



1 deposition testimony, and transcripts of trial testimony and depositions, including  
2 data, summaries, and compilations derived therefrom that is deemed to be  
3 confidential information by any party to which it belongs.

4       2.     The term "materials" will include, but is not be limited to: documents;  
5 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or  
6 other material that identify customers or potential customers; price lists or schedules  
7 or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled  
8 checks; contracts; invoices; drafts; books of account; worksheets; notes of  
9 conversations; desk diaries; appointment books; expense accounts; recordings;  
10 photographs; motion pictures; compilations from which information can be obtained  
11 and translated into reasonably usable form through detection devices; sketches;  
12 drawings; notes (including laboratory notebooks and records); reports; instructions;  
13 disclosures; other writings; models and prototypes and other physical objects.

14       3.     The term "counsel" will mean outside counsel of record, and other  
15 attorneys, paralegals, secretaries, and other support staff employed in the law firms  
16 identified below:

17           For Plaintiffs AMERICAN FIRE AND CASUALTY COMPANY and  
18 WEST AMERICAN INSURANCE COMPANY:

19                   **Brandon D. Saxon, Esq.**  
20                   **Tom T. Nagashima, Esq.**  
21                   **GORDON REES SCULLY MANSUKHANI, LLP**  
22                   **101 West Broadway, Suite 2000**  
                      **San Diego, California 92101**

23           For Defendant SMUCKER FOODSERVICE, INC., erroneously sued as  
24 SMUCKERS FOODSERVICE, INC:

25                   **Peter S. Doody, Esq.**  
26                   **Nicholas D. Brauns, Esq.**  
27                   **HIGGS FLETCHER & MACK LLP**  
                      **401 West "A" Street, Suite 2600**  
28                   **San Diego, California 92101-7913**



1 confidentiality marking.

2 6. Whenever a deposition taken on behalf of any party involves a  
3 disclosure of confidential information of any party:

- 4 a. the deposition or portions of the deposition must be designated as  
5 containing confidential information subject to the provisions of  
6 this Order; such designation must be made on the record  
7 whenever possible, but a party may designate portions of  
8 depositions as containing confidential information after  
9 transcription of the proceedings; [A] party will have until fourteen  
10 (14) days after receipt of the deposition transcript to inform the  
11 other party or parties to the action of the portions of the transcript  
12 to be designated "CONFIDENTIAL" or "CONFIDENTIAL -  
13 FOR COUNSEL ONLY."  
14 b. the disclosing party will have the right to exclude from attendance  
15 at the deposition, during such time as the confidential information  
16 is to be disclosed, any person other than the deponent, counsel  
17 (including their staff and associates), the court reporter, and the  
18 person(s) agreed upon pursuant to paragraph 8 below; and  
19 c. the originals of the deposition transcripts and all copies of the  
20 deposition must bear the legend "CONFIDENTIAL" or  
21 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,  
22 and the original or any copy ultimately presented to a court for  
23 filing must not be filed unless it can be accomplished under seal,  
24 identified as being subject to this Order, and protected from being  
25 opened except by order of this Court.

26 7. All confidential information designated as "CONFIDENTIAL" or  
27 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving  
28 party to anyone other than those persons designated within this order and must be

1 handled in the manner set forth below and, in any event, must not be used for any  
2 purpose other than in connection with this litigation, unless and until such designation  
3 is removed either by agreement of the parties, or by order of the Court.

4 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY"  
5 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,  
6 and by independent experts under the conditions set forth in this Paragraph. The right  
7 of any independent expert to receive any confidential information will be subject to  
8 the advance approval of such expert by the producing party or by permission of the  
9 Court. The party seeking approval of an independent expert must provide the  
10 producing party with the name and curriculum vitae of the proposed independent  
11 expert, and an executed copy of the form attached hereto as Exhibit A, in advance of  
12 providing any confidential information of the producing party to the expert. Any  
13 objection by the producing party to an independent expert receiving confidential  
14 information must be made in writing within fourteen (14) days following receipt of  
15 the identification of the proposed expert. Confidential information may be disclosed  
16 to an independent expert if the fourteen (14) day period has passed and no objection  
17 has been made. The approval of independent experts must not be unreasonably  
18 withheld.

19 9. Information designated "confidential" must be viewed only by counsel  
20 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant  
21 to the terms of paragraph 8), by court personnel, and by the additional individuals  
22 listed below, provided each such individual has read this Order in advance of  
23 disclosure and has agreed in writing to be bound by its terms:

- 24 a) Executives who are required to participate in policy decisions  
25 with reference to this action;
- 26 b) Technical personnel of the parties with whom Counsel for the  
27 parties find it necessary to consult, in the discretion of such  
28 counsel, in preparation for trial of this action; and

1 c) Stenographic and clerical employees associated with the  
2 individuals identified above.

3 10. With respect to material designated "CONFIDENTIAL" or  
4 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of  
5 the document to be its originator, author or a recipient of a copy of the document,  
6 may be shown the same.

7 11. All information which has been designated as "CONFIDENTIAL" or  
8 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party,  
9 and any and all reproductions of that information, must be retained in the custody of  
10 the counsel for the receiving party identified in paragraph 3, except that independent  
11 experts authorized to view such information under the terms of this Order may retain  
12 custody of copies such as are necessary for their participation in this litigation.

13 12. Before any materials produced in discovery, answers to interrogatories,  
14 responses to requests for admissions, deposition transcripts, or other documents  
15 which are designated as confidential information are filed with the Court for any  
16 purpose, the party seeking to file such material must seek permission of the Court to  
17 file the material under seal.

18 13. At any stage of these proceedings, any party may object to a designation  
19 of the materials as confidential information. The party objecting to confidentiality  
20 must notify, in writing, counsel for the designating party of the objected-to materials  
21 and the grounds for the objection. If the dispute is not resolved consensually between  
22 the parties within seven (7) days of receipt of such a notice of objections, the  
23 objecting party may move the Court for a ruling on the objection. The materials at  
24 issue must be treated as confidential information, as designated by the designating  
25 party, until the Court has ruled on the objection or the matter has been otherwise  
26 resolved.

27 14. All confidential information must be held in confidence by those  
28 inspecting or receiving it, and must be used only for purposes of this action. Counsel

1 for each party, and each person receiving confidential information must take  
2 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such  
3 information. If confidential information is disclosed to any person other than a person  
4 authorized by this Order, the party responsible for the unauthorized disclosure must  
5 immediately bring all pertinent facts relating to the unauthorized disclosure to the  
6 attention of the other parties and, without prejudice to any rights and remedies of the  
7 other parties, make every effort to prevent further disclosure by the party and by the  
8 person(s) receiving the unauthorized disclosure.

9 15. No party will be responsible to another party for disclosure of  
10 confidential information under this Order if the information in question is not labeled  
11 or otherwise identified as such in accordance with this Order.

12 16. If a party, through inadvertence, produces any confidential information  
13 without labeling or marking or otherwise designating it as such in accordance with  
14 this Order, the designating party may give written notice to the receiving party that  
15 the document or thing produced is deemed confidential information, and that the  
16 document or thing produced should be treated as such in accordance with that  
17 designation under this Order. The receiving party must treat the materials as  
18 confidential, once the designating party so notifies the receiving party. If the  
19 receiving party has disclosed the materials before receiving the designation, the  
20 receiving party must notify the designating party in writing of each such disclosure.  
21 Counsel for the parties will agree on a mutually acceptable manner of labeling or  
22 marking the inadvertently produced materials as "CONFIDENTIAL" or  
23 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE  
24 ORDER.

25 17. Nothing within this order will prejudice the right of any party to object  
26 to the production of any discovery material on the grounds that the material is  
27 protected as privileged or as attorney work product.

28 18. Nothing in this Order will bar counsel from rendering advice to their

1 clients with respect to this litigation and, in the course thereof, relying upon any  
2 information designated as confidential information, provided that the contents of the  
3 information must not be disclosed.

4 19. This Order will be without prejudice to the right of any party to oppose  
5 production of any information for lack of relevance or any other ground other than  
6 the mere presence of confidential information. The existence of this Order must not  
7 be used by either party as a basis for discovery that is otherwise improper under the  
8 Federal Rules of Civil Procedure.

9 20. Nothing within this order will be construed to prevent disclosure of  
10 confidential information if such disclosure is required by law or by order of the Court.

11 21. Upon final termination of this action, including any and all appeals,  
12 counsel for each party must, upon request of the producing party, return all  
13 confidential information to the party that produced the information, including any  
14 copies, excerpts, and summaries of that information, or must destroy same at the  
15 option of the receiving party, and must purge all such information from all machine-  
16 readable media on which it resides. Notwithstanding the foregoing, counsel for each  
17 party may retain all pleadings, briefs, memoranda, motions, and other documents  
18 filed with the Court that refer to or incorporate confidential information, and will  
19 continue to be bound by this Order with respect to all such retained information.  
20 Further, attorney work product materials that contain confidential information need  
21 not be destroyed, but, if they are not destroyed, the person in possession of the  
22 attorney work product will continue to be bound by this Order with respect to all such  
23 retained information.

24 22. The restrictions and obligations set forth within this order will not apply  
25 to any information that: (a) the parties agree should not be designated confidential  
26 information; (b) the parties agree, or the Court rules, is already public knowledge; (c)  
27 the parties agree, or the Court rules, has become public knowledge other than as a  
28 result of disclosure by the receiving party, its employees, or its agents in violation of



1 this Order; or (d) has come or will come into the receiving party's legitimate  
2 knowledge independently of the production by the designating party. Prior  
3 knowledge must be established by pre-production documentation.

4 23. The restrictions and obligations within this order will not be deemed to  
5 prohibit discussions of any confidential information with anyone if that person  
6 already has or obtains legitimate possession of that information.

7 24. Transmission by email or some other currently utilized method of  
8 transmission is acceptable for all notification purposes within this Order.

9 25. This Order may be modified by agreement of the parties, subject to  
10 approval by the Court.

11 26. The Court may modify the terms and conditions of this Order for good  
12 cause, or in the interest of justice, or on its own order at any time in these proceedings.

13 Dated: April 13, 2021

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17 Hon. Andrew G. Schopler  
18 United States Magistrate Judge  
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**EXHIBIT A TO STIPULATED PROTECTIVE ORDER**

I, \_\_\_\_\_, residing at \_\_\_\_\_  
\_\_\_\_\_ have read the foregoing Stipulated Protective Order  
(the “Order”) in the action entitled *AMERICAN FIRE AND CASUALTY COMPANY, et al. v. SMUCKER FOODSERVICE, INC.*, Case No. 3:20-CV-01619-BEN-AGS, pending in the United States District Court for the Southern District of California. I agree to be bound by its terms with respect to any documents designated as “CONFIDENTIAL” that are furnished to me as set forth in the Order. I further agree to return documents to the producing party or third party according to the terms of that Order.

2. I hereby consent to the jurisdiction of the District Court for the Southern District of California with respect to any proceedings to enforce the terms of the Order against me.

3. I hereby agree that any documents designated as “CONFIDENTIAL” that are furnished to me will be used by me only for the purposes of the Action, and for no other purpose, and will not be used by me in any business affairs of my employer or of my own, nor will the information contained therein be imparted by me to any other person.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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