

**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 Attorney for Defendants  
7 ECLIPSE ENTERPRISES, INC.;  
8 JAN MULLANEY; DEAN MULLANEY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 TOREN SMITH, an individual )  
12 dba STUDIO PROTEUS, )

No. 957460

13 Plaintiff, )

14 **DECLARATION OF DEAN  
15 MULLANEY IN OPPOSITION  
16 TO PLAINTIFF'S EX PARTE  
17 MOTION FOR TEMPORARY  
18 PROTECTIVE ORDER**

19 vs. )

20 ECLIPSE ENTERPRISES, INC., a New )  
21 York corporation; DEAN MULLANEY, )  
22 an individual; JAN MULLANEY, an )  
23 individual; and DOE 1 through )  
24 DOE 20, inclusive, )

DATE: 4-22-94  
TIME: 10:30 am  
PLACE: Rm 469

25 Defendants. )  
26 )  
27 )  
28 )

I, DEAN MULLANEY, declare the following:

1. I am an individually named defendant and president of  
named defendant ECLIPSE ENTERPRISES, INC. ("ECLIPSE") in the  
above entitled action, and I have personal knowledge of the  
following facts and events, and as to those facts stated on  
belief, I am informed and believe them to be true, and allege  
them based on such information and belief. If sworn as a  
witness, I can testify competently to the facts stated herein.

2. The individual defendants in this action both reside  
outside the state of California. The corporate defendant is a  
New York Corporation, whose principal place of business is

1 outside California. As president of ECLIPSE, I have personal  
2 knowledge of its financial dealings, and business practices and  
3 policies.

4 3. ECLIPSE has never blatantly refused to pay a creditor  
5 unless there is some dispute as to the amount charged, or the  
6 quality of product or service. There are large cash flow  
7 fluctuations in the publishing business. In instances where cash  
8 flow was insufficient to pay a bill in full when due, either  
9 myself or JAN MULLANEY would seek an extension with the creditor  
10 or attempt to work out a payment schedule. Any disputes with  
11 creditors in the past have been paid or are being paid to the  
12 creditor's satisfaction.

13 4. ECLIPSE has a legitimate dispute with the claims made  
14 by plaintiffs. Plaintiffs' allegation in the complaint that  
15 assignments of rights under contracts made between ECLIPSE and  
16 various Japanese companies was never demonstrated to myself or  
17 ECLIPSE. I have never seen such assignments and therefore have  
18 not been given the opportunity to investigate their validity. In  
19 addition, monies paid to plaintiffs is not reflected in  
20 plaintiffs claims. We have been negotiating with plaintiffs in  
21 good faith to reach a fair settlement amount and terms that won't  
22 so severely impede our cash flow as to cause a financial  
23 instability.

24 5. Plaintiffs have NO valid claims against the individual  
25 defendants since any alleged contracts in the Complaint involved  
26 ECLIPSE only, and not individual defendants. It is ECLIPSE'S  
27 standard practice that any contracts for publishing activities  
28 relating to ECLIPSE are negotiated and signed only in my or JAN

1 MULLANEY'S capacity as authorized officers of ECLIPSE.

2 6. This Ex Parte Motion was brought in the midst of  
3 settlement negotiations which began on or about Thursday, April  
4 14, 1993. During settlement negotiations, opposing counsel gave  
5 oral notice of his intent to seek a Temporary Protective Order  
6 pending a full hearing on an Application for a Writ of Attachment  
7 on the morning of April 20, 1994, if we could not come to a  
8 settlement before then. On April 19, 1994, all parties were in  
9 agreement on several major points, but some terms needed further  
10 negotiation. Defendants requested opposing counsel delay the Ex  
11 Parte date for one week so as to give sufficient time to reach  
12 settlement. Opposing counsel refused to change the date, and  
13 continued to try to make additions to the settlement that were  
14 not agreed on, and force settlement by 3:30 pm, Tuesday, April  
15 19, 1994. Defendants fully intended to settle plaintiffs'  
16 claims, and were making good faith offers and attempts to resolve  
17 the terms. I therefore believe this ex parte motion was brought  
18 as a means of pressuring a settlement rather than for the purpose  
19 of recovery.

20 7. The buying and selling of various assets of ECLIPSE is  
21 a normal action in the course of the publishing business. We are  
22 continuing to produce and distribute product. We are NOT closing  
23 down operations and "selling the store." Any intended sales  
24 would put ECLIPSE in a better position to settle with plaintiffs.  
25 No defendants are attempting to conceal or dispose of corporate  
26 assets to defraud creditors. In fact, individual defendant  
27 officers of the corporation have currently delayed receiving a  
28 significant portion of their salary to increase cash flow, and

1 allow for even greater financial strength of the corporation  
2 during recessionary times. ECLIPSE has always and continues to  
3 deposit all proceeds from sales into its corporate account, and  
4 there have been no drastic changes in the normal running and  
5 operation of the business. Additionally, we have had notice of  
6 plaintiffs' lawsuit for several months, and notice that plaintiff  
7 would seek a temporary protective order for several days. In  
8 that time, we have taken no actions to quickly liquidate all  
9 assets and transfer funds away from defendants, and have no  
10 intention to do so. These are not the actions of individuals who  
11 are trying to dispose of corporate assets and siphon off or  
12 conceal funds to avoid judgment. The plaintiffs have offered  
13 absolutely no proof that such transfers have taken place. There  
14 is therefore no danger of irreparable harm to plaintiffs to  
15 justify the requested orders.

16 8. There is no harm done to plaintiffs if the Ex Parte  
17 relief is not granted. However, great harm could be done to  
18 ECLIPSE if the relief requested is granted. Published products  
19 require fast shipment and many time-sensitive deadlines are  
20 involved. Interference with ECLIPSE'S ability to meet these  
21 deadlines, and pay printers and others would severely cripple the  
22 business, and affect the goodwill we have built up with our  
23 printers and distributors. Damage to our reputation or our  
24 ability to quickly produce and deliver product would have a far  
25 reaching effect on future sales. This could easily result in a  
26 significant loss of business to ECLIPSE.

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

Dated: 4-21-94

Dean Mullaney  
DEAN MULLANEY