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9 ATTORNEYS FOR DEFENDANTS

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 BRENDAN SCHMIDT AND DENISE  
13 SCHMIDT,

14 Plaintiffs,

15 vs.

16 PENTAIR, INC., DELTA INTERNATIONAL  
17 MACHINERY CORPORATION, BLACK &  
18 DECKER CORPORATION, BLACK & DECKER  
19 (U.S.), INC., AND HOME DEPOT U.S.A., INC.,  
20 DBA YARDBIRDS HOME CENTER,

21 Defendants.

Case No.: C08-04589

**STIPULATED PROTECTIVE ORDER**

Case Filed: 10/02/08

**STIPULATED PROTECTIVE ORDER**

IT IS HEREBY STIPULATED AND AGREED by the parties, through their respective counsel, subject to the approval of the Court, the following Protective Order be entered.

**PROCEEDINGS AND INFORMATION GOVERNED**

1. This Protective Order and any amendments or modifications hereto shall apply to all information, documents, and things subject to discovery in this action that are conveyed by any party, including third parties (hereinafter termed "conveying party") to another party (hereinafter termed "receiving party") in this action, including, without limitation, all portions of transcripts of deposition testimony, exhibits, answers to interrogatories or requests for admission, documents, or things.

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1 including any excerpt, index, description, copy, summary or abstract thereof (hereafter  
2 "DISCOVERY MATERIALS").

3 2. "CONFIDENTIAL MATERIALS" are any DISCOVERY MATERIALS that contain  
4 trade secrets or other non-public, proprietary or business sensitive information or things including,  
5 without limitation, confidential research, development, financial, corporate, or other commercial  
6 information of the conveying party. CONFIDENTIAL MATERIALS also includes a portion of any  
7 document or court pleading that quotes from or summarizes any of the foregoing.  
8

9 3. Discovery in this action may involve disclosure by a third party of its  
10 "CONFIDENTIAL" or "CONFIDENTIAL 2" documents, information or things. It is expressly  
11 contemplated and agreed that third party witnesses may invoke all provisions of this Protective Order.  
12

13 4. Subject to the terms set forth below, all information produced by the conveying party  
14 shall be used by the parties receiving the information solely for the purposes of preparing for and  
15 conducting this action (including appeals), and the information shall not be used for any other  
16 purpose.

17 5. This Protective Order shall not restrict a party's use of its own materials that it  
18 produces in discovery.  
19

20 **DESIGNATION AND USE OF CONFIDENTIAL MATERIALS**

21 6. Each party or third person conveying DISCOVERY MATERIALS shall mark  
22 documents and things produced by it and answers to interrogatories and responses to other discovery  
23 demands deemed to be "CONFIDENTIAL" or "CONFIDENTIAL 2" with an appropriate description  
24 such as:  
25

26 **Schmidt v. Pentair, Inc, et. al, USDC, Northern District, Case No.: C08-04589 TEH**

27 **CONFIDENTIAL (OR CONFIDENTIAL 2) – SUBJECT TO PROTECTIVE ORDER**

28 7. CONFIDENTIAL MATERIALS shall only be made available to:

1 (a) For the Plaintiff:

2 (1) Partners and associates of the law firm of **Hinton, Alfert & Sumner,**  
3 **1646 N. California Blvd., Suite 600, Walnut Creek, CA 94956** and stenographic, clerical and  
4 paralegal employees of those attorneys whose functions require access to CONFIDENTIAL  
5 MATERIALS.

6 (2) Partners and associates of the law firm of **Boies, Schiller & Flexner,**  
7 **401 East Los Olas Blvd., Suite 1200, Fort Lauderdale, FL 33301** and stenographic, clerical and  
8 paralegal employees of those attorneys whose functions require access to CONFIDENTIAL  
9 MATERIALS.

10 (3) The Plaintiff or officers and employees of the receiving party, who  
11 require in good faith access to CONFIDENTIAL MATERIALS to prepare for this action.

12 (b) For the Defendant:

13 (1) Partners and associates of the law firm of **Lynch, Gilardi &**  
14 **Grummer, 475 Sansome Street, Suite 1800, San Francisco, CA 94111** and stenographic, clerical  
15 and paralegal employees of those attorneys whose functions require access to CONFIDENTIAL  
16 MATERIALS.

17 (2) Partners and associates of the law firm of **Miles & Stockbridge P.C.,**  
18 **10 Light Street, Baltimore, MD 21202,** and stenographic, clerical and paralegal employees of those  
19 attorneys whose functions require access to CONFIDENTIAL MATERIALS.

20 (3) Partners and associates of the law firm of **Williams, Montgomery &**  
21 **John, 20 North Wacker Drive, Suite 2100, Chicago, IL 60606** and stenographic, clerical and  
22 paralegal employees of those attorneys whose functions require access to CONFIDENTIAL  
23 MATERIALS.

1 (4) The Defendant or officers and employees of the conveying party whose  
2 functions require access to CONFIDENTIAL MATERIALS.

3 Substitution or change of the individuals identified in this paragraph or an increase in  
4 the number of those individuals may only be made by agreement among the parties to this Protective  
5 Order, subject to the approval of the Court, or by further Order of the Court.  
6

7 8. Notwithstanding the foregoing, the parties or their counsel may use any documents,  
8 information, or things disclosed in this action for purposes of pretrial, trial or appellate proceedings in  
9 any other action in which the conveying party is a defendant and where the allegations concern  
10 design defects in power saws. Further, the parties or their counsel may use any documents,  
11 information, or things disclosed in this action which were created by or for (i) the Power Tool  
12 Institute (PTI) joint venture regarding blade contact injury avoidance system for table saws ("Blade  
13 Contact Joint Venture"), (ii) the PTI joint venture regarding mechanical guarding systems for table  
14 saws ("Guarding Joint Venture"), or (iii) any other PTI committee, in any other action in which a  
15 member of the particular PTI joint venture or committee is a defendant and where the allegations  
16 concern design defects in power saws. Any such use of documents, information or things in any such  
17 action shall be subject to the terms and conditions of this Protective Order unless and until a  
18 superseding order is entered.  
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21 9. If questions put to a witness in a pretrial deposition will disclose information  
22 constituting CONFIDENTIAL MATERIALS, or the answer to any question requires such disclosure,  
23 or if documents to be used as exhibits during the deposition constitute such materials, counsel may so  
24 notify opposing counsel, and the portion of the deposition of such witness containing such material  
25 shall be taken in the presence only of persons entitled to access to CONFIDENTIAL MATERIALS  
26 under this Protective Order, the witness, the reporter, and representatives of the conveying party.  
27 Deposition transcripts and exhibits may be designated as 'CONFIDENTIAL' information either  
28

1 during the course of the deposition or within seven business days after receipt by counsel of the  
2 deposition transcript. Any portions of the deposition transcripts containing information constituting  
3 CONFIDENTIAL MATERIALS and any documents used as exhibits during the deposition  
4 constituting such materials shall be bound separately. Such deposition transcripts and documents, to  
5 the extent that they are or contain CONFIDENTIAL MATERIALS, shall be available only to the  
6 persons entitled to access to CONFIDENTIAL MATERIALS under this Protective Order, to the  
7 reporter, to the witness, and to representatives of the conveying party.

9 10. The parties recognize that in order to assist in the preparation of their case, the  
10 receiving party may desire to utilize the service of experts or consultants, whose advice and  
11 consultation are being or will be used by such party in connection with this litigation. Counsel  
12 desiring to disclose CONFIDENTIAL MATERIALS to such experts or consultants shall first obtain a  
13 signed undertaking of each such expert or consultant who may require access to CONFIDENTIAL  
14 MATERIALS, in the form of Exhibit "A" attached hereto (the "Expert Confidentiality Pledge").  
15 CONFIDENTIAL MATERIALS may be shown to an expert or consultant after such expert or  
16 consultant signs the Expert Confidentiality Pledge. Any and all signed Expert Confidentiality  
17 Pledges shall be maintained by counsel, but need not be produced to opposing counsel absent an  
18 Order of Court. This provision is designed to permit counsel to utilize the services of experts and  
19 consultants without first revealing the identity of those experts or consultants to opposing counsel.  
20 Under no circumstances shall certain documents designated by the conveying party as  
21 CONFIDENTIAL 2 or any of the information contained therein be released or disclosed to Stephen  
22 Gass or any agent or employee of SawStop LLC; SawStop, Inc; SD3, LLC or any of their parents,  
23 subsidiaries or affiliated companies.

24 11. All Expert Confidentiality Pledges shall be maintained by the receiving party's  
25 counsel. When the receiving party identifies experts pursuant to Order of the Court or by  
26

1 supplementation pursuant to Federal R. Civ. P. 26, a copy of the Expert Confidentiality Pledge with  
2 respect to each expert who is identified will be produced to counsel for the conveying party within  
3 ten days. At the conclusion of the litigation, the receiving party shall deliver to counsel for the  
4 conveying party a copy of each and every Expert Confidentiality Pledge.

5  
6 12. CONFIDENTIAL MATERIALS shall not be made public by counsel or persons  
7 entitled access to CONFIDENTIAL MATERIALS under this Protective Order, unless they become a  
8 part of the public record of this action, other than through conduct in breach of this Protective Order,  
9 and shall not be disclosed to anyone other than this Court and the persons entitled access to  
10 CONFIDENTIAL MATERIALS under this Protective Order. To the extent it is necessary to file  
11 CONFIDENTIAL MATERIALS with the Court in connection with proceedings in this action, such  
12 CONFIDENTIAL MATERIALS shall be filed with the Clerk of the Court, together with a  
13 simultaneous sealing motion as may be required by the Court Rules, in sealed envelopes prominently  
14 marked with the caption of this case, an indication of the general nature of the contents, and an  
15 appropriate designation such as:

16  
17 CONFIDENTIAL INFORMATION

18 This envelope is sealed pursuant to the \_\_\_\_\_, 2009 Stipulated Protective Order  
19 in this action. It contains information designated as CONFIDENTIAL or CONFIDENTIAL 2  
20 and is not to be opened or the contents revealed except by  
21 Order of the Court  
22

23 13. CONFIDENTIAL MATERIALS may be used in motion papers, at any motion  
24 hearing, in testimony at trial, and may be offered in evidence at trial or at any motion hearing, all  
25 subject to this Protective Order hereof and to any further order regarding confidentiality as this Court  
26 may enter, and may be used to prepare for discovery, to conduct discovery, to prepare for trial, and to  
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1 support or oppose any motion, all subject to the provisions of this Protective Order.

2 CONFIDENTIAL MATERIALS may also be used at depositions and may be disclosed to a witness  
3 at a deposition or at trial who is an author or copy recipient of a document containing  
4 CONFIDENTIAL MATERIALS but is not a person entitled access to CONFIDENTIAL  
5 MATERIALS under this Protective Order.  
6

7 **CHALLENGES TO PROTECTIVE ORDER**

8 14. The acceptance by a party of CONFIDENTIAL MATERIALS shall not constitute an  
9 admission or concession or permit an inference that such are, in fact, confidential. This Protective  
10 Order shall not foreclose either of the parties from moving this Court for an order that materials  
11 bearing the identifications specified in Protective Order are, in fact, not confidential. On such  
12 motion, the party asserting confidentiality shall have the burden of proving that the material in  
13 question is within the scope of protection afforded by Rule 26(c) of the Federal Rules of Civil  
14 Procedure.  
15

16 15. This Protective Order shall not prevent either of the parties or any third party from  
17 applying to the Court for relief therefrom, or from applying to the Court for further or additional  
18 protective orders, or from agreeing between themselves in writing, to modification of this Protective  
19 Order, subject to the approval of this Court. This Protective Order shall not preclude the parties from  
20 enforcing their rights against any other party or any third party believed to be violating their rights.  
21

22 16. In the event that the parties desire to provide access to or disseminate  
23 CONFIDENTIAL MATERIALS to any person not otherwise entitled to access under this Protective  
24 Order, they may move the Court for an Order that such person be given access thereto. In the event  
25 that the motion is granted, such person may have access to CONFIDENTIAL MATERIALS after  
26 first signing an undertaking in the form of Exhibit "A" attached hereto, a copy of which shall be  
27 forwarded promptly thereafter to opposing counsel.  
28

1 17. Nothing in this Protective Order shall require disclosure of material which the  
2 conveying party contends is protected from disclosure by the attorney-client privilege or the work-  
3 product doctrine or of material the disclosure of which might constitute a breach of an agreement  
4 with a third party. This Protective Order shall not preclude any party from moving the Court for an  
5 order directing the disclosure of such materials.  
6

7 18. Restrictions and obligations set forth herein relating to CONFIDENTIAL  
8 MATERIALS and to DISCOVERY MATERIALS shall not apply to any information which (i) the  
9 conveying party agrees, or the Court rules, is already public knowledge, (ii) the conveying party  
10 agrees, or the Court rules, has become public knowledge other than as a result of disclosure by the  
11 receiving party, (iii) was already known to the receiving party under conditions such that its use  
12 and/or public disclosure by the receiving party would not violate some obligation to another, which  
13 knowledge is established by pre-production documentation, or (iv) has come or shall come into the  
14 receiving party's legitimate possession independently of the conveying party under conditions such  
15 that its use and/or public disclosure by the receiving party would not violate some obligation to  
16 another.  
17

18 **INADVERTENT DISCLOSURE**  
19

20 19. If the conveying party inadvertently produces its CONFIDENTIAL or  
21 CONFIDENTIAL 2 documents, information or things without the identification as specified in this  
22 Protective Order or if any party inadvertently produces CONFIDENTIAL or CONFIDENTIAL 2  
23 documents, information or things to a person not authorized by this Protective Order to receive such  
24 material, the party making the inadvertent disclosure shall promptly send notification of such  
25 inadvertent disclosure to the person to whom the disclosure was made and make reasonable efforts to  
26 obtain return of the CONFIDENTIAL or CONFIDENTIAL 2 documents, information or things.  
27 Upon such notice, the receiving party shall, within five business days, return or destroy all copies of  
28



1 the inadvertently produced material to the conveying party and provide a certification of counsel that  
2 all such inadvertently produced material has been returned or destroyed.

3  
4 **DISCLOSED PROTECTED INFORMATION**

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6 20. If the conveying party discloses information subject to a claim of attorney-client  
7 privilege or attorney work product protection ("disclosed protected information"), the disclosure of  
8 the disclosed protected information shall not constitute or be deemed a waiver or forfeiture of any  
9 claim of privilege or work product protection that the conveying party would otherwise be entitled to  
10 assert with respect to the disclosed protected information and its subject matter.

11  
12 21. The conveying party may assert in writing attorney-client privilege or work product  
13 protection with respect to disclosed protected information. The receiving party shall, within five  
14 business days of receipt of that writing, return or destroy all copies of the disclosed protected  
15 information and provide a certification of counsel that all such disclosed protected information has  
16 been returned or destroyed.

17  
18 22. Within five business days of the notification that such disclosed protected information  
19 has been returned or destroyed, the conveying party shall produce a privilege log with respect to the  
20 disclosed protected information.

21  
22 23. The receiving party may move the Court for an Order compelling production of the  
23 disclosed protected information (a "privilege motion"). The privilege motion shall be filed under seal  
24 and shall not assert as a ground for entering such an Order the fact or circumstances of the  
25 inadvertent production.

26  
27 24. The conveying party retains the burden of establishing privileged or protected nature  
28 of any disclosed protected information. Nothing in this paragraph shall limit the right of any party to  
petition the Court for an *in camera* review of the disclosed protected information.

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1 25. If, a trial, at a hearing, at a deposition, or on a motion, a conveying party marks for  
2 identification or offers into evidence disclosed protected information – or proffers or elicits  
3 testimonial or other evidence that incorporates or relies on disclosed protected information, including  
4 evidence within Federal Rule of Evidence 703 – that act shall be deemed to effect a waiver and  
5 forfeiture by the conveying party of attorney-client privilege and work product protection that would  
6 otherwise apply to undisclosed information concerning the same subject matter, within Federal Rule  
7 of Evidence 502(a). The preceding sentence shall not apply to (i) proceedings to determine whether  
8 the disclosed protected information is privileged or protected or subject to discovery or disclosure, or  
9 (ii) disclosed protected information that is marked for identification, offered into evidence, or  
10 incorporated in evidence proffered or elicited by an adverse party, or relied on by a witness proffered  
11 by an adverse party.  
12

13  
14 **SUBPOENAS**

15 26. If any person or party having possession, custody or control of any document,  
16 information or thing designated as CONFIDENTIAL or CONFIDENTIAL 2 pursuant to this  
17 Protective Order receives a subpoena or other process or order to produce the document, information  
18 or thing, the subpoenaed person or party shall, within five business days:  
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- 20 (i) give notification in writing of such fact to the counsel of the conveying party;  
21 (ii) furnish such counsel with a copy of such subpoenas, process or  
22 order; and  
23 (iii) provide reasonable cooperation to the conveying party with respect to any  
24 procedure instituted by the conveying party to protect the confidentiality of the  
25 document, information or thing, including seeking all reasonable extensions to  
26 afford the conveying party an opportunity to obtain appropriate judicial relief;  
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28

1 (iv) provide the conveying party reasonable time to seek appropriate judicial relief  
2 before complying with the subpoena.

3 27. If the conveying party makes a motion to quash or modify the subpoena, process or  
4 order, the subpoenaed party shall not disclose, pursuant to the subpoena, process or order, any  
5 document, information or thing designated as CONFIDENTIAL or CONFIDENTIAL 2 by the  
6 conveying party except as required by an order or other process of the court having jurisdiction over  
7 the matter, and then only in accordance with such order or process.

9 **DISPOSITION OF DOCUMENTS AT TERMINATION OF LITIGATION**

10 28. After final termination of this action, each receiving party shall either return all  
11 CONFIDENTIAL MATERIALS of the conveying party in its possession, custody or control, and  
12 copies thereof to counsel for the conveying party, or shall otherwise dispose of such  
13 CONFIDENTIAL MATERIALS in a manner agreeable to both parties, except that trial counsel for  
14 the receiving party may retain court papers, trial transcripts, exhibits and attorney work-product  
15 derived from the CONFIDENTIAL MATERIALS. With respect to any such retained materials, and  
16 unless otherwise agreed to, this Protective Order shall survive the final termination of this action,  
17 except to the extent that the information in such CONFIDENTIAL MATERIALS is or becomes  
18 known to the public through no fault of the receiving party.

19 29. Sealed records that have been filed with the Clerk of the Court shall be removed by the  
20 party submitting them (1) within ninety (90) days after a final decision is rendered if no appeal is  
21 taken, or (2) if an appeal is taken, within thirty (30) days after final disposition of the appeal. Parties  
22 failing to comply with this Order shall be notified by the Clerk that, should they fail to remove the  
23 sealed records in accordance with this Order, the Clerk may dispose of them within thirty (30) days  
24 of the notice.  
25  
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**VIOLATION OF ORDER**

30. Any violation of this Stipulated Protective Order during the pendency of this action or thereafter shall be punishable as a contempt of court and shall be grounds for a Motion for Sanctions to be filed in the Court.

**APPROVAL BY COURT**

31. The parties to this Protective Order agree that they will promptly file a joint motion for entry of this Stipulated Protective Order. The parties further agree that they will tender the Stipulated Protective Order to the Court to be so ordered and that, prior to approval by the Court, this Stipulated Protective Order shall be effective and binding on the parties hereto as if approved by the Court.

Dated: April 23, 2009.

HINTON, ALFERT & SUMNER

By Elise R Sanguinetti  
Scott H.Z. Sumner  
Elise Sanguinetti  
Attorneys for Plaintiffs

Dated: April 21, 2009.

LYNCH, GILARDI & GRUMMER

By Robert T Lynch  
Robert T. Lynch  
Attorneys for Defendants

SO ORDERED, this 29<sup>th</sup> day of APRIL, 2009.

Thelton Henderson  
Judge Thelton Henderson  
United States District Judge,  
Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRENDAN SCHMIDT AND DENISE  
SCHMIDT,

Plaintiffs,

vs.

PENTAIR, INC., DELTA INTERNATIONAL  
MACHINERY CORPORATION, BLACK &  
DECKER CORPORATION, BLACK & DECKER  
(U.S.), INC., AND HOME DEPOT U.S.A., INC.,  
DBA YARDBIRDS HOME CENTER,

Defendants.

Case No.: C08-04589

**EXPERT CONFIDENTIALITY PLEDGE**

Case Filed: 10/02/08

**EXPERT CONFIDENTIALITY PLEDGE**

I, \_\_\_\_\_, declare that:

1. My present address is \_\_\_\_\_

2. My present employer is \_\_\_\_\_

\_\_\_\_\_ and the address of my present employer is

3. My present occupation or job description is \_\_\_\_\_

4. I have received a copy of the Protective Order in this action signed by the Court.

5. I have carefully read and understand the provisions of the Protective Order.

6. I will comply with all of the provisions of the Protective Order.

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7. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order and will use only for purposes of this action, any CONFIDENTIAL MATERIALS which are disclosed to me. I will take appropriate steps and assume full responsibility to assure that any other people, e.g., clerical or secretarial personnel, working for me will abide by the Protective Order.

8. I will return all CONFIDENTIAL MATERIALS that come 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 when requested to do so by that counsel.

9. I declare further that I understand that if I violate the provisions of the Protective Order, I will be subject to sanctions by the Court and that any party may assert other remedies against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

Executed on: \_\_\_\_\_

\_\_\_\_\_

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