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FILED
San Francisco County Superior Court
MAY 03 1994
by: ALAN M. CARLSON, Clerk
Deputy Clerk

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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TOREN SMITH, an individual doing) Case No. 957460
business under the fictitious name)
and style of STUDIO PROTEUS,) STIPULATION FOR ENTRY OF
Plaintiff,) JUDGMENT
vs.)
ECLIPSE ENTERPRISES, INC., a)
corporation; DEAN MULLANEY, an)
individual; JAN MULLANEY, an)
individual; and DOE 1 through)
DOE 20, inclusive,)
Defendants.)

21 Plaintiff, Toren Smith an individual doing business under
22 the fictitious name and style of Studio Proteus, and defendants,
23 Eclipse Enterprises, Inc., a corporation, Dean Mullaney, an
24 individual, and Jan Mullaney, an individual, hereby stipulate and
25 agree as follows:

26 WHEREAS, on December 28, 1993, plaintiff, Toren Smith,
27 individually and as assignee of the claims of several Japanese
28 comic book publishers ("Studio Proteus"), filed a Complaint

1 against defendants, Eclipse Enterprises, Inc., Dean Mullaney, and
2 Jan Mullaney, with this Court;

3 WHEREAS, on February 9, 1994, defendants answered the
4 Complaint;

5 WHEREAS, this action was assigned a Status and Setting
6 Conference Plan 1 that was calendared for May 27, 1994 at 8:30
7 a.m. in Room 478, and, in connection with that Status and Setting
8 Conference, a Joint (or individual) Status and Setting Conference
9 Statement(s) was to be filed with this Court on April 29, 1994
10 (the "Statement");

11 WHEREAS, there was heard on April 22, 1994 at 10:30 a.m. in
12 Room 469 of this Court an *Ex Parte* Application of Studio Proteus
13 for a Right to Attach Order and a Writ of Attachment or, in the
14 alternative, a Temporary Protective Order pending a full hearing
15 on the Application for a Writ of Attachment (the "*Ex Parte*
16 Application"), and a decision on the *Ex Parte* Application was
17 held in abeyance by Commissioner Richard Best;

18 WHEREAS, on April 25, 1994 the settlement reflected by this
19 Stipulation was, in principle, entered on the record pursuant to
20 C.C.P. § 664.6 in Department 1 before Hon. Raymond J. Arata, Jr.,
21 and, at the time of such hearing, it was agreed that this
22 Stipulation would be filed with this Court no later than May 2,
23 1994; and

24 WHEREAS, following the entry on the record of the settlement
25 in principle reflected by this Stipulation, the Court waived the
26 necessity of filing the Statement and took the *Ex Parte*
27 Application off calendar.

28

1 NOW, THEREFORE, the parties have stipulated and agreed as
2 follows:

3 1. Seishinsha Co., Ltd. of Osaka, Japan ("Seishinsha") is
4 a primary assignor of claims sued upon by Studio Proteus in this
5 action as the assignee thereof. Defendants acknowledge that
6 Studio Proteus has reassigned the claims of Seishinsha that were
7 assigned to it for the purposes of this action. As such, the
8 term "Studio Proteus", as used in this Stipulation, will mean
9 Studio Proteus acting as the agent for Seishinsha.

10 2. If there is compliance with the terms and conditions of
11 this Stipulation by defendants, then, absent further legal
12 proceedings in this action and/or pursuant to this Stipulation,
13 the settlement amount to be paid to Seishinsha by defendant,
14 Eclipse Enterprises, Inc. ("Eclipse"), pursuant to this
15 Stipulation is \$105,150 without interest (the "Settlement
16 Amount").

17 3. On or before May 2, 1994, defendants will cause their
18 attorney, Daniel Kornbluth, to establish an escrow account (the
19 "Account") with Bank of America, N.T. & S.A. in San Francisco,
20 California (the "Escrow Agent"). The Account will be maintained
21 pursuant to this Stipulation or mutually acceptable irrevocable
22 escrow instructions that are consistent with the directives to
23 the Escrow Agent in this Stipulation, and until either the
24 Settlement Amount has been paid in full or 10 ten business days
25 following the entry of a Judgment pursuant to Paragraph ¹³~~12~~ of ~~\$~~
26 this Stipulation. All costs of the Escrow Agent and the Account
27 will be borne solely by defendants, and will be offset only from
28 disbursements due to Eclipse from the Account.

1 4. Defendants will promptly cause to be credited or
2 deposited to the credit of the Account (i) after the exclusion of
3 the amount of \$500.00 in the aggregate, all funds in any accounts
4 (bank or otherwise) standing to the credit of Eclipse as of April
5 21, 1994, but net of checks drawn and dated through April 20,
6 1994 (the "Existing Balance"); (ii) all proceeds from the ongoing
7 business of Eclipse; (iii) all proceeds from sales and/or
8 transfers of assets or other properties of Eclipse; (iv) all
9 royalties paid to Eclipse; (v) all proceeds from accounts and
10 notes receivable of Eclipse; and (vi) all other monies received
11 by or for the benefit of Eclipse. Excluded from the Account will
12 be the California mail order operations of Eclipse (the "Mail
13 Order Operation"). The Mail Order Operation has been represented
14 by defendants to be currently grossing approximately \$6,000 per
15 month with approximate monthly expenses, which exclude the
16 salaries of or other compensation to defendants, Dean Mullaney
17 and/or Jan Mullaney, of a like amount (the "Representation").
18 Reasonably detailed and corroborating information of the gross
19 revenues and gross expenses (including, but not limited to, bank
20 statements and check registers) of the Mail Order Operation will
21 be promptly provided to Studio Proteus as expeditiously as
22 possible following the receipt of each such bank statement by
23 defendants (the Substantiating Information"). If the difference
24 between the gross revenues and the gross expenses (exclusive of
25 any salaries of or other compensation to defendants, Dean
26 Mullaney and/or Jan Mullaney) of the Mail Order Operation exceeds
27 \$500 and such excess amount was not deposited to the Account,
28 then Studio Proteus will give written notice to both the Escrow

1 Agent and to Eclipse at the address set forth in Paragraph ¹²~~11~~ of A.2.
2 this Stipulation of the right of Seishinsha to receive at the
3 time of its next disbursement from the Account a supplemental
4 disbursement from the Account in the amount of \$25,000 (a "Non-
5 Compliance Payment") after and in addition to the disbursement to
6 Seishinsha then due and the reason(s) therefor in reasonable
7 detail (the "Non-Complaint Circumstances").

8 5. Documentation (i) evidencing the Existing Balance and a
9 copy of each check of Eclipse dated from March 1 through April
10 21, 1994 will be promptly provided to Studio Proteus as
11 expeditiously as possible following the receipt by Eclipse of its
12 statement(s) from banks or others covering any portion of the
13 month of April 1994; and (ii) evidencing that expenses for
14 salaries and direct operating expenses of Eclipse (exclusive of
15 payments for printing and film invoices) did not exceed \$15,500
16 for the period April through April 21, 1994. If such
17 documentation is not promptly provided to Studio Proteus, as
18 provided in this Paragraph 5 of the Stipulation, then Studio
19 Proteus will give written notice to both the Escrow Agent and to
20 Eclipse at the address set forth in Paragraph ¹²~~11~~ of this F
21 Stipulation of the right of Seishinsha to receive at the time of D.2
22 its next disbursement from the Account a Non-Compliance Payment
23 from the Account after and in addition to the disbursement to
24 Seishinsha then due and the reason(s) therefor in reasonably
25 specific detail (the "Non-Compliant Circumstances").

26 6. In the event that the Escrow Agent receives a written
27 notice from Studio Proteus claiming entitlement to a Non-
28 Compliance Payment, then, unless the Escrow Agent receives

1 Contrary Instructions (as such term is hereinafter defined in
2 this Paragraph 6) from Eclipse within 5 days thereafter, the
3 Escrow Agent is directed to comply with the instructions in
4 Paragraph 7(f) of this Stipulation with respect to disbursing to
5 Seishinsha a Non-Compliance Payment at the time of its next
6 disbursement from the Account. The term "Contrary Instructions"
7 will mean the sending to the Escrow Agent of a written
8 certification from an officer of Eclipse, with a copy to Studio
9 Proteus, stating that a Non-Compliance Payment is not due because
10 the Non-Compliant Circumstances set forth in the notification
11 from Studio Proteus have not occurred, or, if such Non-Compliant
12 Circumstances did occur, they have been fully and completely
13 cured by Eclipse and what measures were taken by Eclipse to
14 constitute such a cure. Upon its timely receipt of Contrary
15 Instructions, the Escrow Agent will not disburse the Non-
16 Compliance Payment to Seishinsha until (i) otherwise jointly
17 directed by Studio Proteus and Eclipse; or (ii) it is further
18 directed by the Arbitrator, as set forth in Paragraph 6(a) of
19 this Stipulation.

20 a. In the event of the timely receipt by Studio
21 Proteus of a copy of Contrary Instructions from Eclipse to the
22 Escrow Agent, Studio Proteus may select a representative of a
23 "Big Six" certified public accounting firm that has not in any
24 respect represented Eclipse, Seishinsha, or Studio Proteus within
25 the immediately preceding 2 calendar years, to be the single,
26 mutually approved arbitrator (the "Arbitrator") to resolve the
27 controversy. The Arbitrator will, within 3 business days of
28 being advised of its appointment, notify Eclipse and Studio

1 Proteus of a hearing to be held in San Francisco, California.
2 The Arbitrator will conduct its hearing in accordance with the
3 procedures set forth in the then current Commercial Rules of the
4 American Arbitration Association, and the hearing will last no
5 longer than 1 day. In the event of the failure of either Eclipse
6 or Studio Proteus to appear at the hearing designated by the
7 Arbitrator, the Arbitrator may proceed with the hearing, as
8 noticed, and consider evidence and testimony presented by the
9 party that does appear at such hearing. Eclipse will have the
10 burden of proving the that the Non-Compliant Circumstances did
11 not occur or that they were fully and completely cured prior to
12 the appointment of the Arbitrator. If the final adjudication by
13 the Arbitrator is that the Non-Compliant Circumstances did occur
14 and that they were not fully and completely cured prior to the
15 appointment of the Arbitrator, then Arbitrator will promptly
16 notify the Escrow Agent in writing that (i) the Non-Compliance
17 Payment should be made with the next disbursement to Seishinsha
18 in accordance with the instructions in Paragraph 7(f) of the
19 Stipulation; (ii) Seishinsha is the prevailing party; (iii) that
20 the Escrow Agent should supplement the Non-Compliance Payment
21 with the amount of attorneys' fees and costs, if any, that it is
22 awarding to Studio Proteus; and (iv) the Escrow Agent should
23 deduct from the next disbursement from the Account to Eclipse the
24 fees of the Arbitrator and disburse such fees from the Account
25 directly to the Arbitrator (the "Seishinsha Award"). If the
26 final adjudication by the Arbitrator is that the Non-Compliant
27 Circumstances did not occur or that they did occur and that they
28 were fully and completely cured prior to the appointment of the

1 Arbitrator, then Arbitrator will promptly notify the Escrow Agent
2 in writing that (i) the Non-Compliance Payment should not be made
3 in accordance with the written request for same by Studio
4 Proteus; (ii) Eclipse is the prevailing party; (iii) that the
5 Escrow Agent should supplement the next disbursement from the
6 Account ~~with Non-Compliance Payment~~ with the amount of attorneys'
7 fees and costs, if any, that it is awarding to Eclipse; and (iv)
8 the Escrow Agent should deduct from the next disbursement from
9 the Account to Seishinsha the fees of the Arbitrator and disburse
10 such fees from the Account directly to the Arbitrator.

11 7. The Account is intended to cover all proceeds of
12 Eclipse commencing as of April 21, 1994. Therefore, on May 3,
13 1994, on the 15th and 30th days of May 1994, and on the 15th and
14 30th days of each calendar month thereafter, or, if the 15th or
15 30th day of May 1994 or any calendar month thereafter is not a
16 business day, then on the next business day, the Escrow Agent is
17 directed to disburse all of the cleared and available proceeds
18 then standing to the credit of the Account in the following
19 manner:

20 a. On May 3, 1994, the Escrow Agent is directed to
21 disburse to Seishinsha in the manner hereinafter set forth in
22 Paragraph 11 of this Stipulation all of the cleared and available
23 proceeds then standing to the credit of the Account.

24 b. Commencing thereafter on the 15th day of May 1994,
25 the Escrow Agent is directed to disburse to Eclipse in the manner
26 set forth in Paragraph 12 of this Stipulation all of the cleared
27 and available proceeds then standing to the credit of the
28 account, but not to exceed \$7,500, such disbursement representing

1 up to 1/2 of the Base Amount for that month (the "Base Amount
2 Payment").

3 c. Commencing thereafter on the 30th day of May 1994
4 and except as otherwise provided in Paragraph 7(f) of this
5 Stipulation, the Escrow Agent is directed to disburse all of the
6 cleared and available proceeds then standing to the credit of the
7 Account by (i) first disbursing to Eclipse in the manner set
8 forth in Paragraph 12 of this Stipulation the difference between
9 \$15,000 and the Base Amount Payment for that same month;
10 (ii) then disbursing to Eclipse in the manner set forth in
11 Paragraph 12 of this Stipulation the aggregate total of printing
12 and film invoices (the "Invoices") that have first been approved
13 in writing by Studio Proteus or have been deemed approved in the
14 manner provided in Paragraph 8 of this Stipulation; (iii) then
15 disbursing to Seishinsha in the manner provided in Paragraph 11
16 of this Stipulation 75 percent of the remainder of such proceeds
17 in the Account; and (iv) then, except as provided to the contrary
18 in Paragraph 7(e) of this Stipulation, disbursing to Eclipse in
19 the manner set forth in Paragraph 12 of this Stipulation the
20 balance of such proceeds in the Account for business operating
21 expenses (the "Balance").

22 d. The procedures to be followed in Paragraphs 7,
23 7(a), 7(b), and 7(c) of this Stipulation are collectively
24 referred to as the Cash Sweep.

25 e. Notwithstanding the calculation of the Cash Sweep,
26 on May 30, 1994, prior to paying any of the Balance to Eclipse,
27 the Escrow Agent is directed to disburse to Seishinsha in the
28 manner provided in Paragraph 11 of this Stipulation from such

1 proceeds, after and in addition to the disbursements due to it on
2 that date pursuant to the Cash Sweep, the difference, if any,
3 between the sum of the disbursements paid pursuant to the Cash
4 Sweep on May ³/₅, 1994 and May 30, 1994 and \$25,000 (the
5 "Difference"). If there are insufficient cleared and available
6 proceeds then standing to the credit of the Account on May 30,
7 1994 for the Escrow Agent to pay the Difference (if owed), then
8 Studio Proteus will have the right to file a Motion with this
9 Court pursuant to C.C.P. § 664.6 for the entry of a Judgment (the
10 "Motion"), as hereinafter set forth in Paragraph 10 of this
11 Stipulation.

12 f. Notwithstanding a disbursement date, whether on the
13 15th of the month for the Base Amount Payment or on the 30th day
14 for a Cash Sweep Payment, prior to any disbursements due on those
15 respective dates to Eclipse, the Escrow Agent will disburse to
16 Seishinsha any Non-Compliance Payment if (i) it has received
17 written notification from Studio Proteus and no Contrary
18 Instructions from Eclipse within 5 days thereafter; or (ii) it
19 has received written direction from the Arbitrator to pay the
20 Non-Compliance Payment. If there are insufficient cleared and
21 available proceeds then standing to the credit of the Account for
22 the Escrow Agent to pay any Non-Compliance Payment or the
23 Seishinsha Award, then Studio Proteus will have the right to file
24 the Motion, as hereinafter set forth in Paragraph 10 of this
25 Stipulation.

26 8. The Escrow Agent will submit the Invoices for which
27 Eclipse desires payment be made to Studio Proteus for its
28 approval. Studio Proteus will have 3 business days from its

1 receipt thereof to approve in writing such Invoices for payment
2 by the Escrow Agent. In the absence of such a writing within
3 such 3 business day period, the Invoices so submitted for
4 approval will be deemed approved by Studio Proteus.
5 Studio Proteus will not unreasonably withhold its approval of any
6 one or more of the Invoices.

7 9. If any funds owing to Eclipse or for its benefit are
8 received by either of the individual defendants, Dean Mullaney
9 and Jan Mullaney, or any person acting on the behalf of either or
10 both of them or acting in concert with either or both of them,
11 and such funds are not promptly deposited to the Account, then
12 defendants, Dean Mullaney and Jan Mullaney will be jointly and
13 severally liable to Studio Proteus for the full amount of such
14 funds, and will promptly cause them to be deposited to the
15 Account (the "Personal Obligation"). If they do not do so, then
16 Studio Proteus will have the right to file the Motion, as
17 hereinafter set forth in Paragraph 10 of this Stipulation.

18 10. All disbursements to Seishinsha from the Account will
19 be credited to the Settlement Amount. If either the Settlement
20 Amount has not been paid in full from the ~~by~~ disbursements from ~~the~~ ^{FF}
21 the Account prior to or with the disbursement to Seishinsha that
22 is due on September 30, 1994, or with respect to any matter in
23 this Stipulation ^{FF} to which Studio Proteus is given the right to
24 file the Motion, then Studio Proteus will be entitled to file the
25 Motion with this Court. The Motion will be heard at the earliest
26 available Law and Motion date, but upon no less than 16 calendar
27 days notice to counsel for defendants. The Motion will be for
28 the entry of a Judgment against Eclipse only, and not as against

1 the individual defendants, pursuant to the Stipulation in the
2 agreed amount of \$150,561.66 less any amounts paid to Seishinsha
3 from the Account pursuant to this Stipulation plus the attorneys'
4 fees and costs of Studio Proteus incurred in obtaining a Judgment
5 pursuant to the Stipulation, as hereinafter provided in Paragraph
6 14 of this Stipulation.

7 11. All disbursements to be made to Seishinsha will be sent
8 by the Escrow Agent on the date specified for disbursement by
9 means of bank wire to Seishinsha, Ltd. Regular Account #172323,
10 Sanwa Bank, 1-5-3 Abenobashi-suji, Abeno-ku, Osaka 545 Japan;
11 telephone number (06) 648-0734; routing number Japan 0008-072.
12 The Escrow Agent will have the authority to invoice Studio
13 Proteus 50 percent of the cost of each bank wire therefor, but
14 will not offset such percent of the cost from any balance then
15 standing to the credit of the Account.

16 12. All disbursements to be made to Eclipse will be sent by
17 the Escrow Agent on the date specified for disbursement by means
18 of Check payable to Eclipse by means of Federal Express with the
19 billing to the third party account of Eclipse, account number
20 11031576-7, and addressed to Eclipse Enterprises, Inc., 245 8th
21 Avenue, No. 186, New York, New York 10011.

22 13. Judgment may be entered pursuant to the Stipulation
23 against Eclipse, and not the individual defendants, only if
24 Studio Proteus serves counsel for defendants with the Motion and
25 a Declaration setting forth (i) there has been a failure of the
26 Escrow Agent to disburse to Seishinsha the Difference (if owed)
27 together with the Cash Sweep disbursement due on May 30, 1994;
28 (ii) there has been a failure of the Escrow Agent to disburse to

1/2
1 Seishinsha the ~~a~~ Non-Compliance Payment (if owed); (iii) there
2 has been a failure to pay the full sum of the Settlement Amount
3 before or with the Cash Sweep disbursement due on September 30,
4 1994; and/or (iii) there has been a failure to comply with the
5 Personal Obligation. Defendants, or any of them, will be
6 entitled to appear and heard at the time Studio Proteus requests
7 that this Court to enter Judgment pursuant to the Stipulation.
8 If full payment in good faith, whether for a Non-Compliance
9 Payment and/or a Seishinsha Award, is made prior to the hearing
10 on the Motion, then Studio Proteus will not be entitled to a
11 Judgment.

12 14. If Studio Proteus files a Motion, it will be entitled
13 to an award of attorneys' fees and costs incurred in connection
14 therewith, but if only it obtains a Judgment thereon; provided,
15 however, that if the Motion is based upon a Non-Compliance
16 Payment and/or a Seishinsha Award, then Studio Proteus will be
17 entitled to a hearing on the Motion for the purpose of an award
18 of attorneys' fees and costs for the bringing of the Motion. The
19 Escrow Agent will be directed to disburse an award of this Court
20 for such attorneys' fees and costs prior to any other
21 disbursement to be made by it.

22 15. All documents and notices to be sent by Eclipse to
23 Studio Proteus will be sent to 105 Manchester Street, San
24 Francisco, California 94110-5216. All notices to be sent by
25 Studio Proteus to Eclipse will be sent to 245 8th Avenue, No.
26 186, New York, New York 10011.

27 16. Each of the parties submits to the *in personam*
28 jurisdiction of this Court, and each party waives the right to

1 contest the jurisdiction of this Court with respect to the
2 Stipulation and any Judgment entered thereon.

3 17. Nothing in this Stipulation will be interpreted as
4 imposing liability on the Escrow Agent; provided, however, that
5 the Escrow Agent will have the obligation to comply with the
6 instructions set forth in this Stipulation or, alternatively, in
7 mutually acceptable irrevocable escrow instructions, and will be
8 held harmless by each of the parties to this Stipulation for any
9 liability beyond the carrying out of the directives or
10 instructions to it. If the Escrow Agent is unable or unwilling
11 to comply with the directives set forth in this Stipulation or
12 with mutually acceptable irrevocable escrow instructions, it is
13 directed to (i) file an interpleader action with this Court; and
14 (ii) not disburse any further proceeds from the Account.

15 18. The Stipulation and any Judgment entered thereon will
16 be binding upon and inure to the benefit of the respective
17 successors, heirs, and assigns of the parties hereto and of the
18 Escrow Agent.

19 19. Studio Proteus agrees that neither it nor its agents
20 will interfere with the normal business operations, sales, or
21 sale of corporate assets of Eclipse, except as set forth or
22 permitted by this Stipulation.

23 20. The receipt by Seishinsha of full payment of the
24 Settlement Amount will constitute a complete satisfaction of any
25 and all claims that Seishinsha, Studio Proteus, Toren Smith, or
26 any other person or entity on whose behalf Toren Smith filed this
27 action as assignee of the claims thereof has or may have against
28 all defendants arising out of the allegations in the Complaint.

1 Upon the receipt by Seishinsha of full payment of the Settlement
2 Amount, defendants will promptly be given a release of claims
3 arising out the allegations of the Complaint, and, upon the
4 execution thereof by Seishinsha and each of the parties to this
5 Stipulation, the Complaint will be dismissed with prejudice.

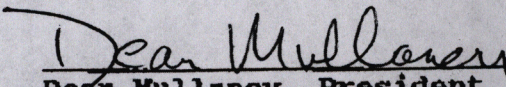
6 21. Each party will bear its own attorneys' fees and costs
7 incurred prior to and including the date of the signing of this
8 Stipulation.

9 22. Studio Proteus will treat as confidential to Eclipse
10 the Substantiating Information and the documentation evidencing
11 the Existing Balance.

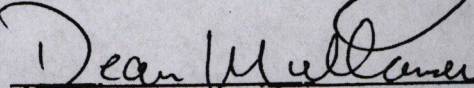
12 23. Each party to the Stipulation waives the right to
13 appeal from any Judgment entered pursuant to the Stipulation.

14 Dated: April 30, 1994

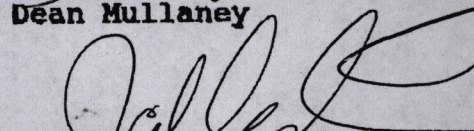
ECLIPSE ENTERPRISES, INC.

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16 
17 Dean Mullaney, President

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19 Dated: April 30, 1994

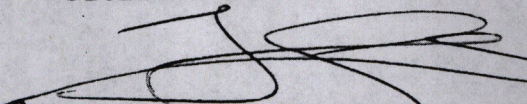

20 Dean Mullaney

21 Dated: April 30, 1994


22 Jan Mullaney

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24 Dated: ^{MAY} ~~April~~ 2, 1994

STUDIO PROTEUS

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26 
27 Toren Smith
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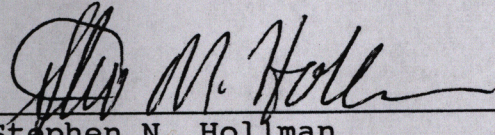
1 Dated: April 29, 1994

PETTIT & MARTIN

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By



Stephen N. Hollman
Attorneys for Plaintiff,
Toren Smith

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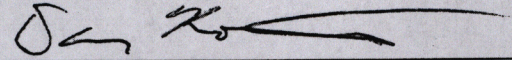
Dated: April 29, 1994

LAW OFFICES OF DANIEL KORNBLUTH

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By



Daniel Kornbluth
Attorney for Defendants

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