EXHIBIT 10.38  
  
 PLEDGE AGREEMENT  
  
 Pledge Agreement dated as of April 16, 2001 (the "Pledge Agreement"),  
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between Xxxxxxx X. Xxxxxxx (the "Pledgor") and SMTC Corporation, a Delaware  
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corporation (the "Company").  
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 WITNESSETH  
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 WHEREAS, Pledgor is the holder of 267,454 shares of the Company's Common  
Stock, $.01 par value plus such number of the Company's Common Stock, $.01 par  
value, as is released to the Pledgor under the terms of the Escrow Agreement  
dated July 27, 2000 by and among the Company, the individual stockholders of  
Pensar Corporation, a Wisconsin corporation ("Pensar") and Xxxxx Brothers  
Xxxxxxxx & Co., on July 27, 2001 (the "Shares"),  
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 WHEREAS, the Shares were originally issued to the Pledgor in accordance  
with the terms of the Stock Purchase Agreement dated as of May 23, 2000 (the  
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"Purchase Agreement") among the Company and Pensar Corporation, and the  
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individual stockholders of Pensar, including the Pledgor.  
  
 WHEREAS, the Pledgor is delivering a duly executed Secured Promissory Note  
(as amended from time to time, the "Note") to the Company in exchange for the  
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Company's loaning $1,255,248 to the Pledgor in accordance with Section 5.12(b)  
of the Purchase Agreement,  
  
 WHEREAS, in connection with the loan by the Company to the Pledgor, the  
Pledgor is delivering to the Company the Note in the principal amount of  
$1,255,248 dated as of the date hereof; and  
  
 WHEREAS, the Pledgor wishes to grant further security and assurance to the  
Company in order to secure the payment of all amounts due under the Note from  
time to time (hereinafter collectively referred to as the "Note Obligations")  
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and therefore wishes to pledge to the Company the Pledgor's right, title and  
interest in and to the Shares and any payments, dividends, interest and  
distributions made to the Pledgor in respect of the Share, all as more  
particularly described herein;  
  
 NOW, THEREFORE, in consideration of the foregoing and for other good and  
valuable consideration, the receipt and adequacy of which are hereby  
acknowledged, the parties hereto agree as follows:  
  
 1. Pledge. As collateral security for the full and timely payment of the  
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Note Obligations and any amounts payable by the Pledgor under this (including, without limitation, any and all reasonable fees and  
expenses, including reasonable legal fees and expenses, incurred by the Company  
in connection with any exercise of its rights under the Note or hereunder), the  
Pledgor hereby delivers, deposits, pledges, transfers and assigns to the  
Company, in form transferable for delivery, and creates in the Company a  
security interest in all Shares and all certificates evidencing the Shares and  
all other instruments or documents evidencing the same and all dividends, cash,  
  
  
  
   
 April 10, 2001  
  
received, receivable or otherwise distributed (collectively, "Dividends") in  
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respect of or in exchange for any or all of the Shares. The Shares and other  
securities described above are hereinafter collectively referred to as the  
"Pledged Securities".  
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 The Pledgor agrees that all certificates evidencing the Pledged Securities  
shall be marked with the following legend:  
  
 THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE PROVISIONS OF  
 A DATED AS OF APRIL 10, 2001 BY AND BETWEEN ORATION, A CORPORATION (THE "CORPORATION"), AND THE PLEDGOR  
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 NAMED THEREIN, A COPY OF WHICH IS ON FILE AT THE OFFICES OF THE  
 CORPORATION.  
  
 The Pledgor agrees to deliver to the Company all Pledged Securities  
currently held by him in order that such legend may be placed thereon.  
  
 2. Administration of Security. The following provisions shall govern the  
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administration of the Pledged Securities:  
  
 (a) So long as no Event of Default has occurred and is continuing (as  
used herein, "Event of Default" shall mean the occurrence of any Event of  
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Default as defined in the Note), the Pledgor shall be entitled to act with  
respect to the Pledged Securities in any manner not inconsistent with this  
 or the Note or any document or instrument delivered or to be  
delivered pursuant to or in connection with any of the foregoing.  
  
 (b) If while this is in effect, the Pledgor shall  
become entitled to receive or shall receive any debt or equity security  
certificate (including, without limitation, any certificates representing shares  
of stock received in connection with the exercise of any option, any certificate  
representing a stock dividend or a distribution in connection with any  
reclassification, increase or reduction of capital, or issued in connection with  
any reorganization), option or right, whether as a dividend or distribution in  
respect of, in substitution of, or in exchange for any Pledged Securities, the  
Pledgor agrees to accept the same as the Company's agent and to hold the same in  
trust on behalf of and for the benefit of the Company and to deliver the same  
forthwith to the Company in the exact form received, with the endorsement of the  
Pledgor when necessary and/or appropriate undated security transfer powers duly  
executed in blank, to be held by the Company, subject to the terms of this  
, as additional collateral security for the Note Obligations.  
  
 (c) The Pledgor shall immediately upon request by the Company and in  
confirmation of the security interests hereby created, execute and deliver to  
the Company such further instruments, deeds, transfers, assurances and  
agreements, in form and substance as the Company shall request, including any  
financing statements and amendments thereto, or any other documents, as required  
or advisable under law and any other applicable law to protect the  
security interests created hereunder.  
  
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 Xxxxx 00, 0000  
  
 (x) Subject to any sale by the Company or other disposition by the  
Company of the Pledged Securities or other property pursuant to this Pledge  
Agreement and subject to Sections 5 and 6 below, the Pledged Securities shall be  
returned to the Pledgor upon payment in full of the Note Obligations.  
  
 (e) So long as no Event of Default has occurred and is continuing, all  
or any portion of the Pledged Securities shall be returned to the Pledgor (free  
of the restrictions set forth herein) in connection with the sale, assignment or  
other disposition for cash or cash equivalents of Pledged Securities by the  
Pledgor if and to the extent that the Pledgor shall have prepaid the Note in an  
amount equal to the Payment Amount (as defined in the Note) in respect of such  
sale, assignment or other transfer.  
  
 3. Remedies in Case of an Event of Default.  
  
 (a) In case an Event of Default shall have occurred and be continuing,  
the Company shall have in each case all of the remedies of a secured party under  
the Uniform Commercial Code, and, without limiting the foregoing, shall  
have the right, in its sole discretion, to sell, resell, assign and deliver all  
or, from time to time, any part of the Pledged Securities, or any interest in or  
option or right to purchase any part thereof, on any securities exchange on  
which the Pledged Securities or any of them may be listed, at any private sale  
or at public auction, with or without demand of performance or other demand,  
advertisement or notice of the time or place of sale or adjournment thereof or  
otherwise (except that the Company shall give ten days' notice to the Pledgor of  
the time and place of any sale pursuant to this Section 3), for cash, on credit  
or for other property, for immediate or future delivery, and for such price or  
prices and on such terms as the Company shall, in its sole discretion,  
determine, the Pledgor hereby waiving and releasing any and all right or equity  
of redemption whether before or after sale hereunder. At any such sale the  
Company may bid for and purchase the whole or any part of the Pledged Securities  
so sold free from any such right or equity of redemption. The Company shall  
apply the proceeds of any such sale first to the payment of all costs and  
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expenses, including reasonable attorneys' fees, incurred by the Company in  
enforcing its rights under this Pledge Agreement and second to the payment of  
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the remaining Note Obligations, and the Pledgor shall continue to be liable for  
any deficiency.  
  
 (b) The Pledgor recognizes that the Company may be unable to effect a  
public sale of all or a part of the Pledged Securities by reason of certain  
prohibitions contained in the Securities Act of 1933, as amended (the  
"Securities Act"), or in the rules and regulations promulgated thereunder or in  
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applicable state securities or "blue sky" laws, but may be compelled to resort  
to one or more private sales to a restricted group of purchasers who will be  
obliged to agree, among other things, to acquire the Pledged Securities for  
their own account, for investment and not with a view to the distribution or  
resale thereof. The Pledgor understands that private sales so made may be at  
prices and on other terms less favorable to the seller than if the Pledged  
Securities were sold at public sale, and agrees that the Company has no  
obligation to delay the sale of the Pledged Securities for the period of time  
necessary to permit the registration of the Pledged Securities for public sale  
under the Securities Act and under applicable state  
  
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securities or "blue sky" laws. The Pledgor agrees that a private sale or sales  
made under the foregoing circumstances shall be deemed to have been made in a  
commercially reasonable manner.  
  
 (c) If any consent, approval or authorization of any state, municipal  
or other governmental department, agency or authority should be necessary to  
effectuate any sale or disposition by the Company pursuant to this Section 3 of  
the Pledged Securities, the Pledgor will execute all such applications and other  
instruments as may be required in connection with securing any such consent,  
approval or authorization, and will otherwise use his or her best efforts to  
secure the same.  
  
 (d) Neither failure nor delay on the part of the Company to exercise  
any right, remedy, power or privilege provided for herein or by statute or at  
law or in equity shall operate as a waiver thereof, nor shall any single or  
partial exercise of any such right, remedy, power or privilege preclude any  
other or further exercise thereof or the exercise of any other right, remedy,  
power or privilege.  
  
 4. Pledgor's Obligations Not Affected. The obligations of the Pledgor under  
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this Pledge Agreement shall remain in full force and effect without regard to,  
and shall not be impaired or affected by: (a) any subordination, amendment or  
modification of or addition or supplement to the Note or the Note Obligations,  
or any assignment or transfer of any thereof; (b) any exercise or non-exercise  
by the Company of any right, remedy, power or privilege under or in respect of  
this Pledge Agreement, the Note or the Note Obligations, or any waiver of any  
such right, remedy, power or privilege; (c) any waiver, consent, extension,  
indulgence or other action or inaction in respect of this Pledge Agreement, the  
Note or the Note Obligations, or any assignment or transfer of any thereof; or  
(d) any bankruptcy, insolvency, reorganization, arrangement, readjustment,  
composition, liquidation or the like, of the Company, whether or not the Pledgor  
shall have notice or knowledge of any of the foregoing.  
  
 5. Transfer by Pledgor. The Pledgor will not sell, assign, transfer or  
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otherwise dispose of, grant any option with respect to, or mortgage, pledge or  
otherwise encumber the Pledged Securities or any interest therein except to the  
extent permitted under Section 2(e) hereof.  
  
 6. Attorney-in-Fact. The Company is hereby appointed the attorney-in-fact  
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of the Pledgor and the Pledgor's transferees for the purpose of carrying out the  
provisions of this Pledge Agreement and taking any action and executing any  
instrument which the Company reasonably may deem necessary or advisable to  
accomplish the purposes hereof, including without limitation, the execution of  
the applications and other instruments described in Section 3(c) hereof, which  
appointment as attorney-in-fact is irrevocable as one coupled with an interest.  
  
 7. Termination. Upon payment in full of the principal of the Note  
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Obligations and upon the due performance of and compliance with all the  
provisions of the Note Obligations, this Pledge Agreement shall terminate and  
the Pledgor shall be entitled to the return of such of the  
  
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Pledged Securities as have not theretofore been sold, released pursuant to  
Sections 5 and 6 hereof or otherwise applied pursuant to the provisions of this  
Pledge Agreement.  
  
 8. Binding Effect, Successors and Assigns. This Pledge Agreement shall be  
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binding upon and inure to the benefit of the parties hereto and their respective  
successors and assigns and nothing herein is intended or shall be construed to  
give any other person any right, remedy or claim under, to or in respect of this  
Pledge Agreement.  
  
 9. Miscellaneous. The Company and its assigns shall have no obligation in  
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respect of the Pledged Securities, except to hold and dispose of the same in  
accordance with the terms of this Pledge Agreement. Neither this Pledge  
Agreement nor any provision hereof may be amended, modified, waived, discharged  
or terminated orally, but only by an instrument in writing signed by the party  
against which enforcement of the amendment, modification, waiver, discharge or  
termination is sought. The provisions of this Pledge Agreement shall be binding  
upon the heirs, representatives, successors and permitted assigns of the  
Pledgor. The captions in this Pledge Agreement are for convenience of reference  
only and shall not define or limit the provisions hereof. This Pledge Agreement  
shall be governed by and construed and enforced in accordance with the laws of  
the State of , without regard to the conflicts of law rules thereof.  
This Pledge Agreement may be executed simultaneously in several counterparts,  
each of which is an original, but all of which together shall constitute one  
instrument.  
  
 IN WITNESS WHEREOF, the parties hereto have caused this Pledge Agreement to  
be executed and delivered as of the date first above written.  
  
 ORATION  
  
  
 By /s/ XXXXXXX XXXXX  
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 Name: Xxxxxxx Xxxxx  
 Title:Chief Financial Officer  
  
 PLEDGOR  
  
  
 /s/ XXXXXXX X. XXXXXXX  
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