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Division of Irwin Industrial Tool Company

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DON BOWENS, an individual,  
Plaintiff,  
v.  
INLAND BUILDERS SUPPLY, et.al.  
Defendants.

CASE NO. EDCV 07-848-VAP  
(JTLx)

~~PROPOSED~~ ORDER ON  
BERNZOMATIC'S MOTION FOR  
A PROTECTIVE ORDER

Date: November 18, 2008  
Time: 10 am  
Crtroom: B  
Hon. Jennifer Lum  
Discovery Cut-off: Nov. 20, 2008  
Pretrial Conf.: February 2, 2009  
Trial: February 10, 2009

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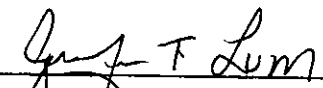
ORDER

The Motion of Bernzomatic For a Protective Order (the "Motion") came up for hearing on November 18, 2008. The appearances of counsel were noted on the record. The Motion, having been considered and found to be in the interest of justice:

IT IS ORDERED as follows:

1. The Motion is granted.
2. The Protective Order attached hereto as Exhibit A is entered by the Court, and shall govern this matter.

DATED: November 18, 2008

  
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Judge of the United States District Court

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EXHIBIT A

1           **I.     PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby  
6 stipulate to and petition the court to enter the following Stipulated Protective  
7 Order. The parties acknowledge that this Order does not confer blanket protections  
8 on all disclosures or responses to discovery and that the protection it affords  
9 extends only to the limited information or items that are entitled under the  
10 applicable legal principles to treatment as confidential.

11           **II.    DEFINITIONS**

12           A.     Party: any party to this action, including all of its officers,  
13 directors, employees, consultants, retained experts, and outside counsel (and their  
14 support staff).

15           B.     Disclosure or Discovery Material: all items or information,  
16 regardless of the medium or manner generated, stored, or maintained (including,  
17 among other things, testimony, transcripts, or tangible things) that are produced or  
18 generated in disclosures or responses to discovery in this matter.

19           C.     "Confidential" Information or Items: information, whether or  
20 not embodied in any physical medium, including all originals and copies of any  
21 documents and/or information, used by the Producing Party in or pertaining to its  
22 business, which information the Producing Party reasonably and in good faith  
23 believes contains or concerns confidential, non-public, proprietary and/or sensitive  
24 information including, but not limited to, information regarding a party's finances,  
25 processes for handling consumer claims, products, services, research &  
26 development, manufacturing, purchasing, accounting, engineering, designing,  
27 distribution, financial data, technical information, product specifications, testing  
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1 procedures, test criteria and results, personnel records and information, non-public  
2 submissions and communications with governmental agencies, proprietary or  
3 nonpublic commercial information, information involving privacy interests, and  
4 commercial and/or competitively sensitive information of a nonpublic nature, or  
5 received on a confidential basis. By way of example only, such information  
6 includes schematics, designs, models, drawings, memoranda, specifications,  
7 computer software, computer printouts, computer programs, development tools and  
8 processes, technical data and improvements. It also includes plans or proposals  
9 with regard to any of the foregoing whether implemented or not and any electronic  
10 data recorded, sent or retrieved by any means that contains any of the foregoing  
11 information.

12           **D.**     “Highly Confidential - Attorneys’ Eyes Only” Information or  
13 Items: extremely sensitive “Confidential Information or Items” whose disclosure to  
14 another Party or non party would create a substantial risk of serious injury that  
15 could not be avoided by less restrictive means.

16           **E.**     Receiving Party: a Party that receives Disclosure or Discovery  
17 Material from a Producing Party.

18           **F.**     Producing Party: a Party or non-party that produces Disclosure  
19 or Discovery Material in this action.

20           **G.**     Designating Party: a Party or non-party that designates  
21 information or items that it produces in disclosures or in responses to discovery as  
22 “Confidential” or “Highly Confidential - Attorneys’ Eyes Only.”

23           **H.**     Protected Material: any Disclosure or Discovery Material that is  
24 designated as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

25           **I.**     Outside Counsel: attorneys who are not employees of a Party  
26 but who are retained to represent or advise a Party in this action.

27           **J.**     House Counsel: attorneys who are employees of a Party.

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1           **K. Counsel (without qualifier):** Outside Counsel and House  
2 Counsel (as well as their support staffs).

3           **L. Expert:** a person with specialized knowledge or experience in a  
4 matter pertinent to the litigation who has been retained by a Party or its counsel to  
5 serve as an expert witness or as a consultant in this action. This definition includes  
6 a professional jury or trial consultant retained in connection with this litigation.

7           **M. Professional Vendors:** persons or entities that provide litigation  
8 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
9 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)  
10 and their employees and subcontractors.

### 11           **III. SCOPE**

12           The protections conferred by this Stipulation and Order cover not only  
13 Protected Material (as defined above), but also any information copied or extracted  
14 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
15 testimony, conversations, or presentations by parties or counsel to or in court or in  
16 other settings that might reveal Protected Material.

### 17           **IV. DURATION**

18           Even after the termination of this litigation, the confidentiality obligations  
19 imposed by this Order shall remain in effect until a Designating Party agrees  
20 otherwise in writing or a court order otherwise directs.

### 21           **V. DESIGNATING PROTECTED MATERIAL**

22           **A. Exercise of Restraint and Care in Designating Material for**  
23 **Protection.** Each Party or non-party that designates information or items for  
24 protection under this Order must take care to limit any such designation to specific  
25 material that qualifies under the appropriate standards. A Designating Party must  
26 take care to designate for protection only those parts of material, documents, items,  
27 or oral or written communications that qualify - so that other portions of the  
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1 material, documents, items, or communications for which protection is not  
2 warranted are not swept unjustifiably within the ambit of this Order. Documents  
3 constituting public record are not covered by this agreement. Also, all documents  
4 or tangible things constituting promotional/advertising material that Bernzomatic  
5 or Worthington actually used to promote their product and are public documents  
6 are also not covered by this agreement.

7           **B.** Mass, indiscriminate, or routinized designations are prohibited.  
8 Designations that are shown to be clearly unjustified, or that have been made for an  
9 improper purpose (e.g., to unnecessarily encumber or retard the case development  
10 process, or to impose unnecessary expenses and burdens on other parties), expose  
11 the Designating Party to sanctions.

12           If it comes to a Party's or a non-party's attention that information or items  
13 that it designated for protection do not qualify for protection at all, or do not  
14 qualify for the level of protection initially asserted, that Party or non-party must  
15 promptly notify all other parties that it is withdrawing the mistaken designation.

16           **C.** Manner and Timing of Designations. Except as otherwise  
17 provided in this Order (see, e.g., second paragraph of section 5 .2(a), below), or as  
18 otherwise stipulated or ordered, material that qualifies for protection under this  
19 Order must be clearly so designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21           1. for information in documentary form (apart from  
22 transcripts of depositions or other pretrial or trial proceedings), that the Producing  
23 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -  
24 ATTORNEYS' EYES ONLY" at the bottom of each page that contains protected  
25 material. If only a portion or portions of the material on a page qualifies for  
26 protection, the Producing Party also must clearly identify the protected portion(s)  
27 (e.g., by making appropriate markings in the margins) and must specify, for each  
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1 portion, the level of protection being asserted (either “CONFIDENTIAL” or  
2 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

3 The Producing Party must determine which documents, or portions thereof, qualify  
4 for protection under this Order, then, before producing the specified documents,  
5 the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the bottom of  
7 each page that contains Protected Material. If only a portion or portions of the  
8 material on a page qualifies for protection, the Producing Party also must clearly  
9 identify the protected portions) (e.g., by making appropriate markings in the  
10 margins) and must specify, for each portion, the level of protection being asserted  
11 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’  
12 EYES ONLY”).

13                   2.     for testimony given in deposition or in other pretrial or  
14 trial proceedings, that the Party or non-party offering or sponsoring the testimony  
15 identify on the record, before the close of the deposition, hearing, or other  
16 proceeding, all protected testimony, and further specify any portions of the  
17 testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES  
18 ONLY.” When it is impractical to identify separately each portion of testimony  
19 that is entitled to protection, and when it appears that substantial portions of the  
20 testimony may qualify for protection, the Party or non-party that sponsors, offers,  
21 or gives the testimony may invoke on the record (before the deposition or  
22 proceeding is concluded) a right to have up to 20 days to identify the specific  
23 portions of the testimony as to which protection is sought and to specify the level  
24 of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
25 - ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are  
26 appropriately designated for protection within the 20 days shall be covered by the  
27 provisions of this Stipulated Protective Order.  
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1 Transcript pages containing Protected Material must be separately bound by the  
2 court reporter, who must affix to the top of each such page the legend  
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES  
4 ONLY,” as instructed by the Party or non party offering or sponsoring the witness  
5 or presenting the testimony.

6                   3.     for information produced in some form other than  
7 documentary, and for any other tangible items, that the Producing Party affix in a  
8 prominent place on the exterior of the container or containers in which the  
9 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only portions of the  
11 information or item warrant protection, the Producing Party, to the extent  
12 practicable, shall identify the protected portions, specifying whether they qualify as  
13 “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

14                   D.     Inadvertent Failures to Designate. If timely corrected, an  
15 inadvertent failure to designate qualified information or items as “Confidential” or  
16 “Highly Confidential - Attorneys’ Eyes Only” does not, standing alone, waive the  
17 Designating Party’s right to secure protection under this Order for such material.  
18 If material is appropriately designated as “Confidential” or “Highly Confidential -  
19 Attorneys’ Eyes Only” after the material was initially produced, the Receiving  
20 Party, on timely notification of the designation, must make reasonable efforts to  
21 assure that the material is treated in accordance with the provisions of this Order.

## 22                   **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23                   A.     Timing of Challenges. Unless a prompt challenge to a  
24 Designating Party’s confidentiality designation is necessary to avoid foreseeable  
25 substantial unfairness, unnecessary economic burdens, or a later significant  
26 disruption or delay of the litigation, a Party does not waive its right to challenge a  
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1 confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3           **B. Meet and Confer.** A Party that elects to initiate a challenge to a  
4 Designating Party's confidentiality designation must do so in good faith and must  
5 begin the process by conferring directly (in voice to voice dialogue; other forms of  
6 communication are not sufficient) with counsel for the Designating Party. In  
7 conferring, the challenging Party must explain the basis for its belief that the  
8 confidentiality designation was not proper and must give the Designating Party an  
9 opportunity to review the designated material, to reconsider the circumstances,  
10 and, if no change in designation is offered, to explain the basis for the chosen  
11 designation. A challenging Party may proceed to the next stage of the challenge  
12 process only if it has engaged in this meet and confer process first.

13           **C. Judicial Intervention.** A Party that elects to press a challenge to  
14 a confidentiality designation after considering the justification offered by the  
15 Designating Party may file and serve a motion that identifies the challenged  
16 material and sets forth in detail the basis for the challenge. Each such motion must  
17 be accompanied by a competent declaration that affirms that the movant has  
18 complied with the meet and confer requirements imposed in the preceding  
19 paragraph and that sets forth with specificity the justification for the confidentiality  
20 designation that was given by the Designating Party in the meet and confer  
21 dialogue.

22           The burden of persuasion in any such challenge proceeding shall be on the  
23 Designating Party. Until the court rules on the challenge, all parties shall continue  
24 to afford the material in question the level of protection to which it is entitled under  
25 the Producing Party's designation.

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1                   **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2                   **A. Basic Principles.** A Receiving Party may use Protected  
3 Material that is disclosed or produced by another Party or by a non-party in  
4 connection with this case only for prosecuting, defending, or attempting to settle  
5 this litigation. Such Protected Material may be disclosed only to the categories of  
6 persons and under the conditions described in this Order. When the litigation has  
7 been terminated, a Receiving Party must comply with the provisions of section 11,  
8 below (FINAL DISPOSITION).

9                   Protected Material must be stored and maintained by a Receiving Party at a  
10 location and in a secure manner that ensures that access is limited to the persons  
11 authorized under this Order.

12                   **B. Disclosure of "CONFIDENTIAL" Information or Items.**  
13 Unless otherwise ordered by the court or permitted in writing by the Designating  
14 Party, a Receiving Party may disclose any information or item designated  
15 CONFIDENTIAL only to:

16                   1. the Receiving Party's Outside Counsel of record in this  
17 action, as well as employees of said Counsel to whom it is reasonably necessary to  
18 disclose the information for this litigation and who have signed the "Agreement to  
19 Be Bound by Protective Order" that is attached hereto as Exhibit A;

20                   2. Bowens, the officers, directors, and employees (including  
21 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary  
22 for this litigation and who have signed the "Agreement to Be Bound by Protective  
23 Order" (Exhibit A);

24                   3. experts (as defined in this Order) of the Receiving Party  
25 to whom disclosure is reasonably necessary for this litigation and who have signed  
26 the "Agreement to Be Bound by Protective Order" (Exhibit A);

27                   4. the Court and its personnel;

1                   5.     court reporters, their staffs, and professional vendors to  
2 whom disclosure is reasonably necessary for this litigation and who have signed  
3 the "Agreement to Be Bound by Protective Order" (Exhibit A);

4                   6.     witnesses in the action to whom disclosure is reasonably  
5 necessary and who have signed the "Agreement to Be Bound by Protective Order"  
6 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions  
7 that reveal Protected Material must be separately bound by the court reporter and  
8 may not be disclosed to anyone except as permitted under this Stipulated  
9 Protective Order.

10                  7.     the author of the document or the original source of the  
11 information to whom disclosure is reasonably necessary and who have signed the  
12 "Agreement to Be Bound by Protective Order" (Exhibit A).

13                  C.     Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS'  
14 EYES ONLY" Information or Items. Unless otherwise ordered by the court or  
15 permitted in writing by the Designating Party, a Receiving Party may disclose any  
16 information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS'  
17 EYES ONLY" only to:

18                   1.     the Receiving Party's Outside Counsel of record in this  
19 action, as well as employees of said Counsel to whom it is reasonably necessary to  
20 disclose the information for this litigation and who have signed the "Agreement to  
21 Be Bound by Protective Order" that is attached hereto as Exhibit A;

22                   2.     Bowens, House Counsel of a Receiving Party to whom  
23 disclosure is reasonably necessary for this litigation, and who has signed the  
24 "Agreement to Be Bound by Protective Order" (Exhibit A);

25                   3.     Experts (as defined in this Order) to whom disclosure is  
26 reasonably necessary for this litigation, and who have signed the "Agreement to Be  
27 Bound by Protective Order" (Exhibit A);

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4. the Court and its personnel;

5. court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

6. the author of the document, any person who had received it prior to this litigation (i.e., addressees), or the original source of the information, to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

**VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than seven court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the

1 expenses of seeking protection in that court of its confidential material, and  
2 nothing in these provisions should be construed as authorizing or encouraging a  
3 Receiving Party in this action to disobey a lawful directive from another court.

4 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
5 **MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has  
7 disclosed Protected Material to any person or in any circumstance not authorized  
8 under this Stipulated Protective Order, the Receiving Party must immediately (a)  
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
10 best efforts to retrieve all copies of the Protected Material, (c) inform the person or  
11 persons to whom unauthorized disclosures were made of all the terms of this  
12 Order, and (d) request such person or persons to execute the "Acknowledgment  
13 and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 **X. FILING PROTECTED MATERIAL**

15 Without written permission from the Designating Party or a court order  
16 secured after appropriate notice to all interested persons, a Party may not file in the  
17 public record in this action any Protected Material. A Party that seeks to file under  
18 seal any Protected Material must comply with Federal Laws and Local Federal  
19 Rules.

20 **XI. FINAL DISPOSITION**

21 Unless otherwise ordered or agreed in writing by the Producing Party, within  
22 sixty days after the final termination of this action, each Receiving Party must  
23 return all Protected Material to the Producing Party. As used in this subdivision,  
24 "all Protected Material" includes all copies, abstracts, compilations, summaries or  
25 any other form of reproducing or capturing any of the Protected Material. With  
26 permission in writing from the Designating Party, the Receiving Party may destroy  
27 some or all of the Protected Material instead of returning it. Whether the Protected  
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1 Material is returned or destroyed, the Receiving Party must submit a written  
2 certification to the Producing Party (and, if not the same person or entity, to the  
3 Designating Party) by the sixty-day deadline that identifies (by category, where  
4 appropriate) all the Protected Material that was returned or destroyed and that  
5 affirms that the Receiving Party has not retained any copies, abstracts,  
6 compilations, summaries or other forms of reproducing or capturing any of the  
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
8 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
9 correspondence or attorney work product, even if such materials contain Protected  
10 Material. Any such archival copies that contain or constitute Protected Material  
11 remain subject to this Protective Order as set forth in Section 4, above.

## 12 XII. MISCELLANEOUS

13 A. Right to Further Relief. Nothing in this Order abridges the  
14 right of any person to seek its modification by the Court in the future.

15 B. Right to Assert Other Objections. By stipulating to the entry of  
16 this Protective Order no Party waives any right it otherwise would have to object to  
17 disclosing or producing any information or item on any ground not addressed in  
18 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
19 any ground to use in evidence of any of the material covered by this Protective  
20 Order.

21 C. This Stipulated Protective Order does not apply to public  
22 records or records in the public domain.

23 D. A party to this Stipulated Protective Order may file a motion in  
24 limine to seek admission of evidence at trial. The motion in limine shall be heard  
25 by the Court under seal or under in-camera review.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name] \_\_\_\_\_, of [print or type full address] \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the U.S. District Court for the Central District of California, Eastern Division on [date] \_\_\_\_\_ in the case of *Bowens v. Worthington Cylinder Corporation*, Case No. EDCV-07-848 VAP (JCRx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Central District of California, Eastern Division for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint [print or type full name] \_\_\_\_\_ of [print or type full address and telephone number] \_\_\_\_\_ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order. Date: \_\_\_\_\_

City and State where sworn and signed:

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

[printed name]

Signature:

[signature]