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Filed 12/15/00

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

DEFENDANT'S MOTION FOR COMPENSATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant Evan Brown ("Brown") and files this Motion for Compensation, and would respectfully show the Court as follows:

I.

As the Court knows, this lawsuit involves a dispute as to the owner of a computer code conversion idea of Defendant Brown. By Order dated December 8, 1998, attached hereto as Exhibit "A" (the "1998 Order"), this Court ordered Brown to fully and completely disclose his solution to DSC by responding to DSC's Interrogatory No. 7. In addition, the Order, in response to concerns voiced by Brown, stated that Brown could apply to the Court for compensation once his disclosure was complete. Specifically, the 1998 Order stated as follows:

After completely disclosing the solution to DSC as required by this Order, and provided that Brown has otherwise complied with all the provisions of this Order, Brown may apply to the Court to be compensated at the rate of no more than \$45.00 per hour for the time that Brown reasonably spent disclosing the solution to DSC.

1998 Order at ¶ 4. The Court subsequently entered an order on January 19, 2000 (the "January 2000 Order"). The Court ordered Brown to disclose his solution at the offices of DSC using a particular

target language, development platform and end language. *See* Exhibit "B" hereto. In addition, the Order required that DSC provide Brown with the reasonable equipment and peripherals needed to complete his disclosure. Finally, the Order specified that the disclosure be completed by April 28, 2000. *Id.*

II.

Following the Court's January 2000 Order, due to his financial difficulties, Brown filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the Western District of Texas, Waco Division. During the pendency of the bankruptcy, this Court's 1998 Order and January 2000 Order were stayed due to the automatic stay applicable in bankruptcy. Following the resolution of the bankruptcy issues, counsel for DSC and counsel for Brown agreed to seek modification of this Court's January 2000 Order in order to provide Mr. Brown until September 27, 2000 to complete the required disclosure due to the delay caused by his bankruptcy filing. The Agreed Order submitted by the parties in this regard was signed on July 11, 2000. *See* Exhibit "C" attached hereto.

III.

Evan Brown began his disclosure at the offices of DSC on approximately June 26, 2000. During the disclosures, several technical issues arose which were resolved by a meeting of representatives of DSC and Brown. After spending numerous days at the offices of DSC, and incurring expenses for transportation and lodging during this time period, Brown completed his disclosure and provided a written disclosure to DSC on September 26, 2000. By letter dated October 13, 2000, DSC raised several questions regarding the written disclosure, which Brown answered by letter dated October 19, 2000. By letter dated October 31, 2000, DSC requested that it be provided with an electronic version of Brown's written disclosure as well as a copy of the

higher level source code produced during his conversion process. By letter dated November 14, 2000, Brown provided the electronic disclosure requested by DSC as well as a copy of the higher level source code produced by his conversion process. After DSC requested two missing source files by letter dated November 27, 2000, Brown corrected his oversight and provided a computer diskette with the missing files on November 29, 2000. In each of the letters from Brown's attorneys in this regard, it was made clear that Brown was willing to meet with DSC or speak with DSC further should it have any additional questions regarding his disclosure. Since Brown provided the disk with the missing source files on November 29, 2000, DSC has not requested any additional information from Brown relating to his disclosure.

IV.

As the Court knows, due to the financial circumstances caused by his termination by DSC, Brown was forced to sell his home in Plano and move to a farm outside of Waco. As evidenced by his bankruptcy filing, Brown is destitute at this time due to his continued unemployment. In order to comply with this Court's orders, Brown was forced to incur significant travel and lodging expenses to travel to DSC's offices in Plano in order to complete his disclosure, a process which lasted nearly three months. Attached hereto as Exhibit "D" is a breakdown of the travel, hotel and other expenses incurred by Brown during his disclosure. In addition, Exhibit "D" sets forth the hours Brown spent on the disclosure at the offices of DSC. Pursuant to the terms of the 1998 Order, Brown hereby applies to the Court for compensation of his time in the amount of \$45.00 per hour plus compensation for his travel, hotel and other expenses incurred during his disclosure of the solution. Brown has fully and completely disclosed his solution to DSC, has answered all of DSC's follow-up questions, has provided DSC with a computer disk of his solution even though it was not

required, and has shown his willingness to answer any further questions by DSC regarding his solution. Because Brown has fully and completely disclosed his solution in accordance with this Court's previous orders, he hereby requests that the Court compensate him for the amounts set forth in Exhibit "D" attached hereto.

WHEREFORE, PREMISES CONSIDERED, Defendant Evan Brown prays that the Court grant this Motion for Compensation and award him the amount set forth in Exhibit "D" attached hereto.

Respectfully submitted,



ERIC D. PEARSON

State Bar No. 15690472

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ATTORNEY FOR DEFENDANT EVAN BROWN

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause in accordance with Rule 21a, Texas Rules of Civil Procedure, on this 14th day of December 2000.



Eric D. Pearson

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

ORDER

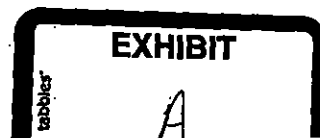
On the 3rd day of December, 1998, came on for consideration before the Court, Plaintiff DSC's Motion to Compel Interrogatory Responses and For Sanctions (the "Motion"). The parties appeared through their attorneys of record and announced ready to proceed on the Motion.

After consideration of the arguments of counsel, the Motion and Defendant's Response,¹ the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff DSC's Motion shall be and is hereby GRANTED according to the following terms:

1. Brown's objections to Interrogatory No. 7 are not well founded. Accordingly, Brown's objections to Interrogatory No. 7 are overruled.
2. Brown shall respond to DSC's Interrogatory No. 7 by fully and completely disclosing the Solution to DSC by 10:00 a.m. on Monday, January 25, 1999.
3. The Solution, once disclosed by Brown, shall be forwarded to the Court under seal. DSC and Brown shall confer concerning the identity of the persons to whom the Solution may be disclosed, and shall advise the Court of any agreements that they reach. In the event the parties are unable to reach agreement concerning the persons

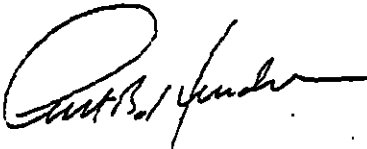
¹ Pursuant to Texas Rule of Civil Evidence 201, the Court took judicial notice of the material in its file concerning this case, including the evidence presented at the Temporary Injunction hearing on June 30, 1997.



to whom the Solution may be disclosed, the Court will enter a further order providing for the disclosure of the Solution to DSC.

4. After completely disclosing the Solution to DSC as required by this Order, and provided that Brown has otherwise complied with all of the provisions of this Order, Brown may apply to the Court to be compensated at the rate of no more than \$45 per hour for the time that Brown reasonably spent disclosing the Solution to DSC.
5. Brown shall not be permitted any further discovery in this matter unless and until he has fully complied with the disclosure required in paragraph 2 above, except upon order of the Court.
6. Brown shall pay DSC \$1,000.00 for its attorneys fees, costs and expenses expended in obtaining this order by Monday, January 25, 1999.
7. Should Brown fail to comply with the terms of this order, this Court will entertain a motion from DSC to strike Brown's pleadings pursuant to Texas Rule of Civil Procedure 215(2).

SIGNED this 8th day of December, 1998.



JUDGE PRESIDING

*In the 219th Judicial District Court
of the State of Texas
Curt B. Henderson, Judge Presiding*

No. 199-00596-97

DSC Communications Corporation

vs.

Evan Brown

ORDER

On June 10, 1999, the Court heard Plaintiff DSC's Second Motion to Compel Interrogatory Responses and For Sanctions (the "Motion"). The parties appeared through their attorneys of record and announced ready to proceed on the Motion. In the Second Motion, DSC demonstrated that the Court ordered that Defendant fully and completely disclose the Solution in its June 30, 1997 Temporary Injunction Order. In connection with entering the Temporary Injunction Order, the Court entered orders (1) requiring strict confidentiality of the Solution once it had been disclosed; and (2) requiring DSC to compensate Defendant for the time he spent making the disclosure. Defendant willfully refused to comply with the terms of the Temporary Injunction Order.

In this Second Motion now before the Court, DSC further demonstrated that DSC served interrogatory requests seeking for Defendant to fully and completely disclose the Solution. Defendant refused to provide any substantive

EXHIBIT

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response to that Interrogatory, forcing DSC to file its First Motion to Compel and for Sanctions (the "First Motion"). After a hearing concerning DSC's First Motion, the Court granted that Motion and ordered (for the second time) that Defendant Brown fully and completely disclose the Solution to DSC. In connection with granting that First Motion, the Court entered orders (1) requiring strict confidentiality of the Solution once it had been disclosed; (2) allowing Defendant to apply to the Court for compensation in connection with the time spent making the disclosure; and (3) warning Defendant that any failure to fully and completely disclose the Solution might result in sanctions, including the striking of Defendant's pleadings and the entry of default judgment against Defendant. Again, Brown willfully refused to fully and completely disclose the Solution to DSC as required by the Court's Order. Now, two and one-half (2½) years later, there has been no disclosure of the Solution. At each stage of these proceedings, the Court has entertained new justifications why compliance has not been forthcoming. In good faith, the Court will again afford Defendant all benefit of the doubt and accommodate his latest explanation in hopes that Defendant will finally acquit himself of his failure to obey the directive of the Court. Such accommodation, however, comes with a price.

Based on the facts of this case, the Court concludes it has on two prior occasions ordered Defendant to provide to DSC a full and complete disclosure of the Solution. These two orders, one of which have been in place since June 30, 1997, provided Defendant with ample opportunity to fully and completely

disclose the Solution to DSC. Defendant's failure to fully and completely disclose the Solution in compliance with these orders is in willful violation of the Court's orders and constitutes bad faith and an abuse of the discovery process. Moreover, in connection with the Court's Order on DSC's First Motion, the Court sanctioned Defendant and advised Defendant that any further violation of the court's Order would result in additional sanctions, including the dismissal of his pleadings and the entry of a default judgement against him. Notwithstanding this order, Defendant failed and refused to fully and completely disclose the Solution. Defendant's conduct demonstrates a willful and continuing refusal to comply with the Court's orders and the discovery process in general.

Following oral argument on the Motion, the Court advised the parties that it intended to enter an order granting the Motion in part. The Court finds that the Defendant has failed to disclose the Solution. The Court engaged counsel in discussion and argument in an effort to give Defendant another opportunity to disclose the Solution. 's excuses and requiring Defendant to disclose the Solution in greater detail than he had previously disclosed the Solution. Accordingly, the Court solicited supplemental briefing and comments from the parties concerning the specific manner in which Defendant should be required to disclose the Solution.

On July 12, 1999, the parties submitted to the Court letter briefs outlining the manner in which Defendant should be required to disclose the Solution. The Court evaluated those letter briefs and thereafter heard further argument

concerning the manner in which Defendant would be required to further disclose the Solution. Following that second oral argument, the Court solicited supplemental briefing from the parties concerning the differences between the two manners for disclose proposed by the parties. On September 14, 1999, the parties submitted a second letter brief outlining the differences between the proposed manners for disclosure of the Solution.

Based on the foregoing arguments and filings with the Court, as well as the Court's general familiarity with the case, the Court is thoroughly familiar with the parties' positions concerning Defendant's required disclosure of the Solution. On October 14, 1999, the Court entered a Memorandum providing that Plaintiff had the option of selecting one of two methods by which Defendant would be required to disclose the Solution. Plaintiff advised the Court and Defendant's counsel that it had selected the second option for the disclosure required by Defendant. The Court's file shall reflect the relevant follow-up correspondence between the Court and parties and the Court's efforts to structure a final resolution to this issue.

Based on these facts, as well as consideration of the pleadings on file in this case, the arguments of counsel at the June 10, 1999 hearing, the follow-up discussion with counsel, and the Court's long-standing and detailed familiarity with the factual and procedural background of this case, the Court is of the opinion that the DSC's Second Motion should be GRANTED, and that the Court

must impose some sanctions, as well as structure another opportunity for Defendant to comply with the disclosure.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff DSC's Motion shall be and is hereby GRANTED as follows:

1. To the extent and to the degree necessary to accomplish the following, the Court hereby strikes, in part, Defendant's Original Answer, which was filed on or about May 25, 1997; and the Court hereby enters judgment in favor of Plaintiff DSC Communications Corporation and against Defendant Evan Brown, ordering that DSC owns a 20% interest in the Solution (as defined in the Court's June 30, 1997 Temporary Injunction Order).
2. Brown shall fully and completely describe the Solution and disclose it to DSC by 5:00 p.m. on Friday, April 28, 2000.
3. Brown's disclosure shall be made using (1) Zilog Z8000 as the target language to be converted, (2) using the UNIX/BSDI-4.01 development platform, and (3) using the K&R "C" language as the language to be created as an end product of the conversion.
4. DSC shall provide Brown with the reasonable equipment and peripherals needs (but not services) required to fully and completely describe the Solution in the manner set forth in paragraph 3 hereof, provided that after DSC provides Brown with equipment and peripherals worth \$40,000, Brown shall be responsible for providing any additional equipment that he requires. DSC shall set up the equipment and peripherals in an office or conference room at Plaintiff's building known as PB-6, located at 3400 West Plano Parkway. Brown shall not damage or modify the equipment or peripherals, nor shall he utilize the equipment in such a way as to

disrupt or interfere with the ordinary business operations or working hours of DSC.

5. Brown shall not be permitted any further discovery in this matter unless and until he has fully demonstrated his compliance with the disclosure, except upon order of the Court.

Signed on Wednesday, January 19, 2000.

Curt B. Henderson
Judge Presiding

CAUSE NO. 199-596-97

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

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EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

AGREED ORDER

On the 11 day of July 2000, the parties advised the Court that they had reached an agreement concerning the relief requested in Defendant's Motion to Modify Court's January 19, 2000 Order. Having considered the agreement of the parties, the Court finds that the following Order should be entered:

ORDERED ADJUDGED AND DECREED that the Court's January 19, 2000 Order is hereby modified to extend the deadline by which Defendant Evan Brown shall be required to fully and completely describe the Solution and disclose it to DSC from 5:00 p.m. on April 28, 2000 to 5:00 p.m. on September 27, 2000. All other aspects of the January 19, 2000 Order shall remain unchanged, and in full force and effect.

SIGNED this the 11 day of July, 2000.

Judge Don Metcalfe
Senior District Judge

HONORABLE CURT B. HENDERSON *ccw*

AGREED:



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ATTORNEYS FOR PLAINTIFF DSC COMMUNICATIONS CORPORATION

Compensation requested by Evan Brown

Week 1: June 26 - 30

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal

Week 2: July 5 - 7

\$900.00 - Labor 20hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$159.12 - Hotel
\$37.36 - Meals

\$1469.38 weekly subtotal

Week 3: July 10 - 14

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals
\$3.94 - Misc (null modem cable - Off the Shelf Components)

\$2668.04 weekly subtotal

Week 4: July 17 - 21

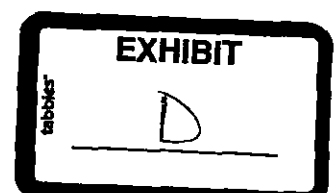
\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal

Week 5: July 24 - 28

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal



Week 6: July 31 - Aug 4

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals
\$9.69 - Misc (cable adaptors - Off the Shelf Components)
\$4.32 - Misc (Xerox paper - Office Depot)

\$2678.11 weekly subtotal

Week 7: Aug 7 - 9

\$900.00 - Labor 20hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$159.12 - Hotel Expenses
\$37.36 - Meals

\$1469.38 weekly subtotal

Week 8: Aug 14 - 18

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal

Week 9: Aug 21 - 25

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal

Week 10: Aug 28 - Sep 1

\$1800.00 - Labor 40hr @ \$45/hr
\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr
\$397.80 - Hotel Expenses
\$93.40 - Meals

\$2664.10 weekly subtotal

Week 11: Sep 4 - 8

\$1800.00 - Labor 40hr @ \$45/hr

\$372.90 - Travel 294mi @ \$0.35 plus 6hr driving @ \$45.00/hr

\$397.80 - Hotel Expenses

\$93.40 - Meals

\$2664.10 weekly subtotal

Week 12: Sep 11 - 15

\$1800.00 - Labor 40hr @ \$45/hr

\$1800.00 weekly subtotal

Week 13: Sep 18 - 22

\$1800.00 - Labor 40hr @ \$45/hr

\$1800.00 weekly subtotal

Week 14: Sep 25

\$271.90 - Travel 168mi @ \$0.35 plus 5hr driving @ \$45.00/hr

\$180.00 - Labor 4hr @ \$45/hr

\$39.60 - Copy charge

\$491.50 weekly subtotal

\$31,025.11 Total Labor and Expenses