



1                   4.       As of September 9, 1993, defendant, Eclipse Enterprises, Inc., admitted to  
2 owing \$84,822.64 of the contractual damages sought by the Complaint in the amount of  
3 \$150,561.66 (exclusive of attorneys' fees and costs).

4                   5.       The total amount due under the Complaint has been outstanding, in a  
5 number of instances, for more than three years during which time the defendants have made use of  
6 the monies owed to me and the Japanese publishing companies for new business ventures, the  
7 expansion of the business of defendant, Eclipse Enterprises, Inc., and cash flow.

8                   6.       The amount of contractual damages sought by the Complaint in the amount  
9 of \$150,561.66 is borne out by very detailed accountings. When repeatedly presented with those  
10 accountings, defendants contend that they have incomplete records available to them in order to  
11 reconcile those accountings. However, the accountings evidencing the contractual damages sought  
12 by the Complaint are true, complete, and accurate.

13                   7.       Defendants are systematically disposing of assets of defendant, Eclipse  
14 Enterprises, Inc., that, if continued, will conceal or make unavailable for levy resources to satisfy  
15 any judgment ordered by this Court in this action.

16                   8.       In the Newswatch section of the January 1994 edition of The Comics  
17 Journal, a trade magazine for the comic book industry, a press account concerning defendants  
18 appeared that is relevant to this Application. A copy of that article is attached hereto as Exhibit A.

19                   9.       In the Newswatch section of the February 1994 edition of The Comics  
20 Journal, a second press account concerning defendants appeared that is relevant to this Application.  
21 A copy of that article is attached hereto as Exhibit B

22                   10.      The second of the two press accounts from Newswatch, while mentioning  
23 this action, relates a disposition of defendant, Eclipse Enterprises, Inc., not to pay its trade  
24 obligations.

25                   11.      In March 1994, it was directly related to me from authoritative sources in the  
26 comic book industry that defendant, Dean Mullaney, was attempting to sell assets of defendant,  
27 Eclipse Enterprises, Inc. In one instance, I was able to verify with one such authoritative source  
28 that defendant, Dean Mullaney, was endeavoring to sell certain assets of defendant, Eclipse

1 Enterprises, Inc., in return for a position of employment. Because of the close knit nature of the  
2 comic industry, I was unable to obtain sworn Affidavits to corroborate what had been directly  
3 related to me and that I had been able to verify.

4 12. Defendants have now admitted in writing that they are liquidating the assets  
5 of defendant, Eclipse Enterprises, Inc. On April 12, 1994, I received a letter sent to me by  
6 facsimile from defendants, Eclipse Enterprises and Jan Mullaney, a copy of which is attached  
7 hereto as Exhibit C. The first sentence of the second paragraph states that "Eclipse has been  
8 working extremely hard on selling assets to raise revenues to pay our various creditors and avoid  
9 bankruptcy." (Emphasis added.) Those defendants, therefore, admit to the fact that they are  
10 selling assets, but make no accounting of the disposition of the resultant proceeds and seem  
11 disposed to continue to sell such assets in violation of the provisions of the Uniform Fraudulent  
12 Conveyance Act.

13 13. On Friday, April 15, 1994, I participated in a telephone discussion with my  
14 attorney, Stephen N. Hollman, defendants, Dean Mullaney and Jan Mullaney, and their attorney,  
15 Daniel Kornbluth. During that telephone discussion, defendant, Dean Mullaney, stated that a  
16 number of the assets of defendant, Eclipse Enterprises, Inc., had been sold, and that negotiations  
17 were underway for the sale of additional of its assets. In that same telephone discussion,  
18 defendant, Dean Mullaney, stated that he was making monthly payments from those proceeds of  
19 \$2,500.00 to a creditor of defendant, Eclipse Enterprises, Inc., who has not yet filed suit to collect  
20 its unpaid obligation.

21 14. In that same telephone discussion on April 15, 1994, defendants, Dean  
22 Mullaney and Jan Mullaney, stated that they had already collected proceeds from the sale of assets  
23 and collection of accounts receivable of defendant, Eclipse Enterprises, Inc., and expected to  
24 collect substantial additional accounts receivable by about the first of May 1994.

25 15. In light of what defendants stated in their April 12, 1994 letter and related in  
26 the April 15, 1994 telephone discussion, I agreed toward the end of that April 15, 1994 telephone  
27 discussion to a compromise resolution of the contractual damages sought by the Complaint if I  
28 could be assured of a mechanism by which an independent third party would pay a portion of the

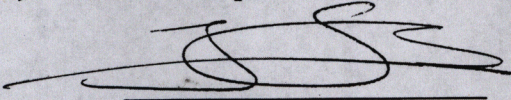
1 proceeds being received by defendants from the sale of assets and collection of receivables of  
2 defendant, Eclipse Enterprises, Inc., toward that compromise resolution. That resolution was to be  
3 placed on the record as a judicially supervised settlement before Hon. Raymond J. Arata, Jr. at 3:30  
4 p.m. on April 19, 1994 in Department 1 of this Court. At approximately 1:30 p.m. on that date, my  
5 attorney was advised that the resolution was being called off by defendants.

6           16. In California, defendant, Eclipse Enterprises, Inc., also does business as  
7 Eclipse Comics. See Exhibit D attached hereto.

8           17. In light of the verbal statements made directly to me by defendants on April  
9 15, 1994, the written admission of defendants dated April 12, 1994 attached hereto as Exhibit C,  
10 the information related to me directly by authoritative third parties that I was later able to verify,  
11 and the press accounts attached hereto as Exhibits A and B that directly quote defendant, Dean  
12 Mullaney, it may be inferred that there is a danger that the property of the corporate and individual  
13 defendants sought to be attached would be concealed, substantially impaired in value, or otherwise  
14 made available to levy if issuance of an attachment order was delayed until the matter could be  
15 heard on notice.

16           I declare under penalty of perjury that the foregoing is true and correct under  
17 penalty of perjury.

18           Executed at San Francisco, California on April 22, 1994.



20           Toren Smith

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**EXHIBIT "A"**

# Eclipse Copes with Divorce and Back Debt

Amidst rumors of cash-flow problems and the dissolution of the marriage of Dean Mullaney and Cat Yronwode, who are also business partners in the company, Eclipse Comics has had a difficult year in 1993. Mullaney and Yronwode, who worked together at Eclipse for 11 years and have been married for six years, separated in the summer of 1993. Regarding the rumors that the company has had cash-flow problems, Mullaney told the *Journal*, "There's definitely been a problem getting royalty statements out on time."

Mullaney moved out of the Forrestville, California home he shared with Yronwode over the summer of 1993 to Staten Island, New York. The editorial offices remain in Forrestville, where Yronwode works as Editor-in-Chief. Divorce proceedings are currently underway, according to Yronwode.

In the September 10 issue of the *Comics Buyer's Guide*, Cat Yronwode wrote a coded message in her "Fit to Print" column, which is a regular feature within a long-running weekly paid Eclipse advertisement. It read: "Those Who Read Code Can Get The Real News Dean Has Left Me For A Woman Named Jane Kingbury Who Has Bone Chips In Her Brain — Cat." She later elaborated in an October 29, 1993 *CBG*:

*After our eleven years together, Dean Mullaney, my publisher and my husband, has unilaterally ended our personal partnership. To be perfectly candid, this was not a mutual decision reached through discussion nor even an expected defection of which I had been foretold. Rather, while he was staying at his mother's home in New York, Dean simply allowed me to find out that he had already undertaken a new relationship. The news was delivered in the most abrupt manner possible — when his new lover answered the telephone.*

How the divorce will affect Eclipse's business remains unclear. Asked if she thought her role in the company would change because of this, Yronwode told the *Journal* that she did not foresee any change at this time.

Neil Gaiman, the writer for Eclipse's *Miracle Man* series, claims that Eclipse owes him and his collaborator, the artist Mark Buckingham, payment for work dating back two years. Gaiman told the *Journal* he's owed for his writing on *Miracle Man* #23-24, and two *Miracle Man* books which came out in the summer of 1992, *Miracle Man: Apocrypha* and *Miracle Man: The Golden Age*. Gaiman said he never even received an advance for *Miracle Man: The Golden Age*, "not one thin dime... I think it's incredibly unprofessional behavior," he said of Eclipse's inability to send royalty statements.

"But I'm delighted to hear that Eclipse will be making payments. I trust we're about to enter a new era of seeing royalties."

Toren Smith, who handled the translation and packaging of Eclipse's line of Japanese comic reprints, claims he's owed for work on at least seven titles: *Appleseed*, *Black Magic*, *Dominion*, *Cyber 7*, *Dirty Pair*, *What's Michael*, and *Lost Continent*. "Eclipse has been paying late for the last three years," he told the *Journal*. "Their accountings have been peculiar, and I am now taking legal steps on behalf of myself and the Japanese to get what we're owed."

Mullaney could not be reached to comment on Gaiman and Smith's specific allegations, although in an earlier conversation with a *Journal* reporter he spoke in general about Eclipse's renewed efforts to make royalty payments. The *Journal* was able to reach Cat Yronwode, who is one of five owners of Eclipse, who stated that: "In the entire time I've been associated with Eclipse I've never been permitted to write checks or see the books of the company. I only deal with the editorial department. The only monetary stuff I oversee is the warehouse [which has a separate checking account located locally in Forrestville]." She added, "I'm a regular officer of the company, but actually I function as an editorial wage slave."

Mullaney has taken over his brother Jan's duties in the company, which includes Accounts Payable. According to Mullaney, "It's been Jan's responsibility" to send out royalty statements, and that he hadn't "had the time to do it. That's the main reason why I'm taking over that job to make sure people get their royalty statements on time." He added that "By [December 31, 1993] everyone who hasn't gotten royalty statements in the last month and a half will be getting them."

Eclipse has also been publishing books in conjunction with Harper Collins since January, 1993, and Mullaney expressed a degree of frustration that royalty checks to creators are not being issued on time by Harper Collins. According to Mullaney, their agreement with Harper Collins is that royalties are reported on a semi-annual basis, the first royalty period being January-June, 1993. During that time Eclipse and Harper Collins published four books together, *The Yattering and Jack*, *Miracle Man: The Golden Age*, *Dragon Flight*, and *Trapped*. Harper Collins was, according to Mullaney, obligated to pay the creators of those books by September 30, 1993, which Harper Collins failed to do. "They're very slow getting paperwork out," Mullaney told the *Journal*. Eclipse is responsible for royalties from sales in the direct-sales market while Harper Collins is responsible for royalties from sales in the book-



According to Toren Smith, Eclipse has been late in paying him for translations of numerous Japanese titles.

store market. In the meantime, Mullaney said, "Eclipse is making payments to creators directly for books sold through the direct sales market." He did not know when checks would be issued from Harper Collins. Yronwode confirmed this: "I have seen numerous faxes from Dean to Harper Collins requesting that they live up to their [obligations]." She added, "I know that tardiness in supplying royalty statements leads to paranoia on the part of the creators. Sometimes they think they're owed a lot of money and that's not always true. If I were ever to be put in charge of royalty statements of any company, I would never do this because having worked as a freelancer I know how painful it is to wait for royalty statements." The *Journal* was unable to reach anyone at Harper Collins who could talk about the Eclipse deal.

As it is currently structured, Eclipse is owned by Dean Mullaney, Jan Mullaney, and Cat Yronwode (who, according to Mullaney, "own the overwhelming majority"), as well as Marketing Director Beau Smith and Vice President Bruce Palley. Dean and Jan Mullaney inherited their mother's shares in the company upon her recent death. According to Mullaney, his brother Jan is "phasing himself out of all work" for the company in order to spend more time pursuing his music career, though he will retain his shares.

Mullaney told the *Journal* that "at different times during the year" Eclipse has experienced cash flow problems, but that "right now... cash flow looks good." "All small and medium size publishers have cash flow problems," he added.

Eclipse currently has eight new books in various stages of production with Harper Collins.



EXHIBIT "B"

# Comic Book Packagers Seek Money From Eclipse; Lawsuit Filed

Two comic book packagers, Glass House Graphics and Studio Proteus, are seeking monies from Eclipse Enterprises for past due advances and royalties.

Toren Smith, owner of Studio Proteus, has filed a lawsuit against Eclipse and two of its owners, Dean and Jan Mullaney, in the Superior Court of California seeking \$150,561 which Smith claims Eclipse owes him and four Japanese companies he represents for royalties due from several Japanese manga comics series which Smith edited and translated. Some of the monies owed to Smith are for books published over two years ago. Smith is also seeking one million dollars in punitive damages to compensate him for "the malicious and oppressive actions and conduct of defendants," according to court documents.

Between 1988 and 1992, Smith made agreements with Eclipse to work on several manga titles including *Appleseed*, *Black Magic*, *Cyber 7*, *Dirty Pair*, and *Lost Continent*, which were licensed through various Japanese publishers and artists. According to the court documents, four Japanese licensees, Studio Nue (*Dirty Pair*), Akihiro Yamada (*Lost Continent*), Seishinsha (*Appleseed*, *Black Magic*), and Shuppansha (*Cyber 7*) assigned Smith all of their claims against Eclipse to recover unpaid monies.

The suit names Dean and Jan Mullaney, stating that "DEAN and JAN completely controlled, dominated, managed, and operated ECLIPSE in a manner so that ECLIPSE is the alter ego of DEAN and JAN." Cat Yronwode, Dean Mullaney's wife who is currently in the midst of divorce proceedings, is also a principal owner of Eclipse, but is not named in the suit.

Smith claims in the suit that he's spent "not less than" \$10,000 pursuing the monies owed to him.

Neither Smith nor his attorney, Stephen Hollman of Pettit & Martin, would comment on the suit. Dean Mullaney did not return several phone messages left at his office in Staten Island, New York. Mullaney's attorney, Dan Kombluth, told the *Journal* he would be filing a response to the suit by mid-February and would make no further comment.

## Glass House Graphics

Eclipse owes money to artists Mike Deodato, Hector Gomez and other clients of Glass House Graphics, according to the agency's owner David Campiti. Glass House is a partnership between Campiti and Helcio de Carvalho, an agent in Brazil who represents over 50 Brazilian artists, including Deodato and Gomez. Eclipse's agreement with Glass House stipulates that the artists will be paid as they turn in their work, Campiti said. However, neither Gomez nor Deodato have received full payment for work they submitted as far back as August 1993.

The following account of Eclipse's negotiations with Glass House is based on interviews with Campiti and Eclipse Editor-in-Chief Cat Yronwode as well as letters between Eclipse and Glass House provided by Campiti. Mullaney could not be reached for comment.

Gomez, who painted 60 pages of a Clive Barker adaptation *The Great and Secret Show*, is owed \$14,000 by Eclipse. Mullaney told Campiti that he couldn't pay for the work because he was waiting for the money to come from HarperCollins UK which was to co-publish *The Great and Secret Show*. Eclipse entered into a joint venture publishing arrangement with HarperCollins UK in January 1993 and has had difficulty getting HarperCollins to pay royalties or vouchers for forthcoming work, according to Yronwode.

In December, HarperCollins Publishing Director Malcolm Edwards, who helped orchestrate

the Eclipse deal, sent a letter to Gomez praising him for the work he'd done on *The Great and Secret Show*. Campiti responded to Edwards in a letter faxed on December 21, 1993:

*Painter Hector Gomez sends his thanks for your letter praising his work on the latest Clive Barker adaptation*

*However, the appreciation by itself comes as a small consolation, considering his situation. Are you aware of his circumstances regarding Eclipse and these Barker adaptations?*

*Hector has painted 60 pages of and cover for The Great and Secret Show #1 many months ago, and Eclipse has been unable to pay him more than \$14,140 he is owed. Can you imagine working diligently for half a year of your life, and not seeing so much as a dime for your efforts?*

*That's what has happened here to Hector and, as you might expect, Hector has a mighty bleak Christmas coming this week.*

*Dean Mullaney of Eclipse Books has repeatedly informed me that HarperCollins has failed to pay the invoices Eclipse submitted for this work, which accounts for Hector's hungry months. Dean even says he's tried to discuss the situation with you, but all has been for naught...*

*I'm told that you alone have the power to remedy the situation, get people paid, and make Christmas something to be thankful for this year, not to be looked upon with dread. Please, help.*

On January 31, 1994, Campiti still hadn't received a response from Edwards and sent him another fax explaining the desperation of Gomez and other Brazilian artists working on Eclipse/HarperCollins projects: "You may not be aware that their situation in little towns in Brazil is so terrible, right now, that some of my artists and their families are finding themselves on the street, without homes. In some cases, you and we were to be their salvation. They trusted you, and so did we."

The *Journal* faxed a list of questions about Eclipse to Edwards on February 2. In a reply faxed to the *Journal* two days later, Edwards declined to comment "pending resolution of various issues on our joint venture with Eclipse." The next week, on February 8, Campiti received a four-line fax from Edwards stating:

*I am sorry to say that your pre-Christmas fax arrived when I was on holiday and escaped my attention.*

*I have been going through your fax of 31st January with our Finance Director. Neither of us can trace any outstanding invoices for these titles.*

*Please be assured that I am looking into the situation as a matter of urgency.*

In a matter separate from any HarperCollins joint venture projects, Deodato turned in ap-

STEPHEN N. HOLLMAN, ESQ., State Bar # 055219  
 PETTIT & MARTIN  
 7th Floor  
 10 West San Fernando St.,  
 San Jose, California 95113  
 (408) 295-3210  
 Attorney for Plaintiffs

ALAN M. CAMPITI, OWNER  
 BY: EVELYN B. ...

MAY 27 1994

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SAN FRANCISCO

66

No. ...  
 COMPLAINT FOR DAMAGES ARISING FROM BREACH OF CONTRACT, MONEY HAD AND RECEIVED, AND CONVERSION; AND FOR THE IMPOSITION OF A CONSTRUCTIVE TRUST

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TOREN SMITH, an individual doing business under the fictitious name and style of STUDIO PROTEUS, Plaintiff;

vs.

ECLIPSE ENTERPRISES, INC., a corporation; DEAN MULLANEY, an individual; JAN MULLANEY, an individual; and DOE 1 through DOE 20, inclusive. Defendants.

Plaintiff, TOREN SMITH alleges:

1. At all times mentioned herein, plaintiff, TOREN SMITH, was an individual who did business under the fictitious business name and style of STUDIO PROTEUS, and who maintained a business and residence address in the City of San Francisco, County of San California ("SMITH").

... named herein, defendant, ECLIPSE ... that was duly



proximately 16 pencilled pages of *Miracleman Triumphant* #1 in the late summer of '93 with the understanding that he would get paid on a net 30 day basis, Campiti said.

In October, when the payment was 30 days past due, Campiti and Carvalho met with Mullaney at the Philadelphia Comicfest '93. Campiti was expecting Mullaney to bring a check for Deodato to the meeting, but Mullaney told him that he'd personally put the check in the mail before leaving for Philadelphia. "To this day I've never seen the check," Campiti said.

Since then Campiti has been unable to get Mullaney to return phone calls or answer questions faxed to him regarding Deodato's or Gomez's payments. Yronwode, who works out of Eclipse's Forresterville, Calif. offices, sent

Campiti two \$500 checks drawn from Eclipse's California bank account and signed by her. The California account is primarily used to process money for Eclipse's back issue sales which are serviced out of the company's Forresterville warehouse, according to Yronwode.

Campiti had been sending Yronwode duplicate copies of his correspondence with Mullaney to make her aware of Eclipse's non-payment. Distressed by the situation, Yronwode said she sent the checks because it was the best she could do.

Asked if she could speculate on why Mullaney broke his promise to send Campiti a check in October, Yronwode said, "It would seem that Dean lied to David. A man who would lie to his wife would lie to anyone."

TP

## Diamond Refuses to Distribute Xeric Winner *True Swamp*

Diamond Distribution, the nation's largest direct distributor, has twice refused to carry Jon Lewis' *True Swamp*, one of four comics awarded grants this past July by the Xeric Foundation. The Xeric Foundation was founded in 1992 by *Teenage Mutant Ninja Turtles* co-creator and Mirage Publishing co-founder Peter Laird for the purpose of awarding grant funding to comics artists of merit who wish to self-publish their work. Diamond, however, replied to Lewis' initial solicitation and subsequent appeal with checklist rejections signed by Vice President of Purchasing Bill Schanes, stating that "the artwork is too rough."

Along with the 20 pages of artwork sent to Diamond for the solicitation, Lewis included endorsements from four established cartoonists — Scott McCloud, Jim Woodring, Julie Doucet and Ed Brubaker — but Lewis was unable to get *True Swamp* listed in either the February or March catalogs. Lewis argues that the endorsements from luminaries such as *Understanding Comics*' McCloud, and the fact the his book was one of four awarded the Xeric grant out of

over 35 applicants, implies a level of merit that automatically deserves Diamond's attention.

The *Journal* asked Schanes how he came to the decision to not carry the book despite the endorsements and Xeric grant. "To be honest, I don't remember the book offhand. Let me look it over and call you back. What was the name of the book again?" he replied. Schanes did not call the *Journal* back or respond to follow-up calls.

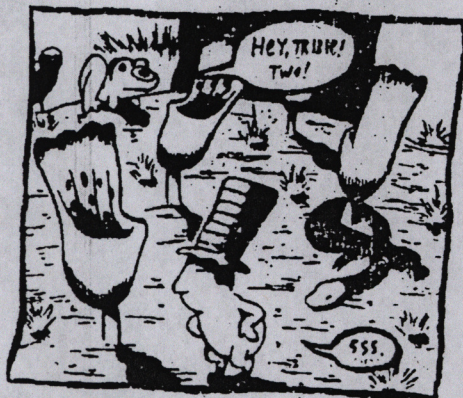
Diamond's move isn't the first time the distributor has controversially rejected alternative comics work. Chester Brown's acclaimed *Yummy Fur* was once rejected for "obscenity" and *Drawn & Quarterly* magazine, now one of alternative comics' leading anthologies, was turned down at first for being "too amateurish."

Without the support of Diamond, sales of *True Swamp* will undoubtedly be affected, and Lewis wonders if he can make it. "Winning the grant, I felt, was a real bottom-line chance at making my book a success. I wasn't even expecting that [Diamond] might possibly refuse. I'm doomed without them; even breaking even might be impossible." Lewis told the *Journal*.

In addition to endorsements from various cartoonists, Lewis has received support from retailers. Representatives from Zanadu Comics in Seattle, Wash. and Comic Book College in Minneapolis are among those who have spoken out to criticize Diamond's decision.

Lewis said he has the first four issues of *True Swamp* completed, and he hopes he can get Diamond to carry the book with issue two and re-list the first issue. If that fails, he said, he will sell directly to retailers. Lewis said he will offer a 50 percent discount on orders of five or more copies, and he can be contacted at (206) 329-2847.

ER



*True Swamp: not polished enough for Diamond?*

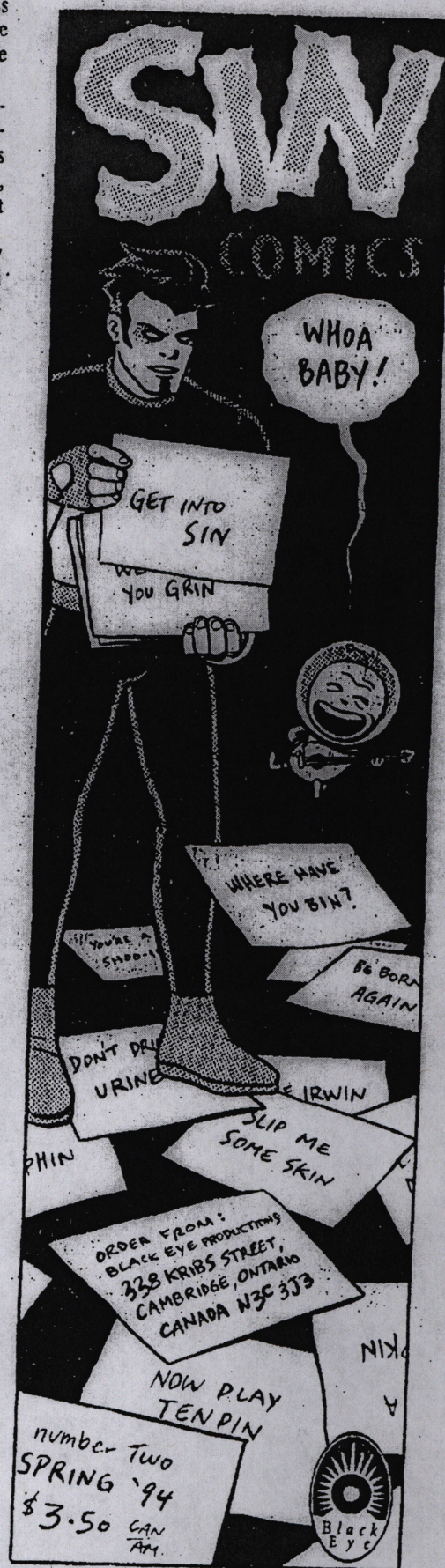


EXHIBIT "C"

# ECLIPSE



12 April, 1994

Studio Proteus  
Attn: Toren Smith

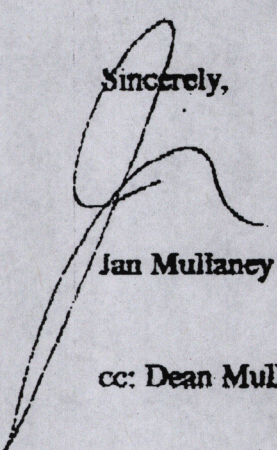
Dear Toren,

I am contacting you directly, without the use of our respective attorneys, in the hopes that we can offer a settlement that will be acceptable to both you and the various Japanese publishers. Please be advised that this offer will also go through the necessary legal channels.

Eclipse has been working extremely hard on selling assets to raise revenues to pay our various creditors and avoid bankruptcy. We are in a position now to make the following offer. A settlement offer of \$50,000.00 to be paid in two installments of \$25,000.00. The first payment would be made May 2 and the second on June 17.

Please consult with your partners and attorney. I hope this will be acceptable and we can all avoid any additional legal costs.

Sincerely,



Jan Mullaney

cc: Dean Mullaney

ECLIPSE ENTERPRISES INC. • 81 DELAWARE ST. • STATEN ISLAND NY • 10304 • TELEPHONE (718) 667-1924  
TELEFAX (718) 667-6787

TOTAL P.01

#617 P01

TEL NO:

APR-12-'94 TUE 12:24 ID:

EXHIBIT "D"

THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY. CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE OFFICE OF THE CALIFORNIA SECRETARY OF STATE.

Information last updated 12-10-1993

Name: ECLIPSE ENTERPRISES INC. WHICH WILL DO  
BUSINESS IN CALIFORNIA AS ECLIPSE COMICS

Mailing Address: 81 DELAWARE ST  
STATEN ISLAND, NY 10304

Registered Agent: DEAN MULLANEY  
Address: 6632 COVEY RD  
FORESTVILLE, CA 95438

Type: FOREIGN STOCK CORPORATION  
State or Country of Inc: NEW YORK  
Date of Qualification: 02-05-1987

Status: ACTIVE

Good Standing Status: NOT PROVIDED TO INFORMATION AMERICA BY THE  
SECRETARY OF STATE. CERTIFICATES OF GOOD  
STANDING MAY BE OBTAINED THROUGH DOX.

State ID Number: 1578529  
Duration: PERPETUAL

\*\*\* Officer Information \*\*\*

Name: DEAN MULLANEY, PRESIDENT  
Address: 6632 COVEY RD  
FORESTVILLE, CA 95438

Statement of Officers File #: 0547092  
Last Complete Statement Filed: 12-18-1989

\*\*\*\*\* End of Report \*\*\*\*\*