

CAUSE NO. 199-~~5~~96-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

AGREED CONFIDENTIALITY ORDER

Came on for consideration the parties' Agreed Confidentiality Order (the "Order"). The Court, after considering the Order, and the pleadings on file in this case, is of the opinion that the Agreed Confidentiality Order should be **granted**. It is, therefore, ORDERED, ADJUDGED, and DECREED as follows:

1. THIS CONFIDENTIALITY ORDER IS APPLICABLE TO DSC COMMUNICATIONS CORPORATION ("PLAINTIFF"), ON THE ONE SIDE, AND EVAN BROWN ("DEFENDANT"), ON THE OTHER SIDE, FOR THE SOLE PURPOSE OF FACILITATING DISCOVERY IN THE ABOVE-STYLED AND NUMBERED CAUSE. IT IS EXPRESSLY ORDERED THAT THIS CONFIDENTIALITY ORDER WILL NOT, IN ANY MANNER, BE DISCLOSED TO THE JURY IN THE ABOVE-STYLED AND NUMBERED CAUSE. IT IS FURTHER ORDERED THAT THIS CONFIDENTIALITY ORDER WILL NOT BE USED, IN ANY MANNER OR FORM, DIRECT OR INDIRECT, AS EVIDENCE IN ANY TRIAL OR ANY HEARING, OR REFERRED TO IN ANY TRIAL OR ANY HEARING ON THE MERITS OF THIS CASE, SAVE AND EXCEPT A HEARING WHICH INVOLVES ISSUES RELATED TO THE ENFORCEMENT OF ANY PROVISION OF THIS CONFIDENTIALITY

ORDER. IT IS FURTHER ORDERED THAT THIS PROVISION IS ABSOLUTELY AND COMPLETELY ESSENTIAL TO THIS CONFIDENTIALITY ORDER AND THAT THIS PARAGRAPH IS NOT SEVERABLE FROM ANY REMAINING PARAGRAPH OR PROVISION OF THIS CONFIDENTIALITY ORDER.

2. Except as otherwise provided below, any document, data, or thing produced, deposition testimony, or interrogatory answer produced, given, or served pursuant to discovery requests in this litigation and designated by the producing party as "Confidential" (the "Material"), or any information contained in or derived from any of the foregoing Material, shall be subject to the provisions of this Confidentiality Order until further order of the Court. Nothing in this Confidentiality Order shall permit one party to designate documents produced by any other party as "Confidential" or otherwise subject those documents to the provisions of this Confidentiality Order, so long as one party's document is not a document originally of the other party, or a summary thereof.

3. The Material shall be designated as "Confidential" by stamping the legend "Confidential" on each page thereof as to which confidentiality is claimed. All copies of Material stamped "Confidential" shall again be stamped "Confidential" if the duplicating process by which copies of such Materials are made does not reproduce the original stamp. Any party may designate a deposition or portion thereof as "Confidential" Material by denominating by page and line those portions of the deposition which are to be considered "Confidential" Material within thirty (30) days of receipt of the transcript and so informing all other parties of such designation. Alternatively, a party may orally designate testimony as "Confidential" Material during the course of the deposition, in which case the Court Reporter shall transcribe the pages so designated in a separate volume marked "CONFIDENTIAL." Any portion of a deposition so designated, or separately bound

volume, shall not be filed with the Court, except in accordance with paragraph 10 of this Confidentiality Order. With respect to any Material designated as "Confidential" that is not produced in paper form (such as diskettes, magnetic media, and other Material not produced in paper form) and that is not susceptible to the imprinting of a stamp signifying its confidential nature, the producing party shall, to the extent practicable, produce such Material with a cover labeled "Confidential" and shall inform all counsel in writing of the "Confidential" designation of such Material at the time such Material is produced.

4. No "Confidential" Material subject to this Confidentiality Order or extracts or summaries therefrom shall be given or shown to any person except the following:

- a. Inside and outside attorneys for any party engaged in the litigation of this action and the employees of such attorneys.
- b. Individual Parties and Employees of a corporate party actively engaged in assisting that party's attorneys in the conduct of this litigation to the extent reasonably necessary to enable the attorneys for that party to render professional services in the litigation.
- c. Persons not employees of any party who are expressly retained to assist such party's counsel ("retaining counsel") in the preparation of this action for trial including, but not limited to, consulting and testifying experts, independent auditors, accountants, statisticians, economists, and other experts, and the employees of such persons ("Outside Experts"), after such Outside Expert has signed and delivered to retaining counsel a statement in the form annexed hereto as Exhibit "A."
- d. The Court, other court officials (including court reporters) and the trier of fact (as provided in paragraphs 9 and 10 herein).
- e. Fact witnesses, after such fact witness has signed and delivered to counsel interviewing such fact witness a statement in the form annexed hereto as Exhibit "A."

No person allowed to view "Confidential" Material shall use any "Confidential" Material for any purpose except as needed solely in connection with or to assist in the prosecution or defense of claims in this action.

5. The parties acknowledge that DSC explicitly reserves the right to seek a modification of this Confidentiality Order in the event it determines that additional protection is needed for any documents produced after the entry of this Confidentiality Order, including protection from disclosing confidential documents to Brown himself. Nothing in this Confidentiality Order shall be deemed to waive or preclude DSC's ability to seek such further confidentiality protection in this case.

6. If counsel wish to disclose "Confidential" Material to any person not described in paragraphs 4 or 5 above, they must proceed in the following manner: the names of the persons to whom "Confidential" Material is to be disclosed and a description of the Material to be disclosed to such person shall be provided in writing to lead counsel for the producing party fourteen (14) days in advance of disclosure to afford counsel an opportunity to object to disclosure and move the Court for a protective order. If no objection and motion for protective order are made within the 14-day period, disclosure to such named persons may be made after the expiration of such 14-day period. If an objection and motion are made within the 14-day period, such Material shall not be disclosed pending a decision by the Court on such motion. Any person who becomes authorized to receive "Confidential" Material pursuant to this paragraph (whether such authorization arises from the lack of an objection and motion for protection or from the Court's ruling on a motion for protection) shall, prior to the receipt of Material, execute and deliver to counsel a statement in the form annexed hereto as Exhibit "A." Disclosures made to all persons to whom disclosures are permitted hereunder shall be made subject to and in accordance with the terms of this Confidentiality Order.

7. If any party believes that any Material which has been designated as "Confidential" is not properly subject to the confidentiality provisions of this Confidentiality Order, that party may so notify the producing party in writing and provide a description of the Material which the objecting party believes should be freed from the constraints of this Agreement, and serve copies of such notice to lead counsel for all other parties herein. The party producing such designated Material must then file a motion for a protective order within fourteen (14) days from receipt of such notice and shall bear the burden of justifying confidential treatment of the disputed Material under applicable law. If such a motion is timely filed, the protection afforded by this Confidentiality Order shall continue until a decision on the motion is made by the Court. If no motion is made within the fourteen-day period, the protection afforded "Confidential" Material by this Confidentiality Order shall terminate as to the Material described in the objecting party's notice given pursuant to this paragraph.

8. Whenever "Confidential" Material is disclosed in a deposition, the party making such disclosure shall inform the witness, on the record, that the use of such Material is subject to the terms of this Confidentiality Order. *The witness must sign the statement form attached hereto as Exhibit "A," which form shall be included as an Exhibit to such deposition, or the witness shall agree on the record to be bound by the terms of this Confidentiality Order and the statement attached hereto as Exhibit "A."* *If a witness refuses both options, the deposition may cease and parties should file any necessary motions with the Court and set them for hearing, or the parties may agree to continue the deposition on terms agreeable to both parties.* If any person present at the deposition is not encompassed within the categories of persons defined in paragraphs 4, 5, or 6 of this Confidentiality Order, that person shall leave the deposition while any "Confidential" Material, as applicable, is being disclosed during the deposition.

9. Except for use in trial, in the event that any "Confidential" Material that is subject to the provisions of this Confidentiality Order is used in motions, briefs, or other documents filed with the Court or testimony before the Court, such document or testimony shall be filed under seal and bear the legend:

"THIS DOCUMENT CONTAINS MATERIALS WHICH ARE CLAIMED TO BE CONFIDENTIAL, AND ARE COVERED BY A CONFIDENTIALITY ORDER."

10. At trial or any hearing on the merits of this case, any exhibits offered into evidence shall have the "Confidential" designation provided for in paragraph 3 of this Confidentiality Order removed, or the document shall be copied in such a manner that the "Confidential" designation shall not be visible on the exhibit. This provision shall apply to the actual trial of this cause. All exhibits and testimony containing Confidential Material shall be placed under seal.

11. This Confidentiality Order shall not be deemed a waiver of:

- a. Any party's right to object to any discovery requests on any ground;
- b. Any party's right to seek an order compelling discovery with respect to any discovery request;
- c. Any party's right in any proceeding herein to object to the admission of any evidence on any ground; or
- d. Any party's right to use its own documents and its own "Confidential" Material in its sole and complete discretion.

12. The provisions of this Confidentiality Order shall continue in effect with respect to any "Confidential" Material until expressly released by the party furnishing such Material, and such effectiveness shall survive the final determination of this action. Unless otherwise agreed by the party producing such Material, within sixty (60) days of the final determination of this action, each party shall return all "Confidential" Material in its possession or control, and all copies, derivations,

and summaries thereof, to the party who furnished it, or certify that all such documents have been destroyed. For purposes of this Confidentiality Order, the "final determination of this action" shall be deemed to be the later of (i) full settlement of all claims, final judgment herein or the completion and exhaustion of all appeals, rehearings, remands, trials and reviews, if any, of this action, or (ii) the expiration of all time limits under Texas law for the filing of or application for all appeals, rehearings, remands, trials or reviews of this action, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law.

13. Counsel for the parties to whom "Confidential" Material has been furnished shall be responsible for restricting disclosure in accordance with the provisions of this Confidentiality Order and for securing execution of and retaining the statement attached hereto as Exhibit "A" as and when required under the provisions of this Confidentiality Order.

14. Nothing in this Confidentiality Order is intended to supersede or modify the terms of the June 30, 1997 Temporary Injunction Order, including the provisions of that Order concerning the disclosure and use of the Solution. The June 30, 1997 Temporary Injunction Order shall not be affected in any way by entry of this Confidentiality Order.

15. The inadvertent disclosure of any privileged documents subsequent to the entry of this Order shall not be deemed a waiver of that privilege as to any other documents, testimony or evidence.

SO ORDERED.

SIGNED this _____ day of _____, 1997.

JUDGE PRESIDING

AGREED:

**LYNN STODGHILL MELSHEIMER
& TILLOTSON, L.L.P.**

By 

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Evan Brown**

EXHIBIT "A"

Statement

1. I am familiar with and agree to be bound by the terms of the Confidentiality Order in the litigation styled *DSC Communications Corporation v. Evan Brown*, Cause No. 199-856-97, in the 219th Judicial District Court of Collin County, Texas.

2. I will only make such copies of or notes concerning documents designated "Confidential" Material as are necessary to enable me to render the assistance required in connection with this litigation, and all such notes and copies shall be preserved in a separate file maintained as confidential and marked for disposal or destruction upon completion of this litigation.

3. I will not reveal the contents of "Confidential" Material to any unauthorized person.

4. I will not use "Confidential" Material for any purpose other than the prosecution or defense of claims in this action, or as provided by the June 30, 1997 Temporary Injunction Order.

DATED this ____ day of _____, 1997.

By: _____

Name: _____

(print name)