

CAUSE NO. 199 596 97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

**DSC'S MOTION TO STRIKE
AFFIDAVIT OF EVAN BROWN**

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Motion to Strike Affidavit of Evan Brown and would respectfully show the following:

I.

1. On May 7, 1999, DSC filed its Second Motion to Compel Interrogatory Answers and for Sanctions (the "Second Motion to Compel"). On May 10, 1999, the Court scheduled the Second Motion to Compel for hearing on June 10, 1999.

2. On June 7, 1999, Defendant filed and served his Response to DSC's Second Motion to Compel (the "Response"), as well as the Affidavit of Evan Brown in support thereof. Defendant served the Response and supporting Affidavit on the undersigned by certified mail.^{1/}

3. The filing and service of the Affidavit of Evan Brown on June 7, 1999, a mere three (3) days before the hearing, is not timely under the rules, and the affidavit should be stricken from

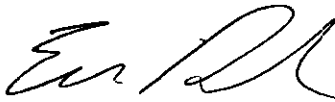
^{1/} Because the undersigned was traveling on June 8, 1999, the undersigned did not even see the Affidavit of Evan Brown until the afternoon of June 9, 1999, less than twenty-four hours before the long-schedule hearing on the Second Motion to Compel.

the record. Texas Rule of civil Procedure 193.4 clearly requires that a party submitting an affidavit in opposition to a motion to compel must file that affidavit "at least seven days before the hearing." Defendant's filing of his affidavit on June 7, 1999 violated this Rule. Moreover, because the Second Motion to Compel has been on file for *more than one month*, and because this hearing has been scheduled *for a full month*, Defendant cannot demonstrate any excuse or justification for filing this affidavit in violation of Rule 193.4.

WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court enter an order striking the Affidavit of Evan Brown (filed on or about June 7, 1999), and for such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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


By: 
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served via hand delivery upon counsel for Defendant Evan Brown on this the 10th day of June, 1999.


Eric W. Pinker, P.C.