

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

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

**SUGGESTIONS IN SUPPORT OF PLAINTIFFS’  
MOTION FOR APPROVAL OF CLASS ACTION NOTICE AND  
TO DIRECT DEFENDANT TO PROVIDE CLASS CONTACT INFORMATION**

Come now, plaintiffs Todd Janson, Gerald Ardrey, Chad Ferrell, and C & J Remodeling, LLC (hereinafter “Plaintiffs”), by and through counsel, and for their Suggestions in Support of their Motion for Approval of Class Action Notice and to Direct Defendant to Provide Class Contact Information, state as follows:

**I. Introduction**

Plaintiffs filed this class action against defendant Legalzoom.com, Inc. (hereinafter “Legalzoom”) challenging Legalzoom’s on line legal document preparation service. Plaintiffs allege that Legalzoom’s service constitutes the unauthorized practice of law in Missouri in violation of § 484.020, RSMo, violates the Missouri Merchandising Practices Act, § 407.010, *et. seq.*, RSMo and make a claim for Money Had and Received for the fees the class paid to Legalzoom over the relevant time period. Plaintiffs allege that the class consists of individuals

who used Legalzoom's various software and computer programs to answer questions which, in turn, allowed Legalzoom to prepare the legal document(s) requested by the class members. Once a legal document was prepared, Legalzoom sent the document to the class member by electronic mail as well as through the U.S. Mail.<sup>1</sup>

On December 14, 2010, this Court granted Plaintiffs' Motion for Class Certification and certified a class defined as "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." The class was certified pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3). *See*, Court's Order dated December 14, 2010 (Doc. # 61). Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), in cases certified under Rule 23(b)(3), "the Court must direct to class members, the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Plaintiffs respectfully request the Court to approve the notice attached hereto as Exhibit 1 be directed to the class members pursuant to the notice plan set forth herein, and to direct Legalzoom to provide contact information for all class members in a useable format.

## **II. Argument**

### **A. Plaintiffs' Proposed Notice to Class**

Plaintiffs' Proposed Notice, attached as Exhibit 1, complies with Federal Rule of Civil Procedure 23(c)(2)(B). This Rule requires, in cases such as this, that the Notice to the class state in "plain, easily understood language":

- (i) The nature of the action;

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<sup>1</sup> Class members may also have received the documents prepared by Legalzoom via overnight mail if the class member choose to pay more the rapid delivery of the legal document.

- (ii) The definition of the class certified;
- (iii) The class claims, issues, or defenses;
- (iv) That a class member may enter an appearance an attorney if the class member so desires;
- (v) That the court will exclude from the class any member who requests exclusion;
- (vi) The time and manner for requesting exclusion; and
- (vii) The binding effect of a class judgment on members under Rule 23 (c)(3).

The text of the proposed notice contains all of the required information in plain terms and describes how class members can obtain all of the pleadings filed in the case, along with the Orders entered by this Court. Plaintiffs further request that the Court permit them to create a web site – <http://www.lzoomclassaction.com>-- where class members can easily access the primary pleadings and Orders from this case and counsel can provide answers to some frequently asked questions by class members.

Plaintiffs propose that if the Court approves this notice and distribution plan, the deadline by which the notice must be distributed should be forty-five (45) days from the date of the Court's Order directing Notice to the class. Plaintiffs further propose that the exclusion date (the date by which the class members must opt out of the case) be sixty (60) days from date by which the Notice must be distributed. This will provide all class members, including those who may not be reached by the initial notice and require a follow up mailing to receive the notice, have a sufficient opportunity to exclude themselves from the class if they so desire.

#### **B. Proposed Distribution of Class Notice to the Class**

Class members in this case have demonstrated they are users of the Internet and most, if not all, communicated with Legalzoom via e-mail. As set forth above and in prior pleadings, it appears they received the documents prepared through Legalzoom via both e-mail and U.S. Mail. Because of the nature of the class members' communication with Legalzoom, Plaintiffs propose

the Notice attached hereto as Exhibit 1 be distributed to the class via e-mail in the first instance and then by U.S. Mail to the mailing addresses Legalzoom has in its database if the e-mail either fails or is otherwise unavailable for any particular class members.

This method for notifying the class meets the requirements of Rule 23(c)(2)(B) – i.e., the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). 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). Further, as the District Court of New Jersey noted, alternative means of contacting individual class members such as “utilizing the cost and efficiency savings that come from features such as electronic mail or text messaging” 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)(citing William B. Rubinstein, Alba Conte and Herbert B. Newberg, 3 Newberg on Class Actions § 8:24 (4<sup>th</sup> Ed. 2002) “The Court is limited in determining alternative measures only by due process considerations, the limits of Rule 23(c)(2)(B) . . . and its own ingenuity.”).

In this case, communication to the class by e-mail and then U.S. Mail in the event the email is not valid, provides the best practicable notice to these internet savvy class members. The class members have shown they are capable of communicating about important legal issues via e-mail. Courts that have considered notice to internet savvy class members frequently determine that electronic mail serves as the best practicable notice. See, e.g., *Browning v. Yahoo!, Inc.*, 2007 WL 4105971, at \*4 (N.D.Cal. Nov. 16, 2007) (holding that e mail notice was “particularly suitable” in a case where class members’ claims arose from their visits to the

defendant's internet website) and *Lundell v. Dell, Inc.*, 2006 WL 3507938, at \*4 (N.D. Cal. Dec. 5, 2006) (notice in nationwide class action against Dell accomplished in part through "electronic messaging").

E-mail notice provides the "best notice that is practicable" to this class. Where the electronic mail option does not exist, traditional mail will provide the necessary individualized notice. Together, these methods more than satisfy the due process requirements of Rule 23(c)(2)(B).

### **C. Class Member Information from Legalzoom**

In order to implement the notice plan, Plaintiffs request that the Court direct Legalzoom to provide Class Counsel with the e-mail addresses and physical addresses of all potential class members in a useable format. Because such information should be readily available and has been formally requested through a Request for Production of Documents and Things, Plaintiffs suggest that the deadline be fifteen days (15) from the filing of this motion or such other time as the Court deems appropriate under the circumstances.<sup>2</sup> This information is obviously necessary to provide the required notice to the class members and is only within the control of Legalzoom.

### **D. Appointment of Epiq Legal Noticing as Notice Administrator.**

Plaintiffs further propose that Epiq Legal Noticing, a Division of Epiq Systems, ("Epiq") be appointed by the Court to serve as the Notice Administrator. Epiq has ample experience in carrying out notice programs in class cases. *See*, Declaration of Cameron R. Azari, attached hereto as Exhibit 2. No class representative or class counsel has any financial interest in Epiq nor does any class representative or counsel for any party serve as an officer, director, agent, or employee of Epiq.

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<sup>2</sup> Plaintiffs served a Request for Production of Documents seeking this information on January 7, 2011.

### III. Conclusion

For the reasons set forth herein, Plaintiffs request that the Court approve the Notice attached hereto as Exhibit 1 be provided to the class members via e-mail and regular mail to any class member for whom the e-mail “bounces back” or otherwise does not appear to be valid. Further, Plaintiffs request that Legalzoom be directed to provide the e-mail addresses and physical mailing addresses to Class Counsel in a useable format in a timely manner so notice may be accomplished. Finally, Plaintiffs respectfully request that Epiq Legal Noticing be appointed as Notice Administrator to assist class counsel in providing the notice directed by the Court.

Respectfully submitted;

/s/Matthew A. Clement

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I certify that on January 31, 2011, I served this paper upon the following via this Court's ECF system:

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\_\_\_\_\_/s/Matthew A. Clement\_\_\_\_\_