

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jimmy R. Flynt,
c/o Robert W. Hojnoski, Esq.
Reminger Co., LPA
525 Vine St., Suite 1700
Cincinnati, Ohio 45202

: Case No.: 1:11-cv-716

: Judge _____

:

Plaintiff,

: **COMPLAINT FOR WRONGFUL
DISCHARGE/TERMINATION, BREACH
OF CONTRACT, PROMISORY
ESTOPPEL AND MONEY DAMAGES**

Vs.

:

Flynt Management Group, LLC,
8484 Wilshire Blvd.
Beverly Hills, CA 90211

:

(JURY DEMAND ENDORSED
HEREON)

:

Defendant.

:

Plaintiff Jimmy R. Flynt (“Plaintiff” or “Jimmy”), through counsel, for his Complaint against Defendant Flynt Management Group, LLC (“FMG” or “Defendant”), hereby states as follows:

PARTIES / JURISDICTION / VENUE

1. Jimmy R. Flynt is a natural individual and is currently a resident of Nevada.

2. Defendant Flynt Management Group, LLC is a California limited liability company which was formally established in or around 2003. At all relevant times, FMG has been affiliated with Larry C. Flynt (“Larry”) and L.F.P., Inc. (“LFP”), a California Corporation, and other related and affiliated business entities all of which constitute the HUSTLER Enterprise – a close corporation (hereinafter “Hustler” or “The Hustler Enterprise” or “The Company”).

3. This Court has subject matter jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff is a citizen of Nevada and Defendant is a citizen of California. The amount in controversy exceeds \$75,000.

4. This Court has personal jurisdiction over FMG because FMG conducts business in Ohio, paid money/salary to Jimmy related to his work and services in Ohio, advertises and markets in Ohio, recruits and hires employees and managers in Ohio, enters into contracts in Ohio, and has committed tortious conduct toward Jimmy related in part to Jimmy's activities in Ohio.

5. Venue is proper in this jurisdiction pursuant to 28 U.S.C. 1391(a)(1)-(3).

6. This action is related to a current and ongoing dispute/civil action in this Court – *L.F.P., IP, LLC, et al. vs. Hustler Cincinnati, Inc., et al.*, , Case No.: 1:09CV913, pending before Judge Bertelsman.

GENERAL FACTUAL ALLEGATIONS

7. Larry and Jimmy Flynt are brothers. They have had a business and/or employment relationship since approximately 1969 in relationship to Hustler. Larry and Jimmy have had a confidential and fiduciary relationship based on mutual trust and benefit, and loyalty.

8. Jimmy has continuously worked with Larry and/or for Larry and/or for one of the HUSTLER-related entities since approximately 1969. The HUSTLER Enterprise is and always has been comprised of several privately owned, related and affiliated business entities all of which function as one singular company/close corporation. Although the names and number of affiliated and related entities has changed and

evolved over the years as business has grown and diversified, there has always been unity of ownership and management, commingling and sharing of funds, and informality.

9. The HUSTLER Enterprise started in Ohio and has grown over the years. HUSTLER's corporate headquarters were in Columbus, Ohio in the 1970's. Since the early 1980's, HUSTLER has been headquartered in Beverly Hills, California. HUSTLER, to include Defendant FMG, has always done business in Ohio.

10. At all times relevant hereto, HUSTLER has been an international multi-media enterprise which publishes, manufactures and/or distributes several adult and non-adult magazines, goods and products, operates numerous websites, produces and distributes video content, operates/licenses a chain of gentlemen's clubs, operates a chain of retail stores, a casino/card room in southern California, and various other adult and mainstream business activities, goods, services and interests.

11. Over the course of their 40 year business/employment relationship, particularly since 1989, Larry has made repeated specific and unequivocal promises and assurances to Jimmy of continued and indefinite employment at/within Hustler. Larry has specifically assured Jimmy that he would not and could not be terminated and that he would have continued employment for the rest of his life. Hustler has been Jimmy's livelihood and sole source of employment for his entire adult life.

12. Over the years, in reliance on his continued and indefinite employment within HUSTLER, Jimmy has made numerous asset transfers totaling millions of dollars to Larry (directly or indirectly) and/or to one or more of the affiliated business entities within HUSTLER owned and/or controlled by Larry.

13. Since 1969, no person other than Larry or Jimmy has ever held legal title in their individual name to any of the HUSTLER entities or assets.

14. Jimmy has frequently been held out by Larry and others within Hustler and/or perceived by third parties as a top-ranking executive, officer, director, owner, principal and/or partner within HUSTLER.

15. FMG was created in or around 2003 to serve as the entity through which the upper level management, officers and executives within the HUSTLER Enterprise are paid, including Jimmy and Larry.

16. Jimmy and Larry's professional relationship and dealings including their business/employment relationship has always been casual, informal, oral and based on mutual trust, loyalty and confidence arising, in part, from their sibling relationship.

17. Although Jimmy has always believed that he and Larry have been business partners / co-owners of Hustler, Jimmy has also been an employee/agent of Larry/Hustler. Jimmy has never been an "at will" employee.

18. Jimmy and Larry have held various titles over the years and have taken on differing roles and responsibilities within Hustler. Jimmy has been an officer and director of innumerable Hustler-entities. In recent years, Jimmy has been President of HUSTLER Entertainment, Inc. n/k/a HH-Entertainment, Inc. and of several of the operating entities set up to operate the various Hustler retail stores across the country. For most of the 2000's, LFP's board of directors consisted of Jimmy and Larry.

19. Jimmy has made significant contributions to the HUSTLER brand and enterprise over the course of his adult life. His activities, ideas, services and efforts

have significantly contradicted to the success, growth, stability and longevity of HUSTLER.

20. Most recently, since the late 1990's, Jimmy was the brainchild for HUSTLER retail, which has led to the second wave of growth for the Hustler Enterprise. HUSTLER retail was Jimmy's idea, has been highly profitable and has allowed expansion into many other areas and business areas, including gaming. Jimmy opened the first HUSTLER store and was the first to use the HUSTLER mark in commerce, in retail. Jimmy literally built HUSTLER retail from the ground up. He found locations, oversaw the design and construction of the stores, developed the concept and layout, came up with the name ("HUSTLER Hollywood") and the marketing tag line ("Relax...it's just sex!"), hired, trained, promoted, and fired employees and staff, monitored the financials, and otherwise oversaw all operational aspects. He traveled all over the country promoting, growing and marketing the Hustler brand. A significant amount of Jimmy's time and efforts related to services/work in Ohio. Larry has recently classified Jimmy as an Ohio employee.

21. During the 2000's, in addition to overseeing retail operations at the Cincinnati and Monroe Hustler locations, and to a lesser extent, the Hustler Store in Beverly Hills, CA, Jimmy took on the role and responsibility of further growing and expanding the retail arm of the company. The initial plan/vision was to open 5 new Hustler retail stores a year throughout the country. Jimmy traveled all over the United States scouting locations for new stores, obtained the necessary building, zoning and operating permits and licenses, coordinated design and construction, recruited, hired

and trained staff, got the stores stocked and set-up to conduct business and otherwise managed the store openings and initial operations.

22. Between 2004 and 2007, “Hustler Hollywood” boutiques (several with cafés) opened in Lexington, KY (July 16, 2004, through HH Lexington, LLC), Fort Lauderdale, Florida (July 23, 2004 through HH Ft. Lauderdale, LLC), New Orleans, LA (November 18, 2004 through HH New Orleans, LLC), Nashville, TN (June 17, 2005 through HH Nashville, LLC), Tacoma, WA, (September 8, 2006 through HH Tacoma, LLC), and St. Louis, MO (May 7, 2007 through HH St. Louis, LLC).¹

23. There have been two primary periods of growth of the HUSTLER brand. The first was in the 1970’s. The second was from the early to mid 1990’s through the time Jimmy was wrongfully discharged in early 2009. Jimmy was closely involved with both periods of growth neither of which would have occurred without his contributions, services, ideas and efforts.

24. Although Hustler has had many employees over the years, no other “long time” employee of Larry/HUSTLER/LFP has acted like Jimmy, has been perceived like Jimmy, or has been treated like Jimmy. No other employee has held stock or assets in their name. No other employee has had unlimited freedom and flexibility with respect to work hours or location. No other employee has participated in the hiring and firing of executives. No other employee was “there from the beginning,” i.e., 1969. No other employee has been prosecuted multiple times with Larry related to the business activities of HUSTLER. No other employee contributed as much as Jimmy. No other employee provided the start-up capital for HUSTLER during its formative and foundation

¹ During this period of time, two other stores opened, in South Beach, FL and Tempe, AZ but those stores are no longer in operation.

years in the 1970's. No other employee ever signed personal guarantees related to HUSTLER loans. No other employee has had unfettered use of the HUSTLER name/marks. No other employee has been a signatory on virtually all HUSTLER bank accounts. No other employee has been the sole legal shareholder of corporations which were the first to use (and register) the HUSTLER marks in commerce. No other employee's name is or has been adorned or displayed on HUSTLER websites, in HUSTLER retail stores and in various other ways in connection with the HUSTLER brand and business. No other employee has been promised a percentage of the Larry Flynt Trust, which was set up to hold and protect company assets. No other employee has given direction to the President of the company. No other employee has done so much to protect Larry. No other employee has had a relationship based on trust and confidence with Larry over the course of 4 decades. No other employee has shared legal and financial advisors with Larry. No other employee took action to become Larry's conservator and save the company in the 1980s during a period when Larry was incapacitated and acting recklessly. No other employee has participated in practically every major decision that has been made in connection with the HUSTLER brand since 1969. No other employee has literally "lived with" Larry for significant periods of time. No other employee has had the various titles that Jimmy has had over the years. No other employee has traveled the world or spent as much time with Larry, building and marketing Hustler, as Jimmy has.

25. Notwithstanding the complex current "corporate structure" that makes up HUSTLER, it has never been run, internally, like a formal corporation. HUSTLER has always been run informally as one private, family-owned and controlled company.

26. Jimmy has never been an “at will” employee of Larry or any business entity with the HUSTLER Enterprise. Since at least 1989, Larry has made repeated specific and unequivocal statements and assurances to Jimmy that he would have continued and indefinite employment at/within Hustler and that he could not be terminated. At all relevant times hereto, Jimmy has had an express and/or implied employment contract with Larry and/or L.F.P, Inc. and/or Defendant Flynt Management Group, LLC. [Jimmy, Larry and LFP are parties to *L.F.P. IP, LLC v. Hustler Cincinnati, Inc.* in which Jimmy has asserted wrongful termination/discharge claims. Those claims remain pending for adjudication.]

27. During the course of their business/employment relationship, Larry and Jimmy have shared legal advisors, both in connection with criminal matters as well as their business interests. Jimmy and Larry have also shared financial advisors and have mutually sought the advice and service of various executives, managers, and employees in connection with HUSTLER’s business affairs and operations.

28. Like many family businesses, HUSTLER was formed within and arose out of Jimmy and Larry’s very close sibling relationship. Jimmy has been there “from the beginning” when all that he and Larry had was a dream and no money. Apart from a difficult time in the 1980’s and up until the present dispute, Larry and Jimmy were extremely close, had a mutual business plan and goals, and trusted each other implicitly. Larry and Jimmy have lived together, traveled the world together, made decisions together, stood trial together and have stood side-by-side through some difficult and unusual storms. Their relationship and dealings have always been informal,

casual and oral. Although Jimmy has worked with and/or for Larry, he has not done so as an employee terminable at will.

29. Jimmy has lived and breathed HUSTLER form the time he was 21 years old until he was pushed out of the company in 2009 without justification by Larry/FMG. HUSTLER has been Jimmy's livelihood, his source of income for his entire adult life and reflects his (and Larry's) life's work.

30. At times, both Jimmy and Larry individually have been named "on paper" as the sole shareholder/legal owner of one or more of the various entities that have been set up within the HUSTLER Enterprise.

31. Jimmy has hired and fired numerous employees and has been involved with practically every major decision that has been made over the years within HUSTLER.

32. Since 1969, Jimmy has never worked for or received compensation from any other "employer" outside of Larry/Hustler to include one or more related or affiliated entities such as LFP or Defendant FMG.

33. Over the years, specifically the last 15 years, Jimmy has been encouraged/induced/coerced/directed to transfer legal title to millions of dollars in assets (cash, stock, personal property, real property, etc.) to Larry, directly or indirectly, in reliance on Larry's specific and unequivocal promises to him that he could not and would not be terminated and that he would have continued and indefinite employment at HUSTLER for the rest of his life. Jimmy also relied on specific and unequivocal promises by Larry that Jimmy would have an irrevocable interest in the Larry Flynt Revocable Trust/Hustler Enterprise. Based on these assurances/promises, Jimmy

transferred to Larry numerous assets, including: (1) real property located at 1038 Lebanon Rd., Monroe, Ohio, (2) real property located at 411 Elm St., Cincinnati, OH, (3) 100% of the stock of an Ohio corporation (HH-Monroe, Inc. f/k/a Hustler Hollywood of Ohio, Inc. – the operating entity of the Hustler Hollywood store in Monroe, Ohio, a very profitable business), and (4) millions of dollars in cash. In addition, Jimmy has taken action to protect Larry while furthering the Hustler's business interests.

34. In January of 2009, Larry filed a federal trademark infringement lawsuit against his nephews (Jimmy Flynt II and Dustin Flynt) and their newly formed company, Flynt Media, in federal court in Los Angeles.

35. In or around the time this trademark action was filed, Larry contacted Jimmy demanding that Jimmy "get control of his boys" and exert pressure on his boys to comply with his settlement demands, which included monetary compensation (\$100,000) and an agreement not to use the Flynt name, alone, to market products. Larry made threats to Jimmy that if he could not make the lawsuit go away (i.e., if he could not persuade his sons to give in to Larry's demands) then he would "cut him off" financially. Larry told Jimmy that he would take his (Jimmy's) compensation/salary to fund the lawsuit that he instituted against Jimmy's sons. Larry was blunt and unequivocal in threatening economic adversity and harm to Jimmy unless Jimmy was willing and able to exert sufficient and effective fatherly influence to affect the outcome of Larry's federal lawsuit in Larry's favor.

36. As of January of 2009, Jimmy drew his salary (\$250,000/year) and benefits through Flynt Management, LLC. In addition to his salary, Jimmy received health and other fringe benefits, including a 401K retirement plan, a car and an expense

account, all through Flynt Management, LLC. Previously, Jimmy received salary and benefits from L.F.P., Inc., Hustler Entertainment, Inc., Hustler Hollywood of Ohio, Inc. and/or one or more other related/affiliated entities within the HUSTLER Enterprise.

37. Jimmy reached out to his sons in an effort to persuade them to give up on using Flynt name, standing alone, in connection with their newly formed business and to otherwise heed to Larry's demands, which included a monetary payment. Jimmy's sons believed strongly in their legal position and in their newly formed company and were unwilling to simply give up.

38. Beginning in February, 2009, Larry embarked on a course of action intending to wrongfully discharge/terminate Jimmy and otherwise "squeeze" Jimmy out of the Hustler business/enterprise.

39. First, Larry gave the directive to FMG to stop Jimmy's pay (direct deposited every two weeks into Jimmy's personal checking account). No explanation was given to Jimmy. At one point in late February, 2009, in violation of the law, FMG direct deposited funds into Jimmy's checking account and then a few hours later, took them back out. Jimmy sought an explanation but none was provided.

40. After Jimmy's pay had been stopped, in early April of 2009, Larry sent Jimmy two legal bills incurred in connection with his lawsuit against Jimmy's sons and asked that Jimmy pay those bills directly.

41. On or about April 29, 2009, Tom Candy, a long time employee of Hustler (and former CFO), contacted Jimmy/HCI's accountant, Allie Jackson III. Tom asked/instructed Allie to "loan" \$400,000 from Hustler Cincinnati, Inc. to LFP Internet Group, LLC (one of the entities within the Hustler enterprise) in connection with a

mysterious “major project” that the “internet group” was working on. Tom held himself out as “Executive Vice President” for LFP Internet Group, LLC, a title he did not actually hold. Tom told Allie that he was aware that Hustler Cincinnati had “excess cash” based on weekly financial reports that, at the time, were provided by Mr. Jackson, on behalf of Hustler Cincinnati, to LFP’s accounting group in California. Tom requested Allie send a wire transfer of \$400,000 and suggested that time was of the essence – asking for the funds to be wired “tomorrow.” Tom followed up his phone communication with an e-mail communication and a proposed “promissory note.” Mr. Candy wrote that he was contacting the “different division (sic) that have excess cash and requesting that they transfer funds to us for the project.” Tom provided instructions for transferring the money to a bank in Beverly Hills, CA. Allie immediately notified Jimmy of this request. Jimmy told Allie not to make the transfer as Jimmy suspected it was fraudulent. Allie called Tom to inform him that Jimmy had instructed him not to make the funds transfer. Tom responded: “this is going to be a problem.”

42. Larry has admitted that he gave the directive in or around April of 2009 to use a fraudulent promissory note / loan request in an effort to obtain “excess cash” from the bank account(s)/possession of Hustler Cincinnati, Inc. Larry believed that he was entitled to those proceeds even though Jimmy was/is the sole shareholder/owner of Hustler Cincinnati, Inc. There was no “major internet project,” no other divisions were requested to loan “excess cash” and Larry/LFP Internet Group, LLC had no intention of paying the requested \$400,000 loan back.

43. Less than a week after the \$400,000 loan request was denied, Larry took action in an effort to evict Jimmy/Hustler Cincinnati, Inc. from 411 Elm Street in

downtown Cincinnati. Litigation concerning that dispute remains ongoing in the Hamilton County Court of Common Pleas.

44. Subsequently, a letter dated June 15, 2009 was sent by an agent of Defendant Flynt Management Group, to Jimmy at his Las Vegas residence advising him that his purported position as an “unpaid consultant” was being terminated by FMG. Jimmy had never heard of this title. The author of the letter, John Lara, has recently testified that he did not know what an “unpaid consultant” was and that the letter was written by Hustler’s legal counsel at the Lipsitz Green law firm in Buffalo, NY.

45. On June 25, 2009, Jimmy received a second letter at his Las Vegas residence from Flynt Management advising that due to “recent events that have clearly placed you in a conflict of interest of Mr. Larry C. Flynt” he was being terminated, effective immediately, and that all of his benefits were being stopped. He was instructed to turn in his company car under threats that if he failed to do so, “FMG shall deem the vehicle stolen, and take whatever legal actions are available to it to secure the return of the vehicle.” Jimmy returned his company car to a dealership. Flynt Management did not follow the normal course of events or company policy in their purported “termination” of Jimmy. No compensation or severance was offered. There was no legitimate business reason or justification nor was their “just cause” to terminate Jimmy’s pay and benefits.

46. Jimmy’s termination violated the terms of his express and/or implied employment agreement and was also in violation of public policy.

Count 1 – Wrongful Termination/Discharge, Breach of Express and/or Implied Employment Contract, Promissory Estoppel

47. Plaintiff restates and incorporates by reference all preceding paragraphs as if fully re-stated herein.

48. Jimmy has believed and continues to believe that he and his brother, Larry, have been partners, co-adventurers and/or co-owners with respect to HUSTLER and that, together, they have built HUSTLER side-by-side. Larry has recently claimed that Jimmy has always been “his employee” since 1969. Larry has admitted to having an “agreement” with Jimmy related to Jimmy’s employment. Larry has asserted that Jimmy was most recently his employee, paid through Defendant FMG, and that he was paid his salary (\$250,000) and benefits primarily for “his work and services” in Ohio.

49. Larry has made repeated and specific promises and assurances to Jimmy over the years, to include the last 23 years, of Jimmy’s continued and indefinite employment at Hustler for the rest of Jimmy’s life. Larry has unequivocally assured Jimmy that he would not and could not be terminated. Larry has also unequivocally assured Jimmy that Jimmy was “taken care of” in his trust. Jimmy has relied to his detriment on these promises, to include the transfer of significant assets and things of value without consideration.

50. Jimmy had an express and/or implied employment agreement/contract with Larry, L.F.P., Inc. and/or Defendant Flynt Management Group, LLC such that Jimmy would have continued and indefinite employment at/within HUSTLER for the remainder of his life, that his salary would remain the same or increase, and that he could not be terminated. This agreement was premised, in part, based on course of dealing, numerous representations made to (and about) Jimmy, Jimmy’s years of service and significant contributions, Jimmy’s numerous asset transfers based on his reliance, in

part, of his continued and indefinite employment at HUSTLER, and other various factors as described herein.

51. Larry and/or LFP and/or FMG breached this agreement when Jimmy's pay was stopped in February, 2009 and when his benefits were stopped in June of 2009 without cause, justification or explanation. Larry attempted to terminate Jimmy for an ulterior purpose, specifically as a consequence of a dispute that Larry had with Jimmy's sons and/or due to Jimmy's refusal to heed to a fraudulent \$400,000 loan request.

52. Jimmy's discharge violated clear public policy. Specifically, Jimmy was terminated as a consequence of his inability to influence the outcome of a federal lawsuit in Jimmy's favor. In addition, Jimmy was discharged because he refused to comply with a fraudulent loan request, which violated Ohio's securities laws. Furthermore, Jimmy's discharge violated public policy in that Jimmy was a minority owner within Hustler (by virtue of his ownership of Hustler Cincinnati, Inc.) to whom a heightened fiduciary duty was/is owed.

53. At all times relevant hereto, HCI was affiliated with the HUSTLER Enterprise, a close corporation, and, as such, Jimmy was/is a minority owner within HUSTLER.

54. Owners in a close corporation are often employees of the corporation/enterprise. An owner of a close corporation who also works for the close corporation cannot be terminated at will absent a legitimate business reason and even then is entitled to receive the equitable value of his ownership interest. A majority or controlling owner has a fiduciary duty not to misuse his power by promoting personal interests at the expense of company interests. Majority or controlling owners breach

such a fiduciary duty to minority owners when control is utilized to prevent the minority from having an equal opportunity in the business.

55. There was not a legitimate business purpose for Jimmy's termination. He was terminated solely as a result of Larry's efforts to obtain influence over his now-concluded litigation with Jimmy's sons and/or in retaliation for Jimmy's inability to influence his sons and/or Jimmy's refusal to accept a fraudulent \$400,000 loan request. Larry's/FMG's/LFP's termination of Jimmy was retaliatory in violation of the law and public policy.

56. The actions of Larry, LFP and Defendant FMG, as described herein, were committed maliciously, fraudulently, oppressively and in bad faith with the intent of injuring Jimmy, and/or with a willful and conscious disregard of public policy and Jimmy's express and/or implied contract for continued, long-term, indefinite employment for the remainder of his life. Because these acts were carried out by managerial employees in a deliberate and intentional manner, Jimmy is entitled to recover punitive damages in a sum sufficient to punish and deter such future conduct.

57. For the reasons set forth herein, specifically Larry's specific promises and assurances to Jimmy of continued and indefinite employment with Hustler, which Jimmy detrimentally relied upon, FMG was/is estopped from terminating Jimmy without cause.

58. Jimmy has suffered, and is suffering, substantial losses of earnings and employment benefits, and has suffered mental and emotional distress and discomfort, all to his damage in an amount exceeding \$10,000,000.

59. Jimmy demands back pay, front pay, lost benefits, interest, and all other damages to which he is entitled as a result of his wrongful termination.

WHEREFORE, based on the foregoing, Plaintiff Jimmy R. Flynt requests the following relief:

1. For Judgment against Defendant Flynt Management Group, LLC;
2. For compensatory damages in excess of \$10,000,000;
3. For an award of punitive damages sufficient to deter Defendant's malicious conduct in excess of \$10,000,000,
4. For a trial by jury,
5. For recovery of Plaintiff's attorneys fees, costs and expenses, and
6. For any and all other relief to which Plaintiff is entitled, legally or equitably.

Respectfully submitted,

REMINGER CO., L.P.A.

/s/ Robert W. Hojnoski

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JURY DEMAND

Plaintiff, through counsel, hereby demands a trial by jury as to all triable issues.

/s/ Robert W. Hojnoski

Robert W. Hojnoski, Esq.