

**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.)	

**DEFENDANT LEGALZOOM’S SUGGESTIONS IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR APPROVAL OF CLASS NOTICE AND TO
DIRECT DEFENDANT TO PROVIDE CLASS CONTACT INFORMATION**

Defendant LegalZoom.com, Inc. (“LegalZoom”) submits the following Suggestions in Opposition to Plaintiffs’ Motion for Approval of Class Notice and to Direct Defendant to Provide Class Contact Information (“Plaintiffs’ Motion”). Plaintiffs’ Proposed Notice must be modified. It omits crucial defenses, would create confusion among LegalZoom’s past and prospective customers while prohibiting LegalZoom from addressing customers’ inquiries, and requires notice to be given to persons who do not properly belong to the class.

I. PLAINTIFFS’ PROPOSED DISTRIBUTION OF NOTICE AND REQUEST FOR CLASS MEMBERS’ ADDRESSES

Plaintiffs’ Suggestions in Support of their Motion (“Plaintiffs’ Suggestions”) ask the Court to approve distribution of notice to the class by email and then by U.S. Mail to class members for whom email is undeliverable. Plaintiffs’ Suggestions 3-5. Plaintiffs support this request by stating that LegalZoom sends final documents to customers “by electronic mail as well as through the U.S. Mail.” *Id.* at 2; *see also id.* at 3.

While LegalZoom does not necessarily object to Plaintiffs’ proposed method of distributing notice, LegalZoom notes that it generally delivers documents to customers only by

U.S. Mail or Federal Express. Email delivery is available either as a courtesy in rare instances or as part of premium packages that are purchased only in a small minority of cases.

Plaintiffs' Suggestions also ask the Court to order LegalZoom to provide Plaintiffs' Counsel with email and physical addresses for all class members. *Id.* at 5. Plaintiffs' Proposed Notice itself states that the class consists of Missouri residents who paid fees to LegalZoom "from December 17, 2004 to the present." Since Plaintiffs filed their Motion for Approval of Class Action Notice, LegalZoom has agreed to produce to Plaintiffs' counsel email and physical addresses through the earlier of March 1, 2011 or the date on which the Court orders notice. As discussed more fully below, however, the class should not extend beyond December 14, 2010, the date the Court certified the class.

II. PLAINTIFFS' PROPOSED NOTICE FAILS TO ADEQUATELY DESCRIBE LEGALZOOM'S DEFENSES

Rule 23 requires that notice describe both the claims in the class as well as the defenses. Fed. R. Civ. P. 23(c)(2)(B)(iii); *Roberts v. Source for Pub. Data, LP*, 2010 WL 2195523, *3 (W.D. Mo. 2010); *see also Wachtel ex rel. Jesse v. Guardian Life Ins. Co. of America*, 453 F.3d 179, 185 (3d Cir. 2006); *Vernon Gries v. Standard Ready Mix Concrete, LLC*, 2009 WL 427281, 11 (N.D. Iowa 2009).

Prominent among LegalZoom's defenses, both to the claim of unauthorized practice of law and the claim under the Missouri Merchandising Practices Act, is that the documents created by Missouri consumers on the LegalZoom website were not in any way invalid, ineffective, or otherwise legally flawed. Plaintiffs' Proposed Notice fails to include a statement of this defense in its description of LegalZoom's defenses.

LegalZoom requests that the Court insert the following sentence at the end of the first full paragraph on page 2 of the Notice — the paragraph noting that LegalZoom denies Plaintiffs’ allegations and describing LegalZoom’s other defenses:

Plaintiffs do not claim that any LegalZoom documents are in any way invalid or ineffective.

Class notice must also be objective and neutral. *In re Corrugated Container Antitrust Litig.*, 611 F.2d 86, 88 n.2 (5th Cir. 1980); 3 NEWBERG ON CLASS ACTIONS § 8:39 (4th ed.) (“It is settled that class notice should be neutral and objective in tone.”); *Lamb v. United Sec. Life. Co.*, 59 F.R.D. 25, 42 (S.D. Iowa 1972).

Notice of the existence of a class action brought against a company known almost exclusively for providing legal documents cannot help but create the impression in the minds of LegalZoom’s Missouri customers that there is something legally flawed or deficient about the documents they have created on LegalZoom’s website. Yet Plaintiffs’ Petition does not allege — and Plaintiffs have not alleged thus far in the case — that any LegalZoom document purchased by any Missouri consumer is invalid for the purpose for which it was created. To give the opposite impression, as Plaintiffs’ Proposed Notice does, is not objective and not neutral. The notice Plaintiffs have proposed will almost certainly have the effect of instilling panic in LegalZoom’s Missouri customers as to whether the will, LLC, power of attorney, living will, trademark, etc., they created on LegalZoom’s website is in fact legally valid.

To restore the required objectivity and neutrality to the Notice, LegalZoom requests that the Court add the following bold and capitalized sentence to the first page of Plaintiffs’ notice after the other capitalized sentences:

THERE ARE NO ALLEGATIONS THAT ANY LEGALZOOM DOCUMENTS ARE IN ANY WAY INVALID OR INEFFECTIVE.

III. THE ADDRESS OF PLAINTIFFS' PROPOSED WEBSITE SHOULD BE CHANGED

Plaintiffs have proposed a class website to be called “www.lzoomclassaction.com” — a name that is a clear and close cognate of LegalZoom’s trade name. The clear consequences of using this name will be to confuse users and create questions, doubts, and concerns in the minds of past and prospective customers of LegalZoom who find the website (*via* a search engine or otherwise) about both LegalZoom itself and the validity of the documents they have purchased or are considering purchasing. What is more, the vast majority of people who encounter this website will be in states other than Missouri, where there is no question whatsoever that LegalZoom is not engaged in the unauthorized practice of law. These persons have nothing to do with this case.

There is no good reason to use Plaintiffs’ proposed name for the class website. LegalZoom therefore requests that the Court order Plaintiffs to use a more neutral name, such as “www.jansonclassaction.com” or “www.jansonlitigation.com,” after the surname of the lead plaintiff.

IV. THE COURT SHOULD PERMIT LEGALZOOM TO ANSWER INQUIRIES ABOUT THE CASE

Plaintiffs’ Proposed Notice ends with this admonition to class members:

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS CASE TO THE CLERK OF THE COURT, TO THE JUDGE OR TO LEGALZOOM. *They are not permitted to answer any questions.*

Plaintiffs’ Proposed Notice, Exhibit 1 to Plaintiffs’ Suggestions, at 4 (bold in original, italics added).

In light of the factors discussed above — the need to inform class members that documents they created on LegalZoom’s website are not legally deficient, and the likelihood that

past and prospective customers will come across a website at an address with a close cognate of LegalZoom's trade name in it — it is inevitable that LegalZoom will receive a large number of calls inquiring about this case. Some of these will no doubt come from non-Missouri customers who have not received the notice, but others are likely come from the many class members who do not read to the end of the notice and call LegalZoom to ask about their documents or the case. LegalZoom must be able to address these inquiries, and without the necessity of determining if a caller is a member of the class or not. The Court should not issue an Order approving a notice that restrains LegalZoom from saying anything in response to such inquiries.

The protections of the First Amendment are applicable to corporations such as LegalZoom. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 899 (2010). The Third Circuit has noted, in the related context of parties addressing potential members of a class action, that “the interest of the judiciary in the proper administration of justice does not authorize any blanket exception to the first amendment.” *Rodgers v. U.S. Steel Corp.*, 508 F.2d 152, 163 (3rd Cir. 1975).

As the Eighth Circuit stated in reversing an order restricting a defendant from making a statement counseling potential class members to opt out of a class, “[i]n a class-action lawsuit, a district court may not order restraints on speech under Fed. R. Civ. P. 23(d) except when justified by actual or threatened misconduct of a serious nature.” *Great Rivers Co-op v. Farmland Industries, Inc.*, 59 F.3d 764, 766 (8th Cir. 1995). The court therefore required “a clear record and specific findings” of the need for such restrictions on the rights of the parties. *Id.*

Not only have Plaintiffs made no such record here, until now they have never expressed a concern about what LegalZoom might tell past and prospective customers who call the company

to ask about this case or the validity of their documents. LegalZoom therefore requests that the Court not approve a Notice restricting LegalZoom from answering questions about the case.

Plaintiffs' Suggestions also propose that the class website contain "answers to some frequently asked questions by class members." Plaintiffs' Suggestions at 3. In the same vein as above, LegalZoom requests that the Court permit LegalZoom to participate in framing answers to any frequently asked questions and either order that those answers be mutually agreed between the parties or approved by the Court.

IV. PLAINTIFFS SEEK NOTICE TO PERSONS NOT PROPERLY IN THE CLASS

Plaintiffs' Proposed Notice repeatedly describes the membership in the class as extending "to the present." Although on December 14, 2010, the Court adopted Plaintiffs' proposed class definition and certified a class running "to the present," there is no factual basis for extending the closing date of the class past the date of certification. The Court should therefore order notice only to those persons the Court certified were included in the class: Missouri customers who purchased documents on the LegalZoom website up to and including December 14, 2010.

LegalZoom acknowledges that some courts have permitted classes to accumulate members after certification and even until notice. Courts also, however, have wide discretion to manage the definition of the class. *In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 & n.7 (5th Cir. 2004); *Harris v. Gen. Dev. Corp.*, 127 F.R.D. 655, 659 (N.D. Ill. 1989). Some courts have read classes defined as continuing "to the present" to extend only to the date of certification. *Bell v. Hershey Co.*, 557 F.3d 953, 955 & n.4 (8th Cir. 2009); *Gordon v. Microsoft Corp.*, 2003 WL 23105552, at *6, *9 (Minn. Dist. Ct. Mar. 14, 2003).

Since December 14, 2010, the Court has received no evidence and made no finding as to the typicality and commonality of purchases made after the certification order. While

LegalZoom does not necessarily maintain that its post-certification transactions with Missouri customers have been different from the certified transactions, it does argue that there is no evidence in the record that the later transactions are *not* different. Because the Court has not found those transactions to belong to the class, it should not approve Notice to Missouri residents who purchased documents on the LegalZoom website after December 14, 2010.

CONCLUSION

For the foregoing reasons, LegalZoom respectfully requests that the Court deny Plaintiffs' Motion for Approval of Class Notice and to Direct Defendant to Provide Class Contact Information, or in the alternative, order Plaintiffs to amend the Proposed Notice to conform to the objections contained herein.

Dated: February 14, 2011

Respectfully submitted,

BRYAN CAVE LLP

By: /s/ James T. Wicks

Robert M. Thompson MO #38156

James T. Wicks MO #60409

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

James R. Wyrsh MO #53197

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 February 14, 2011, the foregoing was electronically filed with the Clerk of Court and served by operation of the Court's electronic filing system upon all counsel of record.

Timothy Van Ronzelen
Matthew A. Clement
Kari A. Schulte
COOK, VETTER, DOERHOFF &
LANDWEHR, PC
231 Madison
Jefferson City, MO 65101
tvanronzelen@cvdll.net
mclement@cvdll.net
kschulte@cvdll.net

David T. Butsch
James J. Simeri
Mathew R. Fields
BUTSCH SIMERI FIELDS LLC
231 South Bemiston Ave., Suite 260
Clayton, MO 63105
butsch@bsflawfirm.com
simeri@bsflawfirm.com
fields@bsflawfirm.com

Edward D. Robertson, Jr.
Mary Doerhoff Winter
BARTIMUS, FRICKLETON, ROBERTSON
& GORNY
715 Swifts Highway
Jefferson City, MO 65109
chiprob@earthlink.net
marywinter@earthlink.net

Randall O. Barnes
RANDALL O. BARNES & ASSOCIATES
219 East Dunklin Street, Suite A.
Jefferson City, MO 65101
rbarnesjclaw@aol.com

Steven E. Dyer
10805 Sunset Office Drive, Suite 300
St. Louis, MO 63127
jdcpamba@gmail.com

/s/ James T. Wicks _____