

**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,)

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

vs.)

LFP PUBLISHING GROUP, LLC,)
d/b/a Hustler Magazine.)
)
Defendant.)

MOTION TO AMEND THE PRETRIAL ORDER

Defendant LFP Publishing Group, LLC hereby moves to amend the Pretrial Order [D.I. 187] to (1) allow the parties to show at trial portions of the video deposition of Charles Bruce David; and (2) identify three additional exhibits LFP may use at trial.

Defendant listed Mr. David as a “will call” witness in the Pretrial Order; however, due to health-related issues which will likely preclude him from traveling across the country to appear in person, Mr. David has likely become unavailable to testify at trial. Defendant’s counsel has conferred with Plaintiff’s counsel

regarding this matter, and Plaintiff does not object to Defendant's use of Mr. David's video deposition at trial and has also reserved her right to do so.

Defendant also seeks to supplement its exhibit list with the following materials which post-date the Court's March 28, 2011 pre-trial Order:

31. March 29, 2011 letter from Donna Hahner to Maureen Toffoloni;
32. April 1, 2011 letter from Richard Decker to Donna Hahner and enclosures;
33. May 20, 2011 issue of Entertainment Weekly magazine (a copy of which has been provided to Plaintiff's counsel via hand-delivery today).

Plaintiff has indicated that she reserves her rights to and will likely object to the admissibility of each of these exhibits at trial.

A proposed Order is submitted herewith for the Court's convenience.

WHEREFORE, Defendant prays that this Court inquire into and sustain this motion, and enter an Order amending the pretrial order, D.I. 187, to reflect the addition of Mr. David's video deposition and the exhibits described above.

Respectfully submitted this 20th day of May 2011.

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Attorneys for LFP Publishing Group,
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CERTIFICATE OF SERVICE

This is to certify that I have this day filed the within and foregoing MOTION TO AMEND PRETRIAL ORDER via the CM/ECF system which will automatically send notification to Plaintiff's attorneys of record, who are participants in the CM/ECF system.

This 20th day of May 2011.

/s/ S. Derek Bauer
S. Derek Bauer

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Defendant.)

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

ORDER

Before the court is Defendant's Motion to Amend the Pretrial Order. Upon consideration of Defendant's motion, the Court grants the motion and ORDERS that the parties may use the video deposition of Charles Bruce David at trial, and further ORDERS that the Pretrial Order [D.I. 187] is hereby amended to reflect the following additions to Defendant's exhibit list:

31. March 29, 2011 letter from Donna Hahner to Maureen Toffoloni.

32. April 1, 2011 letter from Richard Decker to Donna Hahner and enclosures.
33. May 20, 2011 issue of Entertainment Weekly magazine.

So ORDERED this _____ day of May 2011.

Hon. Thomas W. Thrash, Jr.
United States District Judge