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2 SB# 145467  
3 700 11TH AVENUE, #1  
4 SAN FRANCISCO, CA 94118  
5 (415) 386-6575

**FILED**  
San Francisco County Superior Court

FEB 10 1994

4 Attorney for Defendants  
5 ECLIPSE ENTERPRISES, INC.;  
6 JAN MULLANEY; DEAN MULLANEY

ALAN CARLSON, Clerk  
BY: Alan Carlson Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

9 TOREN SMITH, an individual )  
10 dba STUDIO PROTEUS, )  
11 Plaintiff, )  
12 vs. )  
13 ECLIPSE ENTERPRISES, INC., a New )  
14 York corporation; DEAN MULLANEY, )  
15 an individual; JAN MULLANEY, an )  
16 individual; and DOE 1 through )  
17 DOE 20, inclusive, )  
18 Defendants. )

No. 957460

ANSWER TO COMPLAINT

17 Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and JAN

18 MULLANEY answer the complaint of TOREN SMITH, dba STUDIO PROTEUS,  
19 as follows:

20 1. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
21 JAN MULLANEY deny each and every allegation as set forth in  
22 paragraphs 6, 7, 8, 40, 41, 42, 43, 44, 46, 48, 49, 50, 54, 55,  
23 56, 58, 59, 60, 64, 65, 66, 68, 69, 70, 74, 75, 76, 78, 79, 80,  
24 84, 85, 86, 88, 89, 90, 94, 95, 96, 98, 99, 100, 103, 104, 105,  
25 and 107 of the complaint.

26 2. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
27 JAN MULLANEY deny the allegations set forth in paragraphs 9, 10,  
28 13, 14, 17, 18, 22, 26, 27, 31, 33, 35, 37, and 39 of the

1 complaint, except they admit that agreements were made between  
2 ECLIPSE ENTERPRISES, INC. and the parties alleged in those  
3 paragraphs.

4 3. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
5 JAN MULLANEY lack sufficient information and belief to affirm or  
6 deny the allegations set forth in paragraphs 1, 5, 12, 16, 20,  
7 21, 25, 29, 52, 62, 72, 82, and 92 of the complaint, and on those  
8 grounds deny each and every allegation set forth in those  
9 paragraphs of the complaint.

10 4. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
11 JAN MULLANEY are uncertain as to which specific agreements, oral  
12 or written, and between which parties, are being alleged in  
13 paragraphs 11, 15, 19, 24, 28, 30, 32, 34, 36, 38, 45, 51, 61,  
14 71, 81, and 91 of the complaint, and therefore lack sufficient  
15 information and belief to affirm or deny the allegations set  
16 forth in those paragraphs, and on those grounds deny each and  
17 every allegation set forth in those paragraphs of the complaint.

18 5. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
19 JAN MULLANEY admit the allegations set forth in paragraph 2 of  
20 the complaint, except that they deny that ECLIPSE ENTERPRISES,  
21 INC maintained its principal place of business in the City of  
22 Forestville, County of Mendocino, California, or any State other  
23 than New York.

24 6. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
25 JAN MULLANEY admit the allegations set forth in paragraph 3 of  
26 the complaint.

27 7. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
28 JAN MULLANEY admit the allegations set forth in paragraph 4 of

1 the complaint, except that they deny Staten Island is in the  
2 County of Nassau.

3 8. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
4 JAN MULLANEY incorporate herein by reference each and every  
5 denial and admission of the allegations set forth in the  
6 complaint as set forth herein to the same extent that complainant  
7 has realleged and incorporated the allegations of the complaint  
8 in paragraphs 47, 53, 57, 63, 67, 73, 77, 83, 87, 93, 97, and 101  
9 of the complaint.

10 9. Defendants ECLIPSE ENTERPRISES, INC., DEAN MULLANEY, and  
11 JAN MULLANEY deny the allegations set forth in paragraph 23,  
12 except that they admit that an agreement was made between ECLIPSE  
13 ENTERPRISES, INC. and STUDIO NUE, and that some funds were paid  
14 by ECLIPSE ENTERPRISES, INC. pursuant to that agreement.

15 10. Defendants ECLIPSE ENTERPRISES, INC., DEAN  
16 MULLANEY, and JAN MULLANEY deny the allegations set forth in  
17 paragraph 102, except that they admit SMITH has made a demand for  
18 payment of an alleged amount due to SMITH from defendants.

19 11. Defendants ECLIPSE ENTERPRISES, INC., DEAN  
20 MULLANEY, and JAN MULLANEY deny the allegation set forth in  
21 paragraph 106 of the complaint that there was a conversion, and  
22 lack sufficient information and belief to affirm or deny the  
23 remaining allegations set forth in paragraphs 106 of the  
24 complaint, and on those grounds deny each and every allegation  
25 set forth in that paragraph of the complaint.

26  
27 AFFIRMATIVE DEFENSES

28 12. As a first affirmative defense to the complaint,

1 defendants allege and assert that complainant has failed to  
2 allege facts sufficient to state a cause of action.

3 13. As a second affirmative defense to the complaint,  
4 defendants allege and assert that the allegations of the  
5 complaint are vague and uncertain because the alleged contracts  
6 are not attached to the complaint, the complaint fails set forth  
7 the relevant terms of the alleged contracts, and the complaint  
8 fails to state whether the alleged contracts are oral or written.

9 14. As a third affirmative defense to the complaint,  
10 defendants allege and assert complainant's damages, if any, were  
11 legally caused by acts or omissions of persons other than  
12 defendants.

13 15. As a fourth affirmative defense to the complaint,  
14 defendants allege and assert that complainant has failed to  
15 mitigate their damages, if any.

16 16. As a fifth affirmative defense to the complaint,  
17 defendants allege and assert that complainant's claims are barred  
18 by waiver of such claims.

19 17. As a sixth affirmative defense to the complaint,  
20 defendants allege and assert that complainant's claims are barred  
21 by complainant's negligence.

22 18. As a seventh affirmative defense to the complaint,  
23 defendants allege and assert that complainant's claims are barred  
24 by election of remedies.

25 19. As a eighth affirmative defense to the complaint,  
26 defendants allege and assert that complainant's claims are barred  
27 by complainant's fraudulent misrepresentations.

28 20. As a ninth affirmative defense to the complaint,

1 defendants allege and assert that complainant's claims are barred  
2 by complainant's negligent misrepresentations.

3 21. As a tenth affirmative defense to the complaint,  
4 defendants allege and assert that complainant's claims are barred  
5 by the doctrine of unclean hands.

6 22. As a eleventh affirmative defense to the complaint,  
7 defendants allege and assert that complainant's claims are barred  
8 by the doctrine of mistake.

9 23. As a twelfth affirmative defense to the complaint,  
10 defendants allege and assert that complainant's claims are barred  
11 by the statute of frauds, Section 1624, Subsection (1) & (2) of  
12 the Civil Code.

13 24. As a thirteenth affirmative defense to the complaint,  
14 defendants allege and assert that complainant's claims are barred  
15 by the doctrine of impossibility.

16 25. As a fourteenth affirmative defense to the complaint,  
17 defendants allege and assert that complainant's claims are barred  
18 by the doctrine of impracticability.

19 26. As a fifteenth affirmative defense to the complaint,  
20 defendants allege and assert that complainant's claims are barred  
21 by complainant's breach of contract, in not making timely  
22 delivery of work pursuant to the agreements.

23 27. As a sixteenth affirmative defense to the complaint,  
24 defendants allege and assert that complainant's claims are barred  
25 by the doctrine of frustration.

26 28. As a seventeenth affirmative defense to the complaint,  
27 defendants allege and assert that complainant's claims are barred  
28 by the doctrine of laches.

1           29. As a eighteenth affirmative defense to the complaint,  
2 defendants allege and assert that complainant's claims are barred  
3 by the doctrine of hardship.

4           30. As a nineteenth affirmative defense to the complaint,  
5 defendants allege and assert that complainant's claims are barred  
6 by the doctrine of estoppel.

7           31. As a twentieth affirmative defense to the complaint,  
8 defendants allege and assert that complainant's claims are barred  
9 by the parol evidence rule.

10          32. As a twenty-first affirmative defense to the complaint,  
11 defendants allege and assert that complainant's claims are barred  
12 by the doctrine of payment and release.

13          33. As a twenty-second affirmative defense to the  
14 complaint, defendants allege and assert that complainant's claims  
15 are barred by lack of consideration.

16          34. As a twenty-third affirmative defense to the complaint,  
17 defendants allege and assert that complainant's claims are barred  
18 by setoffs.

19          35. As a twenty-fourth affirmative defense to the  
20 complaint, defendants allege and assert that complainant lacks  
21 the capacity to sue.

22          36. As a twenty-fifth affirmative defense to the complaint,  
23 defendants allege and assert that defendants JAN MULLANEY and  
24 DEAN MULLANEY have been misjoined in this action, as they were  
25 not parties to any alleged agreements set forth in the complaint.

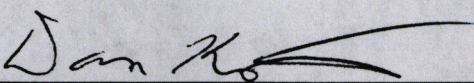
26          37. As a twenty-sixth affirmative defense to the complaint,  
27 defendants allege and assert that complainant 's claims are  
28 barred by the Statute of Limitations under Section 337,

1 Subsections 1, 2, & 3, and Section 339, Subsection 1 of the Code  
2 of Civil Procedure.

3 38. As a twenty-seventh affirmative defense to the  
4 complaint, defendants allege and assert that plaintiff SMITH at  
5 all times mentioned in the complaint dealt with ECLIPSE  
6 ENTERPRISES, INC. as a corporation separate and distinct from  
7 individual defendants DEAN MULLANEY and JAN MULLANEY, and was  
8 fully aware of individual defendants' relationship with the  
9 corporation. Individual defendants relied on the fact that  
10 plaintiff at all times dealt with the corporation as a separate  
11 entity. Application in plaintiff's behalf of the doctrine of  
12 disregarding the corporate entity is not required by equity and  
13 would be inequitable as to individual defendants.

14  
15 WHEREFORE, defendants pray that complainant take nothing by  
16 the complaint, and that defendants be awarded judgment in this  
17 action, along with reasonable attorneys' fees and costs of the  
18 suit incurred, and such other and further relief as the court  
19 deems proper.

20  
21 Dated: 2-9-94

  
\_\_\_\_\_  
Daniel Kornbluth  
Attorney for Defendants

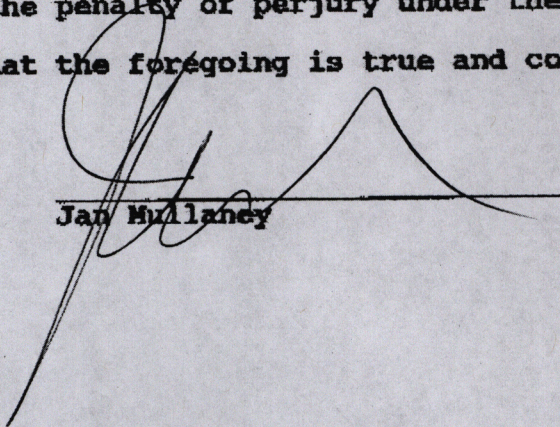
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**VERIFICATION**

I, the undersigned, certify and declare that I have read the foregoing answer to complaint and know its contents. I am an officer of Eclipse Enterprises, Inc., a party to this action, and I am authorized to make this verification for and on behalf of Eclipse Enterprises, Inc. I am informed and believe that the matters stated in the answer to complaint are true.

Executed on 2/9/94, 1994 at Staten Island, New York.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Jan Mullaney



**PROOF OF SERVICE**

CASE NAME: SMITH vs. ECLIPSE ENTERPRISES, INC., ET.AL.

COURT: SAN FRANCISCO SUPERIOR COURT

CASE NO.: 957460

I am a citizen of the United States and a resident of the County of San Francisco. I am over the age of 18 years and not a party to the within above-entitled action; my business address is 700 11th Avenue, #1, San Francisco, CA 94118.

On this date, I served the foregoing document described as:

**ANSWER TO COMPLAINT**

on the parties below by placing a true copy thereof in a sealed envelope and served same on the parties/counsel, addressed as follows:

Stephen N. Hollman, Esq.  
PETTIT & MARTIN  
50 W. San Fernando St., 7th Floor  
San Jose, CA 95113

ATTORNEY FOR PLAINTIFF

The following is the procedure in which service of the document(s) was effected:


U.S. Postal service, by placing such envelope(s) with postage thereon fully prepaid in the United States mail at San Francisco, California.

Fax

Express Mail

Personal Service

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this document was executed at San Francisco, California, on February 10, 1994.

  
\_\_\_\_\_  
Daniel Kornbluth