

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 RSC Equipment Rental, Inc., an Arizona
12 Corporation

13 Plaintiff,

14 vs.

15 Richard Darell, an individual; David Williams,
16 an individual; Paul Connes, an individual, and
Justin Marshall, an individual

17 Defendants.

No. C09 02784 MEJ CRB

~~PROPOSED~~ CONFIDENTIALITY
ORDER

18 **ORDER**

19 The discovery, pretrial and trial phases of this action may involve disclosure of
20 confidential and proprietary business, technical and financial information, and/or private
21 personal information. For good cause shown,

22 IT IS HEREBY ORDERED that:

23 1. Any party to this action, and any non-party from whom discovery is sought
24 in connection with this action, may designate as “Subject to Protective Order” and

25 “*Confidential – Outside Counsel Eyes Only*”

26 or

27 “*Confidential*”
28

1 any documents, things, interrogatory answers, responses to request for admissions, trial
2 or deposition testimony, or other material that contains material or information that is not
3 publicly known which is produced in this litigation by one party to the other including,
4 without limitation, confidential business information, confidential technology, trade
5 secrets, know-how, proprietary data, confidential research, development or commercial
6 information including, but not limited to, production, sales, shipments, purchases,
7 transfers, identification of customers, inventories, amount or source of any income,
8 profits, losses, or expenditures, agreements, contracts, job information, invoices, orders,
9 things, notes, outlines, compilations, memoranda, operating manuals or instructions,
10 correspondence, reports, records, data, charts, specifications, designs, flowcharts, and
11 software and other written, recorded or graphic material, and which is designated as
12 confidential in the manner described in this Order (“Protected Information”). Protected
13 Information includes all such confidential information, whether revealed during a
14 deposition, in a document, in an interrogatory answer, by production of tangible
15 evidence, hearing or trial transcripts, responses to requests for admissions or otherwise
16 made available to counsel for either party in this action.

17 2. “*Confidential – Outside Counsel Eyes Only*” and “*Confidential*” material,
18 as used in this Order, shall refer to any Protected Information designated pursuant to
19 paragraph 1 above, and all copies thereof, and shall also refer to the information
20 contained in or derived from material designated pursuant to paragraph 1 above,
21 including excerpts, summaries, indices, abstracts, or copies of such material.

22 3. No designation of materials as “*Confidential – Outside Counsel Eyes*
23 *Only*” shall be made unless the designated material comprises or contains confidential,
24 highly sensitive technical, marketing, financial, sales or other business information which
25 could be used by the receiving party to obtain a business (not legal) advantage over the
26 producing party.

1 4. No designation of material as “*Confidential*” shall be made unless the
2 designating party or non-party believes in good faith that the designated material is
3 Protected Information and entitled to protection under Rule 26(c)(7) of the Federal Rules
4 of Civil Procedure.

5 5. Outside counsel of the respective parties, including secretarial, clerical,
6 litigation support and paralegal personnel regularly employed by such outside counsel
7 may receive Protected Information designated “*Confidential*” or “*Confidential – Outside*
8 *Counsel Eyes Only*.”

9 6. Translators of foreign language documents or foreign language testimony
10 who are not employed by one of the parties, but are retained to provide translations of
11 any material or testimony designated as “*Confidential*” or “*Confidential – Outside*
12 *Counsel Eyes Only*,” may receive materials so designated, but only for purposes of
13 translating such documents or testimony.

14 7. Third parties, who are not affiliates of or employed by one of the parties,
15 but are specifically retained to assist the attorneys of record or a party in copying or
16 computer coding or imaging of documents, may receive materials designated
17 “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*,” but only for purposes of
18 copying or computer coding or imaging Protected Information contained therein.

19 8. The Court and its employees and court stenographers whose function
20 requires them to have access to material designated as “*Confidential*” or “*Confidential –*
21 *Outside Counsel Eyes Only*” may receive such materials, but only for purposes of
22 discharging the function which requires them to have access thereto.

23 9. Independent outside experts and their clerical and support staff specifically
24 engaged by counsel or the parties to assist in this litigation may receive Protected
25 Information designated “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*,”
26 subject to the provisions of paragraphs 11 and 12 below.

1 10. Employees, officers or directors of the parties, whether or not an expert,
2 may be designated and permitted to receive Protected Information designated
3 *“Confidential.”*

4 11. Before any disclosure of Protected Information is made pursuant to
5 paragraph 9 above, the following must occur:

6 (a) The individual to whom disclosure is to be made must be given a
7 copy of this Order, and the provisions of this Order must be explained to the
8 individual to whom disclosure is to be made by an attorney;

9 (b) The individual to whom disclosure is to be made must sign an
10 acknowledgement in the form of the attached Exhibit A;

11 (c) If the individual to whom disclosure is to be made is an employee,
12 independent contractor or consultant to a competitor of the party whose Protected
13 Information is proposed to be disclosed, a copy of such expert’s signed
14 acknowledgement and curriculum vitae (including an identification of
15 employment history and consulting relationship with any party or any related
16 company) must be served by facsimile on opposing counsel of record at least
17 seven (7) business days before the Protected Information is shown to such expert;
18 and

19 12. Any party may object to the disclosure of Protected Information pursuant to
20 paragraph 9 above, within seven (7) business days of receiving all of the information
21 required to be provided by subparagraph 11(c). The procedure for making and resolving
22 any such objection shall be as follows:

23 (a) Any objection made pursuant to paragraphs 11(c) shall be
24 transmitted in writing by facsimile, to the disclosing party and shall state in detail
25 the basis for such objection;

26 (b) The parties shall thereafter have five (5) business days to confer in
27 an effort to resolve the objection. If they are unable to do so or fail to confer, the
28

1 objecting party shall have five (5) additional business days to seek an Order from
2 the Court barring the requested disclosure proposed to be made under paragraph 9.
3 The failure to seek such an Order within ten (10) business days of the service of a
4 written notice of objections shall effect a waiver of such objection;

5 (c) The party seeking to disclose Protected Information under paragraph
6 9 shall have five (5) business days from the date of service by facsimile to respond
7 to any objections filed with the Court. There shall be no reply submission
8 permitted, nor shall oral argument on the objections be held unless the Court
9 deems it appropriate;

10 (d) No proposed disclosure of Protected Information under paragraph 9
11 shall take place until the Court resolves the issue, or any objection is withdrawn or
12 waived.

13 13. Notwithstanding the other provisions of this Order, Protected Information
14 may be used in the course of any deposition of current employees of the party designating
15 such Protected Information.

16 14. Notwithstanding the other provisions of this Order, any party or third-party
17 witness may be shown at a deposition or examined on any document containing material
18 designated "*Confidential*" or "*Confidential – Outside Counsel Eyes Only*" if it appears
19 from the face of the document that the witness authored or received a copy of it, or if it is
20 reasonably established that the witness has knowledge of information which is contained
21 in the document and about which the witness is being examined.

22 15. In the event that counsel for any party deems it necessary to disclose
23 Protected Information to anyone other than those to whom disclosure is provided for in
24 this Order, the parties agree to negotiate in good faith whether such disclosure may occur
25 and the terms on which such disclosure can occur. In the event the parties are unable to
26 agree, the party seeking disclosure may make application to the Court for such disclosure.

1 16. Until or unless the Court rules otherwise, Protected Information and any
2 information derived therefrom, including excerpts, summaries, indices, abstracts or
3 copies thereof, shall be maintained in confidence by the person to whom such material is
4 produced and shall not be disclosed to any person without the express written consent, or
5 consent on the record, of the producing party, except as set forth above.

6 17. Any person to whom Protected Information is divulged pursuant to the
7 provisions of this Order is similarly obligated to maintain the confidence of such
8 Protected Information, and not to disclose it to any person other than a person authorized
9 under this Order. All produced Protected Information shall be carefully maintained so as
10 to preclude access by persons other than those otherwise authorized under this Order.

11 18. Protected Information shall not be used for any purposes other than this
12 litigation.

13 19. Any redaction of confidential information, not agreed to by both parties or
14 ordered by the court, shall be accompanied by a notification indicating that the redaction
15 has been made and shall further provide the reasoning for the redaction.

16 20. In the event a producing party or a third party elects to produce documents
17 or other material for inspection, no markings need be made by the producing party or
18 third party in advance of the inspection. All such documents or other material may be
19 temporarily designated as “*Confidential – Outside Counsel Eyes Only*” and shall be
20 treated by the receiving party as if they were so marked. After selection by the receiving
21 party of specified documents or material for copying, the producing party without delay
22 shall make its designation under this Order, if any, and the party making copies shall
23 ensure that any copies include any designation made by the producing party.

24 21. Except as otherwise provided herein, no designation shall be effective
25 unless there is placed or affixed on such material a “*Confidential – Outside Counsel Eyes*
26 *Only*” or “*Confidential*” marking, or unless the parties agree upon some other
27 appropriate methods of designation. The designations “*Highly Confidential Attorneys*
28

1 *Eyes Only*,” “*Confidential Attorneys Eyes Only*” or “*Attorneys Eyes Only*” shall have
2 the same meaning and effect as the designation “*Confidential – Outside Counsel Eyes*
3 *Only*.”

4 22. All Protected Information not reduced to documentary, tangible or physical
5 form, or which cannot be conveniently designated pursuant to the foregoing paragraph
6 21, shall be designated by the producing party by informing the opposing party in
7 writing.

8 23. Depositions or portions thereof which contain Protected Information may
9 be designated as “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*” and
10 shall be separately bound in a confidential volume, marked in accordance with paragraph
11 1, and shall, if required, be separately filed as provided herein so as to distinguish such
12 confidential deposition or confidential portions thereof from non-confidential public
13 depositions or public portions thereof.

14 24. At any deposition session, where appropriate, counsel for a party may
15 temporarily designate as “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*”
16 the entire deposition transcript. When such a designation is made, all parties shall
17 maintain the entire deposition transcript and all information contained therein as required
18 by such designation “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*” until
19 thirty (30) calendar days after receipt of an execution copy of the transcript. During that
20 period, the party desiring to maintain confidentiality must designate in writing those
21 portions of the transcript regarded as “*Confidential*” or “*Confidential – Outside Counsel*
22 *Eyes Only*” and only those portions will thereafter be handled and marked in accordance
23 with the provisions of this Order. Designation of material at a deposition as Protected
24 Information shall not, however, operate to exclude a party’s representative, not
25 authorized to receive Protected Information, from any part of a deposition except when
26 counsel for a party deems that a question and/or the answer to a question will result in
27 disclosure of Protected Information. Only individuals otherwise authorized to receive
28

1 such Protected Information under the terms of this Order will be allowed to attend
2 confidential portions of depositions.

3 25. Material and deposition transcripts produced without the designation of
4 “*Confidential – Outside Counsel Eyes Only*” or “*Confidential*” may be so designated
5 subsequent to production or testimony if the producing party provides replacement
6 materials bearing appropriate designations and notifies the receiving party promptly after
7 becoming aware of same that the producing party failed to make such designation at the
8 time of production, during the testimony, or during the thirty (30) day period after receipt
9 of the transcript through inadvertence, mistake, or error. If discovery material is
10 designated “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*” subsequent to
11 production or testimony, the receiving party promptly shall collect any copies that have
12 been provided to individuals other than those authorized to receive Protected Information
13 so designated under this Order, and shall affix the appropriate designation to any copies
14 that have been provided to individuals authorized to receive Protected Information so
15 designated under this Order.

16 26. If any party objects to a designation hereunder, that party may request the
17 designating party to rescind the designation. If the parties do not agree to rescind the
18 designation, the objecting party may move the Court to order a lower designation, *e.g.*,
19 from “*Confidential – Outside Counsel Eyes Only*” to “*Confidential*,” or de-designation
20 of any material. The designating party shall bear the burden of establishing the need for
21 the “*Confidential – Outside Counsel Eyes Only*” or “*Confidential*” designation.

22 27. If in the course of this litigation discovery is sought from third parties
23 which would require such parties to disclose and/or produce “*Confidential*” or
24 “*Confidential – Outside Counsel Eyes Only*” information, such third parties may gain the
25 protections of this Order by simply agreeing in writing to produce documents pursuant to
26 this Order and to be bound by it. No further order of this Court shall be necessary to
27 extend the protections of this Order to third parties.

28. At the conclusion of this case all Protected Information and all materials designated “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*” pursuant to this Order, produced as part of discovery in this action, and all copies thereof, shall be returned to the producing party or, at the option of the receiving party, receiving counsel shall destroy and certify in writing that such material has been destroyed. Outside counsel may retain one copy of any material containing Protected Information marked “*Confidential*” or “*Confidential – Outside Counsel Eyes Only*” and one copy of counsel’s work product incorporating such Protected Information, which shall remain subject to the provisions of this order.

29. Any document or thing containing or embodying Protected Information that is to be filed or submitted in this action shall be filed or submitted in accordance with the official procedures of the Court, if no such procedures are provided by the Court, the documents or things containing or embodying Protected Information shall be filed in sealed envelopes or other sealed containers which shall bear the caption of the case, shall identify the contents for docketing purposes, shall bear a statement substantially in the form:

CONFIDENTIAL

Filed under Protective Order. This envelope is not to be opened nor the contents thereof displayed or revealed except by direction or Order of the Court, or by agreement of the parties.

Subject to applicable local rules, outside attorneys of record and local counsel for the parties are hereby authorized to be the persons who may retrieve confidential exhibits and/or other confidential matters filed with the Court upon termination of this litigation without further order of this Court, and are the persons to whom such confidential exhibits or other confidential matters may be returned by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so filed shall be released except by order of the Court, to outside counsel of record or as otherwise provided for hereunder.

1 30. The restrictions set forth in any of the preceding paragraphs do not and
2 shall not apply to information or material that:

3 (a) was, is or becomes public knowledge in a manner other than by
4 violation of this Order;

5 (b) is acquired by the non-designating party from a third party having
6 the right to disclose such information or material; or

7 (c) was lawfully possessed by the non-designating party prior to the
8 entry by the Court of this Order.

9 31. Nothing in this Order shall bar or otherwise restrict any attorney herein
10 from rendering advice to his client with respect to this litigation and in the course thereof,
11 relying upon the attorney's examination of Protected Information; provided, however,
12 that in rendering such advice and in otherwise communicating with his client, the
13 attorney shall not disclose any Protected Information.

14 32. Any discovery documents produced in this litigation may be later
15 designated as "Attorney Client Privileged" or "Attorney Work Product" promptly upon
16 discovery by the producing party that any such privileged or immune document was
17 produced through inadvertence, mistake, or other error, and no waiver or privilege or
18 immunity shall be deemed to have occurred. Upon such designation, the receiving
19 attorney promptly shall make best efforts to collect all copies of the documents and return
20 them to the producing party. In the event that the receiving attorney believes in good
21 faith that the producing party cannot properly assert any privilege or immunity with
22 respect to the documents, the receiving attorney must notify the designating attorney in
23 writing and the designating attorney shall within thirty (30) calendar days of such notice
24 file a motion to establish that the material is attorney-client privileged; otherwise, the
25 claim of privilege shall be deemed waived.

1 34. This Order shall be without prejudice to the right of any party to oppose
2 production of any information for any reason permitted under the Federal Rules of Civil
3 Procedure.

4 35. This Order may be amended by the agreement of counsel for the parties in
5 the form of a stipulation, subject to order of the Court. Any party for good cause may
6 apply to the Court for a modification of this Order. This Order shall remain in full force
7 and effect after the termination of this litigation, or until canceled or otherwise modified
8 by order of this Court.

9
10 Signed this 20th day of August, 2009.

11
12 The Honorable
13 U.S. District Court

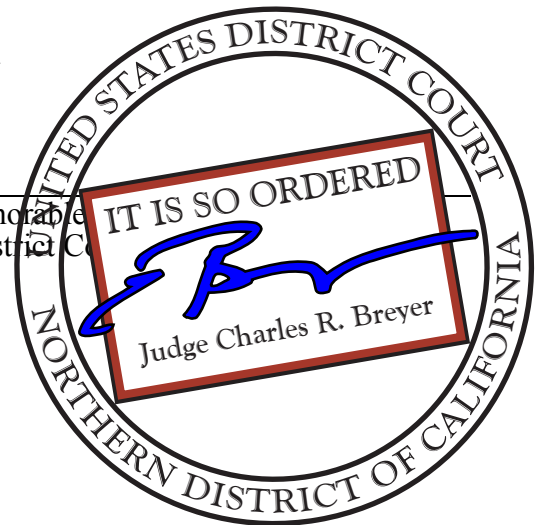


EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RSC Equipment Rental, Inc., an Arizona
Corporation

Plaintiff,

vs.

Richard Darell, an individual; David Williams,
an individual; Paul Connes, an individual, and
Justin Marshall, an individual

Defendants.

No. C09 02784 MEJ

**ACKNOWLEDGEMENT AND
AGREEMENT RE:
CONFIDENTIALITY ORDER**

I, _____, declare that:

1. My address is _____.
2. My present employer is _____.
3. My present occupation or job description is _____
_____.
4. I have received a copy of the Confidentiality Order in this action signed on
_____, 2009.
5. I have carefully read and understand the provisions of the Confidentiality
Order.
6. I will comply with all of the provisions of the Confidentiality Order.
7. I will hold in confidence, will not disclose to anyone not qualified under the
Confidentiality Order, and will use only for purposes of this action any
confidential materials which are disclosed to me.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. I will return all confidential material that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained.
9. I hereby submit to the jurisdiction of this Court for the purposes of enforcement of the Confidentiality Order in this action.

DATED this _____ day of _____, 20____.

(Signature)

(Typed Name)