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13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

17 JOSHUA JOSEPH, individually and
 18 on behalf of all others similarly
 situated

19 Plaintiff,

20 vs.

21 THE J.M. SMUCKER COMPANY,
 22 Defendant.

Case No. 2:17-cv-08735-FMO-KS

**AMENDED STIPULATED ~~AND~~
 PROPOSED} PROTECTIVE ORDER**

Courtroom: 6D
 Judge: Fernando M. Olguin

Complaint filed: December 4, 2017

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the
2 parties' Amended Stipulation for Protective Order ("Stipulation") filed on
3 August 22, 2018, the terms of the protective order to which the parties have
4 agreed are adopted as a protective order of this Court (which generally shall
5 govern the pretrial phase of this action) except to the extent, as set forth below,
6 that those terms have been modified by the Court's amendment of paragraphs
7 5.1, 6.2, 6.3 and 14.4 of the Stipulation.

8
9 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
10 **MODIFIED BY THE COURT**¹
11

12 1. **A. PURPOSES AND LIMITATIONS**

13 Disclosure and discovery activity in this action are likely to involve production
14 of confidential, proprietary, or private information for which special protection from
15 public disclosure and from use for any purpose other than prosecuting this litigation
16 may be warranted. Accordingly, the parties hereby stipulate to and petition the court
17 to enter the following Stipulated Protective Order. The parties acknowledge that this
18 Order does not confer blanket protections on all disclosures or responses to discovery
19 and that the protection it affords from public disclosure and use extends only to the
20 limited information or items that are entitled to confidential treatment under the
21 applicable legal principles. The parties further acknowledge, as set forth in Section
22 14.4, below, that this Stipulated Protective Order does not entitle them to file
23 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
24 that must be followed and the standards that will be applied when a party seeks
25 permission from the court to file material under seal.

26 **B. GOOD CAUSE STATEMENT**

27 _____
28 ¹ The Court's additions to the agreed terms of the Protective Order are generally indicated in bold
typeface, and the Court's deletions are indicated by lines through the text being deleted.

1 This action is likely to involve trade secrets, customer identifying financial
2 information, and other valuable research, development, commercial, financial, and/or
3 proprietary information for which special protection from public disclosure and from
4 use for any purpose other than prosecution of this action is warranted. Such
5 confidential and proprietary materials and information consist of, among other things,
6 confidential business or financial information, including, but not limited to pricing,
7 sales data, profit, and/or loss information and corporate financial statements;
8 information regarding confidential business practices or other confidential research,
9 development, or commercial information (including information implicating privacy
10 rights of third parties); credit card numbers; social security numbers; personal
11 financial information; information otherwise generally unavailable to the public, or
12 which may be privileged or otherwise protected from disclosure under state or federal
13 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
14 flow of information, to facilitate the prompt resolution of disputes over confidentiality
15 of discovery materials, to adequately protect information the parties are entitled to
16 keep confidential, to ensure that the parties are permitted reasonable necessary uses of
17 such material in preparation for and in the conduct of trial, to address their handling at
18 the end of the litigation, and serve the ends of justice, a protective order for such
19 information is justified in this matter. It is the intent of the parties that information
20 will not be designated as confidential for tactical reasons and that nothing be so
21 designated without a good faith belief that it has been maintained in a confidential,
22 non-public manner, and there is good cause why it should not be part of the public
23 record of this case.

24 2. DEFINITIONS

25 2.1 Challenging Party: a Party or Non-Party that challenges the designation
26 of information or items under this Order.

27 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
28 how it is generated, stored or maintained) or tangible things that qualify for protection

1 under Federal Rule of Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House
3 Counsel (as well as their support staff).

4 2.4 Designated House Counsel: House Counsel who seek access to
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this
6 matter.

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY”

11 2.6 Disclosure or Discovery Material: all items or information, regardless of
12 the medium or manner in which it is generated, stored, or maintained (including,
13 among other things, testimony, transcripts, and tangible things), that are produced or
14 generated in disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve
17 as an expert witness or as a consultant in this action, (2) is not a current employee of a
18 Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to
19 become an employee of a Party or of a Party’s competitor.

20 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
21 Information or Items: extremely sensitive “Confidential Information or Items,”
22 disclosure of which to another Party or Non-Party would create a substantial risk of
23 serious harm that could not be avoided by less restrictive means.

24 2.9 House Counsel: attorneys who are employees of a party to this action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

27 2.10 Non-Party: any natural person, partnership, corporation, association, or
28 other legal entity not named as a Party to this action.

1 2.11 Outside Counsel of Record: attorneys who are not employees of a party
2 to this action but are retained to represent or advise a party to this action, including
3 support staff and subcontractors.

4 2.12 Party: any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.14 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.15 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied or extracted
21 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
22 Protected Material; and (3) any testimony, conversations, or presentations by Parties
23 or their Counsel that might reveal Protected Material. However, the protections
24 conferred by this Stipulation and Order do not cover the following information: (a)
25 any information that is in the public domain at the time of disclosure to a Receiving
26 Party or becomes part of the public domain after its disclosure to a Receiving Party as
27 a result of publication not involving a violation of this Order, including
28 becoming part of the public record through trial or otherwise; and (b) any information

1 known to the Receiving Party prior to the disclosure or obtained by the Receiving
2 Party after the disclosure from a source who obtained the information lawfully and
3 under no obligation of confidentiality to the Designating Party. Any use of Protected
4 Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs. Final disposition shall be
9 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
10 without prejudice; and (2) final judgment herein after the completion and exhaustion
11 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
12 limits for filing any motions or applications for extension of time pursuant to
13 applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under this
17 Order must take care to limit any such designation to specific material that qualifies
18 under the appropriate standards. To the extent it is practical to do so, the Designating
19 Party must designate for protection only those parts of material, documents, items, or
20 oral or written communications that qualify – so that other portions of the material,
21 documents, items, or communications for which protection is not warranted are not
22 swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purpose (e.g., to unnecessarily encumber or retard the case development process or to
26 impose unnecessary expenses and burdens on other parties) **may** expose the
27 Designating Party to sanctions.

28

1 If it comes to a Designating Party’s attention that information or items that it
2 designated for protection do not qualify for protection at all or do not qualify for the
3 level of protection initially asserted, that Designating Party must promptly notify all
4 other parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
8 under this Order must be clearly so designated before the material is disclosed or
9 produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
18 each portion, the level of protection being asserted.

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
24 inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must determine which documents, or portions thereof, qualify for
26 protection under this Order. Then, before producing the specified documents, the
27 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains

1 Protected Material. If only a portion or portions of the material on a page qualifies for
2 protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins) and must specify, for each
4 portion, the level of protection being asserted.

5 (b) for testimony given in deposition or in other pretrial or trial
6 proceedings, that the Designating Party identify on the record, before the close of the
7 deposition, hearing, or other proceeding, all protected testimony and specify the level
8 of protection being asserted. When it is impractical to identify separately each portion
9 of testimony that is entitled to protection and it appears that substantial portions of the
10 testimony may qualify for protection, the Designating Party may invoke on the record
11 (before the deposition, hearing, or other proceeding is concluded) a right to have up to
12 21 days to identify the specific portions of the testimony as to which protection is
13 sought and to specify the level of protection being asserted. Only those portions of the
14 testimony that are appropriately designated for protection within the 21 days shall be
15 covered by the provisions of this Stipulated Protective Order. Alternatively, a
16 Designating Party may specify, at the deposition or up to 21 days afterwards if that
17 period is properly invoked, that the entire transcript shall be treated as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY.”

20 Parties shall give the other parties notice if they reasonably expect a deposition,
21 hearing or other proceeding to include Protected Material so that the other parties can
22 ensure that only authorized individuals who have signed the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
24 document as an exhibit at a deposition shall not in any way affect its designation as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on the
28 title page that the transcript contains Protected Material, and the title page shall be

1 followed by a list of all pages (including line numbers as appropriate) that have been
2 designated as Protected Material and the level of protection being asserted by the
3 Designating Party. The Designating Party shall inform the court reporter of these
4 requirements. Any transcript that is prepared before the expiration of a 21-day period
5 for designation shall be treated during that period as if it had been designated
6 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
7 otherwise agreed. After the expiration of that period, the transcript shall be treated
8 only as actually designated.

9 (c) for information produced in some form other than documentary and
10 for any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the
12 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY”. If only a portion or portions of the information or item warrant protection,
14 the Producing Party, to the extent practicable, shall identify the protected portion(s)
15 and specify the level of protection being asserted.

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material.
19 Upon timely correction of a designation, the Receiving Party must make reasonable
20 efforts to assure that the material is treated in accordance with the provisions of this
21 Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time. Unless a prompt challenge to a Designating
25 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
26 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
27 litigation, a Party does not waive its right to challenge a confidentiality designation by
28 electing not to mount a challenge promptly after the original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process by providing written notice of each designation it is challenging
3 and describing the basis for each challenge. To avoid ambiguity as to whether a
4 challenge has been made, the written notice must recite that the challenge to
5 confidentiality is being made in accordance with this specific paragraph of the
6 Protective Order. The parties shall attempt to resolve each challenge in good faith and
7 must begin the process by conferring directly (in voice to voice dialogue; other forms
8 of communication are not sufficient) within 7 days of the date of service of notice. In
9 conferring, the Challenging Party must explain the basis for its belief that the
10 confidentiality designation was not proper and must give the Designating Party an
11 opportunity to review the designated material, to reconsider the circumstances, and, if
12 no change in designation is offered, to explain the basis for the chosen designation. A
13 Challenging Party may proceed to the next stage of the challenge process only if it has
14 engaged in this meet and confer process first or establishes that the Designating Party
15 is unwilling to participate in the meet and confer process in a timely manner.

16 The Parties acknowledge and agree that this challenge procedure shall not be
17 used to gain any unfair tactical advantage in this case, such as through burdening a
18 Producing Party with unnecessary voluminous challenges. Any disputes in this regard
19 shall, after the required good faith meet-and-confer, be presented to the Court under
20 the Court's procedure for discovery disputes, **Local Rule 37.1, et seq., and consistent**
21 **with the Court's pre-motion discovery procedures.**

22 6.3 Judicial Intervention. ~~If the Parties cannot resolve a challenge without~~
23 ~~court intervention, the Designating Party shall file and serve a motion to retain~~
24 ~~confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-~~
25 ~~5, if applicable) within 21 days of the initial notice of challenge or within 14 days of~~
26 ~~the parties agreeing that the meet and confer process will not resolve their dispute,~~
27 ~~whichever is earlier. Each such motion must be accompanied by a competent~~
28 ~~declaration affirming that the movant has complied with the meet and confer~~

1 ~~requirements imposed in the preceding paragraph. Failure by the Designating Party to~~
2 ~~make such a motion including the required declaration within 21 days (or 14 days, if~~
3 ~~applicable) shall automatically waive the confidentiality designation for each~~
4 ~~challenged designation. In addition, the Challenging Party may file a motion~~
5 ~~challenging a confidentiality designation at any time if there is good cause for doing~~
6 ~~so, including a challenge to the designation of a deposition transcript or any portions~~
7 ~~thereof. Any motion brought pursuant to this provision must be accompanied by a~~
8 ~~competent declaration affirming that the movant has complied with the meet and~~
9 ~~confer requirements imposed by the preceding paragraph.~~

10 The burden of persuasion in any such challenge proceeding shall be on the
11 Designating Party. Unless the Designating Party has waived the confidentiality
12 designation ~~by failing to file a motion to retain confidentiality as described above~~, all
13 parties shall continue to afford the material in question the level of protection to which
14 it is entitled under the Producing Party's designation until the court rules on the
15 challenge.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this case
19 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
20 Material may be disclosed only to the categories of persons and under the conditions
21 described in this Order. When the litigation has been terminated, a Receiving Party
22 must comply with the provisions of section 15 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
24 location and in a secure manner¹ that ensures that access is limited to the persons
25 authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 otherwise ordered by the court or permitted in writing by the Designating Party, a
2 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
3 only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as
5 well as employees, and subcontractors of said Outside Counsel of Record to whom it
6 is reasonably necessary to disclose the information for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
8 Exhibit A;

9 (b) the Parties to the litigation, provided they have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (c) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
13 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (e) the court and its personnel;

18 (f) court reporters and their staff, professional jury or trial consultants,
19 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
20 for this litigation and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A);

22 (g) any mediator(s) or settlement officer, and their supporting personnel,
23 mutually agreed upon by any of the Parties engaged in settlement discussions;

24 (h) during their depositions, witnesses and attorneys for witnesses, in the
25 action to whom disclosure is reasonably necessary and who have signed the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
27 by the Designating Party or ordered by the Court. Pages of transcribed deposition
28 testimony or exhibits to depositions that reveal Protected Material must be separately

1 bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this Stipulated Protective Order; and

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.

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
7 writing by the Designating Party, a Receiving Party may disclose any information or
8 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY only
9 to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as
11 well as employees and subcontractors of said Outside Counsel of Record to whom it is
12 reasonably necessary to disclose the information for this litigation and who have
13 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
14 Exhibit A;

15 (b) the Parties to the litigation, provided they have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (c) Designated House Counsel of the Receiving Party (1) who has no
18 involvement in competitive decision-making, (2) to whom disclosure is reasonably
19 necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement
20 to Be Bound” (Exhibit A);

21 (d) Experts of the Receiving Party (1) to whom disclosure is reasonably
22 necessary for this litigation, (2) who have signed the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants,
26 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
27 this litigation and who have signed the “Acknowledgment and Agreement to Be
28 Bound” (Exhibit A);

1 (f) any mediator(s) or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the Parties engaged in settlement discussions; and

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 their
5 attorneys.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other
9 litigation that compels disclosure of any information or items designated in this action
10 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY” that Party shall, to the extent permitted by law:

12 (a) promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the subpoena
16 or order is subject to this Protective Order. Such notification shall include a copy of
17 this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.²

20 If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in this
22 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
23 EYES ONLY” before a determination by the court from which the subpoena or order
24 issued, unless the Party has obtained the Designating Party’s permission. The
25

26 ² The purpose of imposing these duties is to alert the interested parties to the existence
27 of this Protective Order and to afford the Designating Party in this case an opportunity
28 to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 Designating Party shall bear the burden and expense of seeking protection in that
2 court of its confidential material – and nothing in these provisions should be construed
3 as authorizing or encouraging a Receiving Party in this action to disobey a lawful
4 directive from another court.

5 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
6 IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by
8 a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by
10 Non-Parties in connection with this litigation is protected by the remedies and relief
11 provided by this Order. Nothing in these provisions should be construed as prohibiting
12 a Non-Party from seeking additional protections.

13 (b) In the event that a Party is required, by a valid discovery request,
14 to produce a Non-Party’s confidential information in its possession, and the Party is
15 subject to an agreement with the Non-Party not to produce the Non-Party’s
16 confidential information, then the Party shall:

17 1. promptly notify in writing the Requesting Party and the Non-Party
18 that some or all of the information requested is subject to a confidentiality agreement
19 with a Non-Party;

20 2. promptly provide the Non-Party with a copy of the Stipulated
21 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
22 specific description of the information requested; and

23 3. make the information requested available for inspection by the
24 Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this
26 court within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party’s confidential information responsive to
28 the discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the court.³
3 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
4 of seeking protection in this court of its Protected Material.

5 12. UNAUTHORIZED DISCLOSURE OF PROTECTED 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 best
10 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
11 person or 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 and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order that provides for production without prior
21 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
22 parties reach an agreement on the effect of disclosure of a communication or
23 information covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order submitted to
25 the court.

26 _____
27 ³ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
protect its confidentiality interests in this court.

1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in this
7 Stipulated Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 14.3 Export Control. Disclosure of Protected Material shall be subject to all
10 applicable laws and regulations relating to the export of technical data contained in
11 such Protected Material, including the release of such technical data to foreign persons
12 or nationals in the United States or elsewhere. The Producing Party shall be
13 responsible for identifying any such controlled technical data, and the Receiving Party
14 shall take measures necessary to ensure compliance.

15 14.4 Filing Protected Material. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested
17 persons, a Party may not file in the public record in this action any Protected Material.
18 A Party that seeks to file under seal any Protected Material must comply with Civil
19 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
20 order authorizing the sealing of the specific Protected Material at issue. ~~Pursuant to~~
21 ~~Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that~~
22 ~~the Protected Material at issue is privileged, protectable as a trade secret, or otherwise~~
23 ~~entitled to protection under the law.~~ If a Receiving Party's request to file Protected
24 Material under seal pursuant to Civil Local Rule 79-5.2.2.(b) is denied by the court,
25 then the Receiving Party may file the Protected Material in the public record pursuant
26 to Civil Local Rule 79-5.2.2.(b)(ii) unless otherwise instructed by the court.

27 15. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in paragraph

1 4, each Receiving Party must return all Protected Material to the Producing Party or
2 destroy such material. As used in this subdivision, “all Protected Material” includes
3 all copies, abstracts, compilations, summaries, and any other format reproducing or
4 capturing any of the Protected Material. Whether the Protected Material is returned or
5 destroyed, the Receiving Party must submit a written certification to the Producing
6 Party (and, if not the same person or entity, to the Designating Party) by the 60-day
7 deadline that (1) identifies (by category, where appropriate) all the Protected Material
8 that was returned or destroyed and (2) affirms that the Receiving Party has not
9 retained any copies, abstracts, compilations, summaries or any other format
10 reproducing or capturing any of the Protected Material. Notwithstanding this
11 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
12 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
13 deposition and trial exhibits, expert reports, attorney work product, and consultant and
14 expert work product, even if such materials contain Protected Material. Any such
15 archival copies that contain or constitute Protected Material remain subject to this
16 Protective Order as set forth in Section 4 (DURATION).

17
18
19 **IT IS SO STIPULATED AND AGREED.**

20
21
22 Dated: August 22, 2018

WINSTON & STRAWN LLP

23
24 By: /s/ Ronald Rothstein

25 Megan L. Whipp
26 WINSTON & STRAWN LLP
27 333 S. Grand Avenue
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10 Attorneys for Defendant
11 THE J.M. SMUCKER COMPANY

12 Dated: August 22, 2018

13 **FARUQI & FARUQI, LLP**

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23 Attorneys for Plaintiff
24 JOSHUA JOSEPH

25 **ATTESTATION**

26 I, Ronald Y. Rothstein, attest that the above listed signatories on whose behalf
27 this document is being filed, have concurred in the context and have authorized the
28 filing.

29 Dated: August 22, 2018

30 /s/ Ronald Y. Rothstein

31 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

32 

33 Dated: August 23, 2018

34 The Honorable Karen L. Stevenson
35 United States Magistrate 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 of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the case of
7 _____ [insert formal name of the case and the number
8 and initials assigned to it by the court]. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
11 promise that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Order.

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

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22
23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____
26 [printed name]

27 Signature: _____
28 [signature]