

1 John Shaeffer (State Bar No. 138331)
 2 jshaeffer@lathropgage.com
 3 Jeffrey Grant (State Bar No. 218974)
 4 jgrant@lathropgage.com
 5 LATHROP & GAGE LLP
 6 1888 Century Park East, Suite 1000
 Los Angeles, CA 90067
 Telephone: (310) 789-4600
 Fax: (310) 789-4601

7 Petty Tsay Rader (State Bar No. 227563)
 8 petty.rader@munchkin.com
 9 MUNCHKIN, INC.
 10 16689 Schoenborn Street
 North Hills, CA 91343
 Telephone: (818) 893-5000
 Fax: (818) 893-6343

11 Attorneys for Plaintiff
 12 MUNCHKIN, INC.

13
 14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA
 16

17 Munchkin, Inc.

18 Plaintiff,

19 v.

20 The First Years, Inc. et al.

21 Defendants.
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 23
 24
 25
 26

) CASE NO. CV 10-2219-GW (AGR_x)

) **PROTECTIVE ORDER**

) [DISCOVERY MATTER]

1 THIS MATTER having come before the Court pursuant to the stipulation of
2 the Parties, and the Court being fully advised in the premises, it is hereby
3 ORDERED as follows:

4 **I. DEFINITIONS**

5 1. As used in this Protective Order,

6 a. “Designating Party” means any Person who designates Material as
7 Confidential Material.

8 b. “Discovering Counsel” means counsel of record for a Discovering
9 Party.

10 c. “Discovering Party” means the Party to whom Material is being
11 Provided by a Producing Party.

12 d. “Confidential Material” means any material designated as
13 CONFIDENTIAL or where appropriate, ATTORNEYS’ EYES ONLY, in accordance
14 with the terms of this Protective Order.

15 e. “Material” means any document, testimony or information in any
16 form or medium whatsoever, including, without limitation, any written or printed
17 matter, Provided in this action by a Party before or after the date of this Protective
18 Order.

19 f. “Party” means the Parties to this action, their attorneys of record
20 and their agents.

21 g. “Person” means any individual, corporation, partnership,
22 unincorporated association, governmental agency, or other business or governmental
23 entity whether a Party or not.

24 h. “Producing Party” means any Person who Provides Material during
25 the course of this action.

26 i. “Provide” means to produce any Material, whether voluntarily or
27 involuntarily, whether pursuant to request or process.

28 **II. CONFIDENTIAL DESIGNATION**

1 2. A Producing Party may:
2 a. Designate as “CONFIDENTIAL” any material provided to a Party
3 which contains or discloses any of the following:

4 i. Non-public insider information, personnel files, financial
5 information, trade secrets, confidential commercial information, proprietary
6 information, or other confidential or sensitive information which the Producing Party
7 determines in good faith should be kept confidential; and

8 ii. Information that the Party is under a duty to preserve as
9 confidential under an agreement with or other obligation to another Person.

10 b. Designate as “ATTORNEYS’ EYES ONLY,” documents Parties
11 contend contain or disclose materials which they in good faith believe to be of an
12 extremely high degree of current commercial sensitivity and/or would provide a
13 competitive advantage to its competitors if disclosed.

14 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS’
15 EYES ONLY Materials which the Producing Party in good faith believes are entitled
16 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A
17 Producing Party may designate Confidential Material for protection under this order by
18 either of the following methods:

19 a. By physically marking it with the following inscription prior to
20 Providing it to a Party:

21 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

22 or

23 ATTORNEYS’ EYES ONLY SUBJECT TO PROTECTIVE ORDER

24 b. By identifying with specificity in writing to the Discovering Party
25 any previously Provided Material which was not designated as Confidential Material
26 prior to its having been Provided. For purposes of this method of designation, it will be
27 a sufficiently specific identification to refer to the bates numbers or deposition page
28 numbers of previously Provided Material. Where a Producing Party designates

1 previously Provided Material as Confidential Material pursuant to this subparagraph,
2 the Producing Party will follow the procedures set forth in the previous subparagraph
3 for designating Confidential Material, and Provide to the Discovering Party additional
4 copies of the previously Provided Material marked with the inscription described in the
5 previous subparagraph. Upon receipt of the additional copies which comply with the
6 procedures set forth in the previous subparagraph, the Discovering Party will
7 immediately return to the Producing Party the previously Provided Material, or
8 alternatively, will destroy all the previously Provided Material. For previously
9 Provided Material which was not designated as Confidential Material at the time of its
10 being Provided, this Protective Order shall apply to such materials beginning on the
11 date that the Producing Party makes such designation.

12 All costs associated with the designations of materials as “Confidential” or
13 “Attorneys’ Eyes Only” involving, for example, the cost of binding confidential
14 portions of deposition transcripts, shall be initially borne by the Party making the
15 designation with no prejudice regarding the Designating Party’s ability to recover its
16 costs upon completion of the litigation.

17 The designation of documents as “Confidential” or “Attorneys’ Eyes Only” does
18 not entitle the parties to have those documents filed under seal. An application,
19 including a stipulated application to filed documents under seal must comply with
20 Local Rule 79-5.

21 **III. RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

22 4. Confidential Material designated as CONFIDENTIAL shall not be
23 disclosed, nor shall its contents be disclosed, to any person other than those described
24 in Paragraph 7 of this Protective Order and other than in accordance with the terms,
25 conditions and restrictions of this Protective Order. Confidential Material designated as
26 ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its contents be disclosed
27 to any person other than those described in Paragraph 8 of this Protective Order.
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1 5. Confidential Material Provided by a Producing Party to a Discovering
2 Party shall not be used by the Discovering Party or anyone other than the Producing
3 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,
4 for any purpose, including, without limitation any personal, business, governmental,
5 commercial, publicity, public-relations, or litigation (administrative or judicial)
6 purpose, other than the prosecution or defense of this action.

7 6. All Confidential Material shall be kept secure by Discovering Counsel
8 and such Discovering Counsel shall take all reasonable steps necessary to ensure that
9 access to Confidential Material is limited to persons authorized pursuant to Paragraphs
10 7 or 8 of this Protective Order.

11 7. For purposes of the preparation of this action, and subject to the terms,
12 conditions, and restrictions of this Protective Order, Discovering Counsel may disclose
13 Material designated as CONFIDENTIAL and the contents of Material designated as
14 CONFIDENTIAL only to the following persons:

15 a. Counsel of record working on this action on behalf of any Party and
16 counsel's employees who are directly participating in this action, including counsel's
17 partners, associates, paralegals, assistants, secretaries, and clerical staff;

18 b. In-house or outside corporate counsel to a Party;

19 c. Court and deposition reporters and their staff;

20 d. The Court and any Person employed by the Court whose duties
21 require access to Material designated as CONFIDENTIAL;

22 e. Witnesses at depositions or pre-trial proceedings, in accordance
23 with procedures set forth in Paragraphs 11-13;

24 f. Experts and consultants assisting counsel with respect to this action
25 and their secretarial, technical and clerical employees who are actively assisting in the
26 preparation of this action, in accordance with the procedures set forth in Paragraphs
27 11-13;

1 g. Officers, directors and employees of the Parties hereto who have a
2 need to review Material designated as CONFIDENTIAL to assist in connection with
3 this litigation, subject to the limitations set forth herein;

4 h. Photocopy service personnel who photocopied or assisted in the
5 photocopying or delivering of documents in this litigation;

6 i. Any Person identified on the face of any such Material designated
7 as CONFIDENTIAL as an author or recipient thereof;

8 j. Any Person who is determined to have been an author and/or
9 previous recipient of the Material designated as CONFIDENTIAL, but is not identified
10 on the face thereof, provided there is prior testimony of actual authorship or receipt of
11 the Material designated as CONFIDENTIAL by such Person; and

12 k. Any Person who the Parties agree in writing may receive Material
13 designated as CONFIDENTIAL.

14 The Parties shall make a good faith effort to limit dissemination of Material designated
15 as CONFIDENTIAL within these categories to Persons who have a reasonable need
16 for access thereto.

17 8. For purposes of the preparation of this action, and subject to the terms,
18 conditions, and restrictions of this Protective Order, the Discovering Counsel may
19 disclose confidential financial Material designated as ATTORNEYS' EYES ONLY,
20 and the contents of Material so designated, only to the following persons:

21 a. Counsel of record for the Parties to this action and counsel's
22 employees who are directly participating in this action, including counsel's partners,
23 associates, paralegals, assistants, secretarial, and clerical staff;

24 b. In-house or outside corporate counsel to a Party who are not
25 responsible for competitive decision-making;

26 c. Court and deposition reporters and their staff;

27 d. The Court and any person employed by the Court whose duties
28 require access to Material designated as ATTORNEYS' EYES ONLY;

1 e. Witnesses at depositions or pre-trial proceedings, in accordance
2 with procedures set forth in paragraphs 11-13;

3 f. Non-party experts and consultants assisting counsel with respect to
4 this action and their secretarial, technical and clerical employees who are actively
5 assisting in the preparation of this action, in accordance with the procedures set forth in
6 paragraphs 11-13;

7 g. Any Person identified on the face of any such Material designated
8 as ATTORNEYS' EYES ONLY as an author or recipient thereof;

9 h. Any Person who is determined to have been an author and/or
10 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but is
11 not identified on the face thereof, provided there is prior testimony of actual authorship
12 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such Person;
13 and

14 i. Any Person who the Parties agree in writing may receive Material
15 designated as ATTORNEYS' EYES ONLY.

16 **IV. UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

17 9. Before Discovering Counsel may disclose Confidential Material to any
18 Person described in subparagraphs 7(f), 7(g), or 8(f) above, the Person to whom
19 disclosure is to be made shall receive a copy of this Protective Order, shall read
20 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable) of
21 the Protective Order, shall evidence his or her agreement to be bound by the terms,
22 conditions, and restrictions of the Protective Order by signing an undertaking in the
23 form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the copy of
24 this Protective Order, with a copy of his or her signed Undertaking attached.
25 Discovering Counsel shall keep a copy of the signed Undertaking for each person
26 described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel discloses
27 Confidential Material.
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1 10. The individuals designated in subparagraphs 8(a) and 8(b) above, are
2 specifically prohibited from publishing, releasing, or otherwise disclosing Material
3 designated as ATTORNEYS' EYES ONLY, or the contents thereof, to any directors,
4 officers, or employees of the company for which the individual is employed, or to any
5 other persons not authorized under this Protective Order to receive such information.
6 The designated individuals in subparagraphs 8(a) and 8(b) shall retain all
7 ATTORNEYS' EYES ONLY material in a secure manner under separate and
8 confidential file, so as to avoid inadvertent access by, or disclosure to, unauthorized
9 persons.

10 **V. DEPOSITIONS**

11 11. Those portions of depositions taken by any Party at which any Material
12 designated as CONFIDENTIAL is used or inquired into, may not be conducted in the
13 presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel,
14 and (c) Persons authorized under Paragraph 7 of this Protective Order to view such
15 Confidential Material. During those portions of depositions in which Material
16 designated ATTORNEYS' EYES ONLY is used or inquired into, only those persons
17 authorized under Paragraph 8 to view such Materials may be present.

18 12. Counsel for any deponent may designate testimony or exhibits as
19 Confidential Material by indicating on the record at the deposition that the testimony
20 of the deponent or any exhibits to his or her testimony are to be treated as Confidential
21 Material. Counsel for any Party may designate exhibits in which that Party has a
22 cognizable interest as Confidential Material by indicating on the record at the
23 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of
24 counsel to designate testimony or exhibits as confidential at deposition, however, shall
25 not constitute a waiver of the protected status of the testimony or exhibits. Within
26 thirty calendar days of receipt of the final transcript of the deposition, or thirty days of
27 the date on which this Protective Order becomes effective, whichever occurs last,
28 counsel shall be entitled to designate specific testimony or exhibits as Confidential

1 Material. Any exhibits that were designated as Confidential Material at the time they
2 were produced shall maintain such designation when used in a deposition, absent
3 express consent from the Producing Party to the contrary. If counsel for the deponent
4 or Party fails to designate the transcript or exhibits as Confidential within the above-
5 described thirty day period, any other Party shall be entitled to treat the transcript or
6 exhibits as non-confidential material. For purposes of this Paragraph 12, this Protective
7 Order shall be deemed “effective” on the date on which it has been executed by all
8 counsel for the Parties.

9 13. When Material disclosed during a deposition is designated Confidential
10 Material at the time testimony is given, the reporter shall separately transcribe those
11 portions of the testimony so designated, shall mark the face of the transcript in
12 accordance with Paragraph 3 above, and shall maintain that portion of the transcript or
13 exhibits in separate files marked to designate the confidentiality of their contents. The
14 reporter shall not file or lodge with the Court any Confidential Material without
15 obtaining written consent from the Party who designated the Material as Confidential
16 Material. For convenience, if a deposition transcript or exhibit contains repeated
17 references to Confidential Material which cannot conveniently be segregated from
18 non-confidential material, any Party may request that the entire transcript or exhibit be
19 maintained by the reporter as Confidential Material.

20 **VI. USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER**
21 **COURT PAPERS**

22 14. When a party wishes to file with the Court any document (including
23 motion papers themselves) that reveals any Confidential Material, that party shall
24 request that the Court accept such documents under seal, and they shall be labeled as
25 follows: “This Document Is Subject to a Protective Order Issued by the Court and May
26 Not Be Examined or Copied Except in Compliance with that Order.” The parties will
27 request that the Clerk keep such Documents under seal and that they be made available
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1 only to the Court or persons authorized by the terms of this Order to have access
2 thereto. Any documents the Court orders submitted under seal shall be filed
3 and handled in the same manner as Confidential Material filed in connection with
4 discovery motions or proceedings.

5 **VII. OBJECTIONS TO DESIGNATION**

6 15. Any Party may at any time notify the Designating Party in writing of its
7 contention that specified Material designated as Confidential Material is not properly
8 so designated because such Material does not warrant protection under applicable law.
9 The Designating Party shall within five court days, meet and confer in good faith with
10 the Party challenging the designation in an attempt to resolve such dispute. The
11 Designating Party shall have ten (10) calendar days from the initial meet and confer to
12 file a motion to uphold the designation of the material in question. Any such motion
13 shall be set for hearing on the first available calendar date. If no motion is filed within
14 10 days, or any mutually agreed to extension of time, all Parties may treat the Material
15 as non-confidential. To maintain the designation as Confidential Material and to
16 prevail on such a motion, the Designating Party must show by a preponderance of the
17 evidence that there is good cause for the designation as Confidential Material. Pending
18 resolution of any motion filed pursuant to this Paragraph, all Persons bound by this
19 Protective Order shall continue to treat the Material which is the subject of the motion
20 as Confidential Material.

21 16. Any discovery disputes concerning the designation of materials or
22 disclosure of documents or information under this Protective Order shall be brought in
23 compliance with Local Rule 37 and a proposed stipulated protective order should so
24 provide.

25 **VIII. RETURN OF MATERIAL**

26 17. Within ninety (90) calendar days after the final settlement or termination
27 of this action, Discovering Counsel shall return or destroy (at the option and expense
28 of Discovering Counsel) all Materials provided by a Producing Party and all copies

1 thereof except to the extent that any of the foregoing includes or reflects Discovering
2 Counsel's work product, and except to the extent that such Material has been filed with
3 a court in which proceedings related to this action are being conducted. In addition,
4 with respect to any such retained work product and unless otherwise agreed to, at the
5 conclusion of this action, counsel for each Party shall store in a secure area all work
6 product which embodies Confidential Material together with all of the signed
7 undertakings they are required to preserve pursuant to Paragraph 9 above, and shall not
8 make use of such Material except in connection with any action arising directly out of
9 these actions, or pursuant to a court order for good cause shown. The obligation of this
10 Protective Order shall survive the termination of this action. To the extent that
11 Confidential Materials are or become known to the public through no fault of the
12 Discovering Party, such Confidential Materials shall no longer be subject to the terms
13 of this Protective Order. Upon request, counsel for each Party shall verify in writing
14 that they have complied with the provisions of this paragraph.

15 **IX. SCOPE OF THIS ORDER**

16 18. Except for the provisions regarding post-trial or post-settlement return and
17 destruction of Material, or segregation of work product which embodies Confidential
18 Material, this order is strictly a pretrial order; it does not govern the trial in this action.

19 19. Not later than seven days before trial in the action, Counsel agree to meet
20 and confer concerning the use at trial of Confidential Material.

21 20. Nothing in this Protective Order shall be deemed to limit, prejudice, or
22 waive any right of any Party or Person (a) to resist or compel discovery with respect to,
23 or to seek to obtain additional or different protection for, Material claimed to be
24 protected work product or privileged under California or federal law, Material as to
25 which the Producing Party claims a legal obligation not to disclose, or Material not
26 required to be provided pursuant to California law; (b) to seek to modify or obtain
27 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
28 admissibility at trial or otherwise of any Material, whether or not designated in whole

1 or in part as Confidential Material governed by this Protective Order; or (d) otherwise
2 to require that discovery be conducted according to governing laws and rules.

3 21. Designation of Material as Confidential Material on the face of such
4 Material shall have no effect on the authenticity or admissibility of such Material at
5 trial.

6 22. This Protective Order shall not preclude any Person from waiving the
7 applicability of this Protective Order with respect to any Confidential Material
8 Provided by that Person or using any Confidential Material Provided by that Person or
9 using any Confidential Material owned by that Person in any manner that Person
10 deems appropriate.

11 23. This Protective Order shall not affect any contractual, statutory or other
12 legal obligation or the rights of any Party or Person with respect to Confidential
13 Material designated by that Party.

14 24. The restrictions set out in the Protective Order shall not apply to any
15 Material which:

16 a. At the time it is Provided is available to the public;
17 b. After it is Provided, becomes available to the public through no act,
18 or failure to act, of the Discovering Party; or


19 c. The Discovering Party can show
20 i. Was already known to the Discovering Party independently
21 of receipt of the Confidential Material in this or prior litigation; or

22 ii. Was received by the Discovering Party, after the time it was
23 designated as Confidential Material hereunder, from a third party having the right to
24 make such disclosure.

25 25. If at any time any Material protected by this Protective Order is
26 subpoenaed from the Discovering Party by any Court, administrative or legislative
27 body, or is requested by any other Person or entity purporting to have authority to
28 require the production of such material, the Party to whom the subpoena or other

1 request is directed shall immediately give written notice thereof to the Producing Party
2 with respect to Confidential Material sought and shall afford the Producing Party
3 reasonable opportunity to pursue formal objections to such disclosures. If the
4 Producing Party does not prevail on its objections to such disclosure, the Discovering
5 Party may produce the Confidential Material without violating this Protective Order.

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8 DATED: January 3, 2011

By: 

9 **United States District Judge**

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2 **EXHIBIT A**

3
4 **UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER**
5 **REGARDING CONFIDENTIALITY OF DOCUMENTS**

6 I, _____ [print or type full name], of _____
7 [print or type full address], declare under penalty of perjury that I have read in its
8 entirety and understand the Protective Order that was issued by the United States
9 District Court for the Central District of California in the case of *Munchkin, Inc. v. The*
10 *First Years, Inc. et al.* – Case No. CV 10-2219-GW (AGRx). I agree to comply with
11 and to be bound by all the terms of this Protective Order and I understand and
12 acknowledge that failure to so comply could expose me to sanctions and punishment in
13 the nature of contempt. I solemnly promise that I will not disclose in any manner any
14 information or item that is subject to this Protective Order to any person or entity
15 except in strict compliance with the provisions of this Order.

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

20
21 Date: _____, 2010

22
23 City and State where sworn and signed: _____

24
25 Signed: _____
26 [Print Name] [Signature]

