

FILED
San Francisco County Superior Court

APR 22 1994

ALAN CARLSON, Clerk

BY: [Signature] Deputy Clerk

1 DANIEL KORNBLUTH, ESQ.
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6
7 Attorney for Defendants
8 ECLIPSE ENTERPRISES, INC.;
9 JAN MULLANEY; DEAN MULLANEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

9	TOREN SMITH, an individual)	
10	dba STUDIO PROTEUS,)	No. 957460
)	
	Plaintiff,)	
11)	DECLARATION OF DANIEL
	vs.)	KORNBLUTH IN OPPOSITION
12)	TO PLAINTIFF'S EX PARTE
	ECLIPSE ENTERPRISES, INC., a New)	MOTION FOR TEMPORARY
13	York corporation; DEAN MULLANEY,)	PROTECTIVE ORDER
	an individual; JAN MULLANEY, an)	
14	individual; and DOE 1 through)	
	DOE 20, inclusive,)	DATE: 4-22-94
15)	TIME: 10:30 am
	Defendants.)	PLACE: Rm 469
16)	

17

18 I, DANIEL KORNBLUTH, declare the following:

19 1. I am a natural person residing in San Francisco,

20 California, and am the attorney of record for defendants DEAN

21 MULLANEY, JAN MULLANEY, and ECLIPSE ENTERPRISES, INC. ("ECLIPSE")

22 in the above entitled action. I have personal knowledge of the

23 following facts and events, and as to those facts stated on

24 belief, I am informed and believe them to be true, and allege

25 them based on such information and belief. If sworn as a

26 witness, I can testify competently to the facts stated herein.

27 2. I have been engaged in settlement negotiations with

28 opposing counsel, Stephen Hollman, and the parties to this action

1 since on or about Thursday, April 14, 1994. By April 15, we had
2 agreed to a significant portion of a settlement, but were still
3 working out some details. On April 15, Mr. Hollman informed me
4 that he would seek an Ex Parte Application for Temporary
5 Protective Order ("TPO") and would try to set it for Wednesday,
6 April 20. I requested he put off the Ex Parte application to
7 allow sufficient time to work out the settlement, to which he
8 refused.

9 3. With many points agreed to, Mr. Hollman was to fax a
10 written rough draft to my office. When I received the written
11 proposal, it was full of severe enforcement penalties and
12 requirements that were never agreed to by myself or my clients.
13 When I brought these problems to Mr. Hollman's attention, he
14 refused to remove them, and on Monday, April 18, informed me that
15 he set an Ex Parte hearing for Application for a TPO pending a
16 full hearing on an Application for a Writ of Attachment for
17 Wednesday, April 20, at 10:30 am in Room 469. I believe that Mr.
18 Hollman is using the Ex Parte procedure as a means to pressure my
19 clients into settlement. Mr. Hollman had mentioned his intent to
20 seek such an order from the beginning of the negotiations. If
21 Mr. Hollman truly believed there was a chance of "great and
22 irreparable harm" to his clients, requiring an Ex Parte Temporary
23 Protective Order, I do not believe he would have given, what has
24 amounted to 8 days notice of his intent, when only 24 hours or
25 less notice is required on a showing of great and irreparable
26 harm.

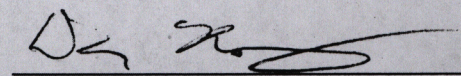
27 3. As stated above, I believe this motion is being brought
28 for an improper purpose. On the morning of April 20, two hours

1 prior to the noticed Ex Parte hearing, Mr. Hollman telephoned me
2 informing that the motion was reset for April 22, 1994. I
3 received a faxed letter from Mr. Hollman which alleged he was
4 confirming notice of an Ex Parte Application for a right to
5 attach and writ of attachment or, in the alternative, a TPO.
6 This was the first I had heard that the hearing was for an Ex
7 Parte Right to Attach and Writ of Attachment. I had been noticed
8 that the hearing was for a TPO pending a full hearing on a writ
9 of attachment. This was also verified in written form during the
10 settlement negotiations.

11 4. I have spent 6.0 hours in researching the issues
12 involved in this motion, preparing the opposing declarations, and
13 speaking with my clients. I anticipate spending another 2.0
14 hours at the Ex Parte hearing. My billing rate is \$125.00 per
15 hour. I believe this motion to be frivolous and an abuse of
16 process. I would therefore request attorney's fees be granted as
17 against plaintiff and/or plaintiff's counsel.

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

21
22 Dated: 4-21-94



23 DANIEL KORNBLUTH

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