should be given preliminary approval. *Blando v. Nextel West Corp.*, Case No. 02-0921-FJG, Doc. #41, at 2 (W.D. Mo. Oct. 9, 2003). If the Court finds preliminary approval is warranted, the Court should direct that notice be provided to the class members and hold a formal fairness hearing where formal arguments can be made both in support of and in opposition of the settlement if class members so choose. *See* Manual for Complex Litigation, Fourth, § 21.632.

A final fairness hearing is the mechanism by which the Court finally evaluates the parties’ settlement in light of the strong judicial and societal policy favoring settlements. At the preliminary approval stage, the Court does not make a final decision on the merits of the proposed settlement, rather it merely evaluates whether (i) the Settlement Agreement was negotiated at arms’ length, (ii) there has been sufficient investigation and discovery to enable counsel and the Court to act intelligently and (iii) there are not obvious deficiencies in the Settlement Agreement. *See*, NEWBERG ON CLASS ACTIONS, § 11.25.

The Court should also consider Defendant's view of Plaintiffs' case and the probability of success on the merits. "An integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). While Plaintiffs believe that they would have prevailed on the issue of liability in this matter, Plaintiffs nevertheless recognize there is risk and uncertainty in any litigation. Further, Defense counsel was confident that they had viable defenses to the Class Claims. There was also the possibility of appeals even if the Plaintiffs' case was successful at trial. Thus, even if Plaintiffs were successful at both trial and on appeal, it could be years before the Class Members received any benefits if the appellate process were to be invoked by LegalZoom. In light of all of the considerations, the settlement benefits are fair and reasonable because each class member who makes a claim will receive substantial consideration commensurate with the real value of his or her claim.

B. THE PROPOSED SETTLEMENT MEETS THE STANDARD

1. Settlement Resulted from Arms' Length Negotiations

Settlement negotiations were conducted at arms' length between counsel experienced in class action litigation. As set forth in more detail above, the parties participated in two (2) separate mediations before experienced mediators. The last mediation lasted over twelve (12) hours before a final agreement as to the general terms was reached. In short, there is no question that the Settlement Agreement was the product of an adversarial process.

2. Adequate Investigation and Discovery was Conducted

Class Counsel conducted adequate discovery and performed a sufficient investigation into the underlying basis of the claims in order make an intelligent evaluation of the possible outcomes of the litigation and the settlement terms. In connection with the Litigation, Class

Counsel performed substantial discovery, both formal and informal, including taking depositions of LegalZoom’s corporate representatives (three times), the three General Managers of LegalZoom’s Personal Services, Business Services, and Intellectual Property departments, a Vice President in LegalZoom’s finance department, and LegalZoom’s expert witness. In fact, all pretrial discovery was completed prior to the settlement. Class Counsel also served significant written discovery, including multiple sets of interrogatories and requests for production of documents. In addition, Class Counsel conducted their own investigation into LegalZoom’s business, subpoenaing and requesting documents of LegalZoom’s business partners and advertising outlets and hiring an independent witness to help demonstrate the operation of LegalZoom’s website. Class Counsel also performed extensive research and analysis of the legal principles applicable to the claims against LegalZoom in the Litigation and to the potential defenses to those claims. Multiple motions were briefed and submitted. Two separate summary judgment motions were briefed and decided by the Court. Class counsel also engaged an expert witness to evaluate and calculate the damages to the Class and issue a report explaining those calculations. The case was eleven days from trial when the Parties reached an agreement in principle to settle the case.

The settlement was reached with full information. It was not reached “in the dark.” Plaintiffs’ Counsel performed thousands of hours of work to prosecute and evaluate the case prior to reaching a settlement with LegalZoom. There should be no question that Plaintiffs’ had sufficient information when settlement was reached.

3. The Proposed Settlement is Within the Range of Possible Approval and Does Not Reveal “Obvious Deficiencies”

The proposed Settlement Agreement reached by the parties and attached hereto is fair and reasonable and is certainly within the “range of possible approval” for the following reasons:

First, Class members will receive valuable benefits in exchange for giving up what Plaintiffs believe are meritorious claims, but which Defendant LegalZoom believes are claims that are subject to many defenses. As set forth above, the Group 1 members that make a claim for benefits will receive more than they actually paid for the legal documents at issue. If the full amount of the agreed upon fees and expenses are applied for and awarded, the Group 1 members who make a claim will receive 1.632 times the amount they paid LegalZoom for their particular product. Group 2 members would not have been entitled to treble damages if they won at trial, and as such their compensation under the terms of the proposed settlement is less than Group 1. If the full amount of agreed upon fees are applied and awarded, Group 2 members who make a claim will be entitled to .544 times the amount they paid LegalZoom for their particular product. The settlement provides substantial compensation to both groups.

Second, there is no unduly preferential treatment of segments of the Class. While Group 1 is entitled to roughly three times the compensation of Group 2 under the terms of the Settlement Agreement, that is consistent with the potential value of their respective claims. As described above, Group 1 claims were subject to treble damages if they were successful, while Group 2 claims would only be entitled to the actual damages if they were successful. Accordingly, Group 1 claims were valued as being worth roughly Three times as much as Group 2 claims. Therefore, the treatment of these groups is consistent with the actual value of their claims.

Third, Class Counsels' fees and expenses that are to be requested are reasonable given the stage of the litigation and the time and money expended on the case by Class Counsel. The fees and expenses Class Counsel anticipates requesting the Court approve are approximately thirty percent (30%) of the available settlement amounts for the Class. This amount is well within the accepted range for compensating class counsel in cases of this size. *See, In re US Bancorp Litigation*, 276 F.3d 1008, 1010 (8th Cir. 2002) (approving fee equal to 36% of settlement fund); *Wiles v. Southwestern Bell Telephone Company d/b/a AT & T*, 2011 WL 2416291 at * 4 (W.D. Mo., June 9, 2011) (approving fee equal to one-third of the settlement fund); *In re Combustion, Inc.*, 986 F. Supp. 1116 (W.D. La. 1997) (approving fees of 36% of settlement fund); *In re Airline Ticket Comm'n Antitrust Lit.*, 953 F.Supp. 280, 285-86 (D. Minn. 1997) (33.3% of \$86 million fund); *In Re Wedtech Securities Litigation*, M 21-46 (LBS) MDL 735 (S.D.N.Y. July 30, 1992) (33-1/3% of \$77.5 million settlement fund); *Eisel v. Midwest Bank Centre*, 230 S.W.2d 335 (Mo. banc 2007) (33-1/3% of \$1.19 million class action judgment award). Moreover, any award of attorneys' fees and costs will be subject to the Court's final approval of an application that is yet to be filed.

Fourth, the law favors settlement, especially in class actions and other complex cases. Here the class receives real value in exchange for the release of their claims. Approval of the Settlement will avoid significant litigation costs. Class action litigation is typically hard-fought, complicated, and expensive, usually requiring years to complete. This case was no exception. By the end of trial and all potential appeals, Plaintiffs and their attorneys would have had to spend significant additional sums in attorneys' fees, litigation expenses and expert costs, to fully and finally litigate their claims without any guarantee that the rewards would exceed the fees, expenses and costs. In addition, settlement preserves the judicial resources of this Court.

Fifth, litigation is uncertain. The parties naturally dispute the relative strengths of their respective position. LegalZoom believes it has strong factual and legal defenses to this action that could dramatically reduce any potential award of damages. Plaintiffs believe they have claims that, if presented at trial, would result in a verdict for Plaintiffs. Nevertheless, LegalZoom's defenses increase the risk that the Settlement Class would receive nothing if this case were to proceed to trial.

All of the factors necessary for preliminary approval are present in this case.

C. THE CLASS AND PROPOSED NOTICE SATISFIES RULE 23

This Court previously certified a class in this case. (See, Document # 61, Order dated December 14, 2010). In that Order, the Court found the class met all of the pre-requisites of Rule 23. The proposed settlement Class mirrors the definition of the previously certified class.³ Therefore, it is clear the requirements of Rule 23 are met in this case.

In addition, the suggested procedure for notice to the Class related to this settlement is that it be sent in essentially the same manner as was done to apprise the Class after the initial certification. (See Document #82, Court's Order Granting Plaintiff's Motion to Approve Class Notice, filed April 4, 2011). Specifically, the Class will first be notified of the settlement via email. If the email bounces back as undeliverable, then the Settlement Administrator will send a notice by regular first class mail first consulting with the National Change of Address Database to obtain the most current address for the Class Member. The notice and claim form will also be placed on a website maintained by the Settlement Administrator for purposes of providing

³ The Court clarified that "to the present" in the previously certified class definition should be interpreted to mean through the date of notice. Thus, the previously certified class ran through May 20, 2011, which is the same date used in the proposed settlement class.

additional information and documents to Class members. *See*, Settlement Agreement, p. 27-28 attached as Exhibit 1 to Joint Motion for Preliminary Approval.

Class members in this case have demonstrated they are users of the Internet, and the vast majority communicated with LegalZoom via email. Subject to the requirement that notice be the “best practicable,” the Court has “complete discretion as to how the notice should be given.” 7B CHARLES A. WRIGHT, et. al., FEDERAL PRACTICE AND PROCEDURE, § 1797.6 at 200 (3d. ed. 2005). Furthermore, alternative means of contacting individual class members such as “utilizing the cost and efficiency savings that come from features such as electronic mail” may be part of a notice plan that meets the Rule 23(c)(2)(B) standards. *Larson v. Sprint Nextel Corp.*, 2009 WL 1228443, *15 (D. N.J. 2009).

The proposed notice will adequately provide the Class with the material information regarding the proposed settlement and their rights pertaining to it. It will provide a claim form by which each Class member can obtain their benefits and provide additional avenues to receive information if there are questions. The Court should, therefore, approve the proposed forms and method of dissemination proposed by the Parties.

V. CONCLUSION

The Settlement Agreement before the Court is fair, adequate, and reasonable, and satisfies the requirements of Rule 23. The Court should therefore issue its Order of Preliminary Approval of the proposed Class Action Settlement; Order notice to the potential members of the Class as provided in the Proposed Settlement Agreement; Order a schedule for objectors, if any, to file objections and for the method and time within which the Court wishes to conduct the final fairness hearing; and for such other orders as the Court deems appropriate under the circumstances.

Respectfully submitted;

/s/ Matthew A. Clement

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CERTIFICATE OF SERVICE

I certify that on September 28, 2011, I served this paper upon the following via this Court's ECF system:

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