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JUL 30 2010

JAMES N. HATTEN, Clerk
By: *[Signature]*
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

MAUREEN TOFFOLONI,
as Administrator and Personal
Representative of the ESTATE
OF NANCY E. BENOIT,

Plaintiff,

vs.

LFP PUBLISHING GROUP, LLC,
d/b/a Hustler Magazine, et al.,

Defendant.

CASE NO. 1:08-cv-00421-TWT

ORIGINAL AFFIDAVIT OF TYLER DOWNEY

Attached hereto is the original Affidavit of Tyler Downey manually filed by
Defendant LFP Publishing Group, LLC.

Respectfully submitted this 30th day of July 2010.

/s/ S. Derek Bauer

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AFFIDAVIT OF TYLER DOWNEY

Kansas
STATE OF ~~MISSOURI~~,

COUNTY OF Johnson.

Personally appeared before the undersigned officer duly authorized by law to administer oaths, TYLER DOWNEY, who being first duly sworn, deposed and said as follows:

1.

My name is Tyler Downey. I am over twenty-one (21) years of age and I am competent to make and give this Affidavit, and do so from personal knowledge.

2.

From February 2006 to February 2008 I was employed by LFP Publishing Group, LLC ("LFP") as editorial assistant.

3.

Shortly after Nancy Benoit was murdered in June 2007, Mark Samanksy contacted the LFP offices offering to sell information about Ms. Benoit's early career ambitions to be a nude model and images of her first and only known efforts to pursue those ambitions. After discussing the matter with my then-boss and *Hustler* Magazine Editorial Director Bruce David, we pursued the story and images for inclusion in a future issue of *Hustler* Magazine.

4.

LFP was interested in publishing the story about Ms. Benoit's early efforts to pursue a nude modeling career and the related images because of Ms. Benoit's celebrity status, the recent and substantial public interest in the high profile circumstances of her murder, and because, to the best of our knowledge, no other media outlet had ever reported on this unique aspect of Ms. Benoit's life and career. I do not believe LFP would have published the images of Ms. Benoit had they not illustrated and been accompanied by a news story with exclusive or otherwise notable information about her life and career.

5.

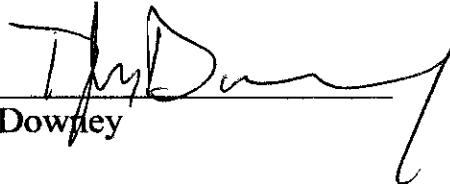
At the time LFP made the decision to publish the story and images of Ms. Benoit, and after discussing the matter with Mr. David and counsel for LFP I believed that LFP had the legal right to publish the story and the images without seeking permission from the Estate of Ms. Benoit. I recall that Mr. David shared that understanding.

6.

When the preview for the article about and images of Ms. Benoit was published in the February 2008 issue of *Hustler Magazine*, Ms. Benoit's first husband, James Daus, contacted LFP by telephone, through me, to inquire whether the images to be published by LFP included images from a videotape of Mr. Daus and Ms. Benoit engaging in sexual intercourse, and whether he was entitled to any payment from LFP for the images of Ms. Benoit that would be published in the March 2008 issue of *Hustler Magazine*. In that same telephone conversation Mr. Daus also told me that he had additional nude photographs of Ms. Benoit he would be interested in selling to *Hustler Magazine*.

[Signatures on following page]

Further affiant sayeth not.


Tyler Dowley

Sworn to and subscribed before me
this 28 day of July 2010.


Notary Public

