

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD L. WENDT REVOCABLE  
LIVING TRUST dated March 8, 1995, by  
Trustee Roderick Wendt,

Plaintiff,

v.

CHURCHILL & COMPANY2 LLC, a  
Washington limited liability corporation,

Defendant.

No. 3:23-cv-05359-JLR

**STIPULATED MOTION AND  
~~PROPOSED~~ PROTECTIVE  
ORDER**

Note on Motion Calendar:  
**July 23, 2024**

Plaintiff the Richard L. Wendt Revocable Living Trust dated March 8, 1995, by Trustee Roderick Wendt (“the Trust”) and Defendant Churchill & Company2 LLC (“Churchill”) (the Trust and Churchill collectively, “the Parties”) jointly request that the Court enter the following Protective Order. Per LCR 26(c)(2), the Parties have based this proposed Protective Order on the Western District of Washington’s model Protective Order and departures from that model order are indicated in redline in the exhibit submitted herewith.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the Parties

1 hereby stipulate to and petition the court to enter the following Stipulated Protective Order.  
2 The Parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer  
3 blanket protection on all disclosures or responses to discovery, the protection it affords from  
4 public disclosure and use extends only to the limited information or items that are entitled to  
5 confidential treatment under the applicable legal principles, and it does not presumptively  
6 entitle Parties to file confidential information under seal.

7 2. “CONFIDENTIAL” MATERIAL

8 “Confidential” material shall include the following documents and tangible things  
9 produced or otherwise exchanged: contact information for non-parties, non-public financial  
10 information, confidential internal business correspondence, processes, and procedures. This  
11 listing is not an agreement by any party that all or any part of the categories of information  
12 listed herein is indeed confidential information.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential material (as  
15 defined above), but also (1) any information copied or extracted from confidential material;  
16 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
17 testimony, conversations, or presentations by Parties or their counsel that might reveal  
18 confidential material.

19 However, the protections conferred by this agreement do not cover information that  
20 is in the public domain or becomes part of the public domain through trial or otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is  
23 disclosed or produced by another party or by a non-party in connection with this case only  
24 for prosecuting, defending, or attempting to settle this litigation. Confidential material may  
25 be disclosed only to the categories of persons and under the conditions described in this  
26 agreement. Confidential material must be stored and maintained by a receiving party at a

1 location and in a secure manner that ensures that access is limited to the persons authorized  
2 under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
4 ordered by the court or permitted in writing by the designating party, a receiving party may  
5 disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as  
7 employees of counsel to whom it is reasonably necessary to disclose the information for this  
8 litigation;

9 (b) the officers, directors, and employees (including in house counsel) of  
10 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
11 Parties agree that a particular document or material produced is for Attorney’s Eyes Only and  
12 is so designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary  
14 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
15 (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff, and any  
17 mediator of this dispute and the mediator’s staff;

18 (e) copy or imaging services retained by counsel to assist in the  
19 duplication of confidential material, provided that counsel for the party retaining the copy or  
20 imaging service instructs the service not to disclose any confidential material to third parties  
21 and to immediately return all originals and copies of any confidential material;

22 (f) during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and, in the case of witnesses who are not employees or representatives  
24 of the designating party, who have signed the “Acknowledgment and Agreement to Be  
25 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.

26 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential

1 material must be separately bound by the court reporter and may not be disclosed to anyone  
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a  
4 custodian or other person who otherwise possessed or knew the information; and

5 (h) any other person or entity to which the Parties agree in writing.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing  
7 or referencing such material in court filings, the filing party shall confer with the designating  
8 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating  
9 party will remove the confidential designation, whether the document can be redacted, or  
10 whether a motion to seal or stipulation and proposed order is warranted. During the meet and  
11 confer process, the designating party must identify the basis for sealing the specific  
12 confidential information at issue, and the filing party shall include this basis in its motion to  
13 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets  
14 forth the procedures that must be followed and the standards that will be applied when a party  
15 seeks permission from the court to file material under seal. A party who seeks to maintain the  
16 confidentiality of its information must satisfy the requirements of Local Civil Rule  
17 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this  
18 requirement will result in the motion to seal being denied, in accordance with the strong  
19 presumption of public access to the Court's files.

20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
22 party or non-party that designates information or items for protection under this agreement  
23 must take care to limit any such designation to specific material that qualifies under the  
24 appropriate standards. The designating party must designate for protection only those parts  
25 of material, documents, items, or oral or written communications that qualify, so that other  
26 portions of the material, documents, items, or communications for which protection is not

1 warranted are not swept unjustifiably within the ambit of this agreement.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
3 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
4 unnecessarily encumber or delay the case development process or to impose unnecessary  
5 expenses and burdens on other Parties) expose the designating party to sanctions.

6 If it comes to a designating party's attention that information or items that it  
7 designated for protection do not qualify for protection, the designating party must promptly  
8 notify all other Parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
10 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or  
11 ordered, disclosure or discovery material that qualifies for protection under this agreement  
12 must be clearly so designated before or when the material is disclosed or produced.

13 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
14 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
15 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page  
16 that contains confidential material. If only a portion or portions of the material on a page  
17 qualifies for protection, the producing party also must clearly identify the protected portion(s)  
18 (*e.g.*, by making appropriate markings in the margins).

19 (b) Testimony given in deposition or in other pretrial proceedings: the  
20 Parties and any participating non-parties must identify on the record, during the deposition  
21 or other pretrial proceeding, all protected testimony, without prejudice to their right to so  
22 designate other testimony after reviewing the transcript. Any party or non-party may, within  
23 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
24 designate portions of the transcript, or exhibits thereto, as confidential. Upon conclusion of  
25 the deposition or pretrial proceeding and through expiration of the fifteen-day designation  
26 period, the transcript shall be treated by the Parties as confidential information subject to this

1 Order, unless otherwise agreed by the Parties. If a party or non-party desires to protect  
2 confidential information at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent  
4 place on the exterior of the container or containers in which the information or item is stored  
5 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant  
6 protection, the producing party, to the extent practicable, shall identify the protected  
7 portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
9 to designate qualified information or items does not, standing alone, waive the designating  
10 party's right to secure protection under this agreement for such material. Upon timely  
11 correction of a designation, the receiving party must make reasonable efforts to ensure that  
12 the material is treated in accordance with the provisions of this agreement.

## 13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right  
18 to challenge a confidentiality designation by electing not to mount a challenge promptly after  
19 the original designation is disclosed.

20 6.2 Meet and Confer. The Parties must make every attempt to resolve any dispute  
21 regarding confidential designations without court involvement. Any motion regarding  
22 confidential designations or for a protective order must include a certification, in the motion  
23 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
24 conference with other affected Parties in an effort to resolve the dispute without court action.  
25 The certification must list the date, manner, and participants to the conference. A good faith  
26 effort to confer requires a face-to-face meeting or a telephone conference.

1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention and the designating party does not wish to withdraw the challenged designation,  
3 the designating party must file and serve a motion to retain confidentiality under Local Civil  
4 Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable) within fourteen (14) days  
5 of completion of the meet and confer referenced in Paragraph 6.2. The burden of persuasion  
6 in any such motion shall be on the designating party. If the designating party does not timely  
7 file such a motion to retain confidentiality, the challenged designation shall be deemed  
8 withdrawn. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or  
9 impose unnecessary expenses and burdens on other Parties) may expose the challenging party  
10 to sanctions. All Parties shall continue to maintain the material in question as confidential  
11 until the court rules on the challenge.

12     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
13 OTHER LITIGATION

14           If a party is served with a subpoena or a court order issued in other litigation that  
15 compels disclosure of any information or items designated in this action as  
16 “CONFIDENTIAL,” that party must:

17           (a)     promptly notify the designating party in writing and include a copy of  
18 the subpoena or court order;

19           (b)     promptly notify in writing the party who caused the subpoena or order  
20 to issue in the other litigation that some or all of the material covered by the subpoena or  
21 order is subject to this agreement. Such notification shall include a copy of this agreement;  
22 and

23           (c)     cooperate with respect to all reasonable procedures sought to be  
24 pursued by the designating party whose confidential material may be affected.

25     8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL  
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1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
2 confidential material to any person or in any circumstance not authorized under this  
3 agreement, the receiving party must immediately (a) notify in writing the designating party  
4 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
5 the protected material, (c) inform the person or persons to whom unauthorized disclosures  
6 were made of all the terms of this agreement, and (d) request that such person or persons  
7 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as  
8 Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving Parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
14 provision is not intended to modify whatever procedure may be established in an e-discovery  
15 order or agreement that provides for production without prior privilege review. The Parties  
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17 10. NON-TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each  
19 receiving party must return all confidential material to the producing party, including all  
20 copies, extracts and summaries thereof. Alternatively, the Parties may agree upon appropriate  
21 methods of destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
25 work product, even if such materials contain confidential material.  
26



1           The confidentiality obligations imposed by this agreement shall remain in effect until  
2 a designating party agrees otherwise in writing or a court orders otherwise.

3  
4 DATED: July 23, 2024.

5           **ARETE LAW GROUP PLLC**

6  
7 By: /s/ Jeremy E. Roller  
8 Jeremy E. Roller, WSBA No. 32021  
9 1218 Third Avenue, Suite 2100  
10 Seattle, WA 98101  
11 Phone: (206) 428-3250  
12 Fax: (206) 428-3251  
13 [jroller@aretelaw.com](mailto:jroller@aretelaw.com)

14 *Attorneys for Plaintiff Richard L. Wendt*  
15 *Revocable Living Trust*

6           **SELBY MORGAN & BORN, PLLC**

7 By: /s/ L. Clay Selby  
8 L. Clay Selby, WSBA No. 26049  
9 Stuart C. Morgan, WSBA No. 26368  
10 1019 Regents Blvd., Suite 103  
11 Fircrest, Washington 98466-6037  
12 Phone: (253) 446-8610  
13 Fax: (253) 327-1700  
14 [clay@smb-lawyers.com](mailto:clay@smb-lawyers.com)  
15 [stu@smb-lawyers.com](mailto:stu@smb-lawyers.com)

16 *Attorneys for Defendant Churchill &*  
17 *Company2 LLC*

1 ~~PROPOSED~~ ORDER

2 PURSUANT TO STIPULATION, IT IS SO ORDERED

3 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
4 any documents, electronically stored information (ESI) or information, whether inadvertent  
5 or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other  
6 federal or state proceeding, constitute a waiver by the producing party of any privilege  
7 applicable to those documents, including the attorney-client privilege, attorney work-product  
8 protection, or any other privilege or protection recognized by law. This Order shall be  
9 interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The  
10 provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or  
11 shall serve to limit a party's right to conduct a review of documents, ESI or information  
12 (including metadata) for relevance, responsiveness and/or segregation of privileged and/or  
13 protected information before production. Information produced in discovery that is protected  
14 as privileged or work product shall be immediately returned to the producing party.

15  
16 DATED: July 24, 2024

17 

18 Hon. James L. Robart  
19 United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Western District of Washington on July  
7 \_\_\_\_, 2024, in the case of *Richard L. Wendt Revocable Living Trust v. Churchill & Company2*  
8 *LLC*, No. 3:23-cv-05359-JLR. I agree to comply with and to be bound by all the terms of this  
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
11 will not disclose in any manner any information or item that is subject to this Stipulated  
12 Protective Order to any person or entity except in strict compliance with the provisions of  
13 this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17  
18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_