

NOTE: CHANGES MADE BY THE COURT

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

EDGEWELL PERSONAL CARE
BRANDS, LLC and INTERNATIONAL
REFILLS COMPANY, LTD.,

Plaintiffs,

v.

MUNCHKIN, INC.,

Defendant.

Case No. 2-18-CV-03005-PSG-JPR

PROTECTIVE ORDER

MUNCHKIN, INC.,

Counter-Plaintiff,

v.

EDGEWELL PERSONAL CARE
BRANDS, LLC and INTERNATIONAL
REFILLS COMPANY, LTD.,

Counter-Defendants.

1 This Protective Order shall govern the handling of documents, answers to
2 interrogatories, depositions, pleadings, exhibits, and all other information and things
3 exchanged by the parties in this action. Disclosure and discovery activity in this action
4 is likely to involve the production of confidential, proprietary, or private information
5 for which special protection from public disclosure and from use for any purpose other
6 than the prosecution, defense or resolution of this litigation is warranted. The Protective
7 Order does not confer blanket protections on all disclosures, productions or responses
8 to discovery and that the protection it affords extends only to the limited information or
9 items that are entitled under applicable legal principles to treatment as confidential. The
10 Protective Order creates no entitlement to file confidential information under seal; Civil
11 Local Rule 79-5 sets forth the procedures that must be followed and reflects the
12 standards that will be applied when a party seeks permission from the Court to file
13 material under seal.

14 It is ORDERED as follows:

15 1. This Order shall govern:

16 (a) all testimony at depositions and discovery-related proceedings. The
17 parties must seek a separate order from the District Judge at the appropriate time
18 governing the use of confidential material at trial.

19 (b) all documents, information, materials or things produced by any
20 party or third-party in response to discovery requests and subpoenas, under the
21 Federal Rules of Civil Procedure, or otherwise;

22 (c) all copies, abstracts, excerpts, analyses, summaries, or other
23 materials (written, electronic, or in other form) that contain, reflect, or disclose
24 information contained in such testimony, documents, information, materials, or
25 other things.

26 The items listed in (a)-(c) above shall be referred to as “Discovery Materials.”

27 2. Any party to this litigation shall have the right to designate Discovery
28 Materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pursuant to the

1 terms of this Protective Order. Discovery Materials designated CONFIDENTIAL or
2 HIGHLY CONFIDENTIAL will be referred to as “Designated Materials.” Any third-
3 party producing documents pursuant to a subpoena or otherwise may designate
4 Discovery Materials pursuant to this Protective Order only if an authorized
5 representative of the producing third-party executes a written acknowledgment,
6 substantially in the form of Exhibit 1 annexed to this Protective Order, that the non-
7 party has reviewed a copy of the Protective Order, will comply with its terms, and will
8 submit to the jurisdiction of this Court for adjudication of any dispute regarding that
9 third-party’s designations under the Protective Order. All designations must be made
10 in good faith and on reasonable belief that the designation accurately reflects the
11 definition of CONFIDENTIAL or HIGHLY CONFIDENTIAL materials.

12 (a) Materials marked “CONFIDENTIAL” shall be those Discovery
13 Materials, including any document, file, portion of a file, transcribed testimony,
14 or other material that the party making the designation (the “Designating Party”)
15 in good faith reasonably believes to constitute or relate to sensitive business or
16 commercial information of the Designating Party that is not publicly available
17 and the disclosure of which to persons other than those set forth below would
18 create a risk of competitive harm.

19 (b) Materials marked “HIGHLY CONFIDENTIAL” shall be those
20 Discovery Materials, including any document, file, portion of a file, transcribed
21 testimony, or other material that the Designating Party in good faith reasonably
22 believes to constitute or relate to highly sensitive business or commercial
23 information (including, but not limited to, trade secrets, financial information
24 relating to pricing, revenues, and costs, and documents related to design and
25 development of products, among others) of the Designating Party that is not
26 publicly available and the disclosure of which to persons other than those set forth
27 below would create a substantial risk of serious competitive harm. Discovery
28 Materials may only be designated HIGHLY CONFIDENTIAL if the Designating

1 Party believes in good faith that designation as CONFIDENTIAL will not
2 provide adequate protection.

3 (c) All Discovery Materials made available for inspection, and the
4 information contained therein, shall be treated as “HIGHLY CONFIDENTIAL”
5 for 60 days, to allow the Designating Party sufficient opportunity to review such
6 Discovery Materials and designate them as appropriate.

7 (d) Information is not CONFIDENTIAL or HIGHLY
8 CONFIDENTIAL if it is known to the public or was known to the recipient
9 without obligation of confidentiality before the Designating Party disclosed it.

10 3. Information designated as “CONFIDENTIAL” (“Confidential
11 Information”) shall be used by the party receiving such information solely for purposes
12 related to this litigation and may be disclosed only to the following persons:

13 (a) outside counsel for the respective parties, and employees and
14 independent contractors engaged in work for such counsel to assist in this
15 litigation, including but not limited to counsel of record in this litigation and
16 counsel of record in the related litigation pending in Canadian Federal Court , T-
17 15-16 *Angelcare Development Inc. et al. v. Munchkin, Inc. et al.*;

18 (b) in-house counsel for the respective parties;

19 (c) the parties’ officers and employees directly involved in this
20 litigation whose access to the information is reasonably required to supervise,
21 manage, or participate in the case;

22 (d) experts or consultants and their staff retained for purposes of this
23 litigation, provided that the expert or consultant first signs the Acknowledgement
24 attached to this Protective Order as Exhibit 1 before being provided Confidential
25 Information and otherwise complies with the requirements of paragraph 4(b)
26 below;

27 (e) court reporters, stenographers, videographers, and any other persons
28 preparing transcripts of depositions;

1 (f) the Court, Court personnel, and jurors or potential jurors;

2 (g) litigation support personnel retained by outside counsel to perform
3 functions relating to this action such as photocopying, scanning, stenography,
4 videography, imaging, translation/interpretation from one language to another,
5 the preparation of graphics or demonstratives, and the processing and production
6 of documents;

7 (h) mock jurors and/or trial or jury consultants engaged by either Party
8 in preparation for trial, provided that (i) no Party will use any mock juror who is
9 employed or affiliated with or who knows any person employed by or affiliated
10 with any Party; (ii) the mock jurors will not be allowed to retain any tangible
11 materials that contain or disclose any Designated Material; and (iii) mock jurors
12 first agree in writing to maintain the confidentiality of any materials and
13 information provided to them in connection with being a mock juror; and

14 (i) any other person upon order of the Court or upon stipulation of the
15 Designating Party, in writing or on the record of a deposition, or at a hearing.

16 4. Information designated as “HIGHLY CONFIDENTIAL” (“Highly
17 Confidential Information”) shall be used by the party receiving such information solely
18 for the purposes related to litigation between the parties and may be disclosed only to
19 the following persons:

20 (a) outside counsel for the respective parties, and employees and
21 independent contractors engaged in work for such counsel to assist in this
22 litigation, including but not limited to counsel of record in this litigation and
23 counsel of record in the related litigation pending in Canadian Federal Court, T-
24 15-16 *Angelcare Development Inc. et al. v. Munchkin, Inc. et al.*);

25 (b) experts or consultants retained for purposes of this litigation,
26 subject to the requirements of this subsection. The Receiving Party shall, prior
27 to the disclosure of Designated Material to a consultant or expert, excluding
28 trial or jury consultants, supply to the Designating Party a copy of the

1 Acknowledgement in Exhibit 1 executed by the consultant or expert, a current
2 curriculum vitae or resume of the consultant or expert, a description of past and
3 present activities, including publications, and a list of all non-confidential
4 consulting engagements undertaken by the consultant or expert, as well as any
5 cases in which he or she has offered testimony during the past four (4) years. If
6 the Designating Party has good cause to object to the disclosure to the expert or
7 consultant (which does not include challenging his or her qualifications or
8 contemplated work), it shall be entitled to object to such disclosure to the
9 consultant or expert in writing within five (5) business days after receipt of the
10 Receiving Party's written notification, stating specifically the reasons why such
11 consultant or expert should not receive the Designated Material. If the Parties
12 are unable to resolve on their own a dispute concerning disclosure of
13 Designated Material to a consultant or expert within ten (10) days after service
14 of the objection, the Designating Party has the burden to apply to the Court,
15 within ten (10) business days after an unsuccessful meet and confer for an
16 Order that such disclosure is improper. No disclosure of the Designated
17 Material shall be made to the consultant or expert until the Designating Party's
18 time for serving objections has passed, or, in the event that the Designating
19 Party timely serves a written objection and timely files a motion with the Court,
20 until the time as the Court has made a ruling thereon, and then, only in
21 accordance with such ruling. If the Designating Party fails to object to such
22 disclosure or fails to raise the objection with the Court within the prescribed
23 periods outlined above, the expert or consultant proposed shall be deemed
24 approved, but that shall not preclude the Designating Party from later objecting
25 to continued access by that expert or consultant where a new basis for objection
26 is subsequently learned by the Designating Party;

27 (c) the author of the Highly Confidential Information and anyone
28 shown as having received the Highly Confidential Information in the ordinary

1 course of business;

2 (d) court reporters, stenographers, videographers, and any other
3 persons preparing transcripts of depositions;

4 (e) the Court, Court personnel, and jurors or potential jurors;

5 (f) litigation support personnel retained by outside counsel to perform
6 functions relating to this action such as photocopying, scanning, stenography,
7 videography, imaging, translation/interpretation from one language to another,
8 the preparation of graphics or demonstratives, and the processing and
9 production of documents;

10 (g) mock jurors and/or trial or jury consultants engaged by either Party
11 in preparation for trial, provided that (i) no Party will use any mock juror who is
12 employed or affiliated with or who knows any person employed by or affiliated
13 with any Party; (ii) the mock jurors will not be allowed to retain any tangible
14 materials that contain or disclose any Designated Material; and (iii) mock jurors
15 first agree in writing to maintain the confidentiality of any materials and
16 information provided to them in connection with being a mock juror; and

17 (h) any other person only upon order of the Court or upon stipulation
18 of the Designating Party, in writing or on the record of a deposition, hearing or
19 trial.

20 5. Notwithstanding paragraphs 3 and 4 above, a Party may disclose
21 CONFIDENTIAL or HIGHLY CONFIDENTIAL information to (i) any employee of
22 the Designating Party; (ii) former employees of the Designating Party, so long as they
23 were employed by the Designating Party as of the date of the document or thing, and
24 the Party has a reasonable belief that the employee was aware or had knowledge of the
25 subject matter contained in the document or thing during their employment; or (iii) any
26 person who authored or received the information in whole or in part, including as
27 indicated on the face of the document or thing.

28 6. Persons who are authorized to review Designated Materials and are subject

1 to this order shall hold such materials in confidence and shall not disclose their contents,
2 either verbally or in writing, to any person not otherwise authorized to receive such
3 information under this Protective Order. Copies of Designated Materials shall be made
4 only to the extent necessary to facilitate permitted use under this Protective Order.

5 7. The recipient of Designated Materials provided under this Order shall
6 exercise the same standard of due and proper care with respect to the storage, custody,
7 use and/or dissemination of such information as is exercised by the recipient with
8 respect to its own proprietary information. Designated Materials shall not be copied,
9 reproduced, summarized or abstracted, except to the extent that such copying,
10 reproduction, summarization or abstraction is reasonably necessary for purposes related
11 to this lawsuit. All such copies, reproductions, summaries, extracts, and abstracts shall
12 be subject to the terms of the Order, and labeled in the same manner as the Designated
13 Materials on which they are based.

14 8. In the event a Party deems it necessary or appropriate to disclose any
15 Materials designated as “CONFIDENTIAL” to any person not specified in paragraph
16 3, to disclose any Discovery Material designated as “HIGHLY CONFIDENTIAL” to
17 any person not specified in paragraph 4 (the “Proposed Disclosure”), or to disclose any
18 Discovery Material to any person who does not qualify under paragraph 5, that party
19 shall notify counsel for the Designating Party in writing of: (i) the Designated Materials
20 it wishes to disclose, and (ii) the person or persons to whom such disclosure is to be
21 made. In the event the Disclosing Party does not consent to the Proposed Disclosure
22 within seven (7) days of receipt of the redesignation request, the party requesting the
23 Proposed Disclosure may petition the Court for an order permitting the Proposed
24 Disclosure. Counsel shall obtain from all persons to whom disclosures are made
25 pursuant to this paragraph a written acknowledgement in the form of Exhibit 1 hereto,
26 that such person or persons have reviewed a copy of this Protective Order, will comply
27 with its terms in all respects and will submit to the jurisdiction of this Court for
28 adjudication of any dispute about whether such person or persons have complied with

1 the terms of this Protective Order.

2 9. Disclosing parties shall designate Discovery Materials
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as follows:

4 (a) In the case of documents, interrogatory answers, responses to
5 requests to admit, and the information contained therein, designation shall be
6 made by placing one of the following legends on every confidential or highly
7 confidential page of any such document prior to production, as appropriate:
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL;”

9 (b) In the case of testimony provided during a deposition, transcripts or
10 portions thereof shall be designated by the Designating Party either (i) on the
11 record during the deposition or hearing or (ii) by written notice to the reporter
12 and all counsel of record within twenty-one (21) days after the reporter notifies
13 the Parties that the certified or final transcript is available for review. In either
14 case, the final transcript shall be appropriately marked, as directed by the
15 Designating Party. To the extent that only a portion of the transcript is designated
16 as containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” materials,
17 the transcript of the “Designated Materials” shall be bound in one or more
18 separate volumes marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
19 as appropriate. If a portion of a deposition is designated as Designated Materials
20 during the course of a deposition, counsel may request all persons, except persons
21 entitled to receive Designated Materials pursuant to this Protective Order, to
22 leave the room while the deposition is proceeding until completion of the answer
23 or answers containing Designated Materials. Pending such designation by
24 counsel, the entire transcript, including exhibits, shall be deemed “HIGHLY
25 CONFIDENTIAL.” If no designation is made within twenty-one (21) days after
26 receipt of a certified or final transcript from the court reporter, the transcript shall
27 be considered not to contain any Designated Materials;

28 (c) Transcripts of depositions or documentation produced in the action

1 will not be filed with the Court unless it is necessary to do so for purposes of trial,
2 motions for summary judgment, or other matters. The parties shall use their best
3 efforts to include Designated Materials in Court filings only when absolutely
4 necessary, and shall, to the extent possible, file redacted versions of sealed filings
5 that redact any portions of those filings that contain or reflect Designated
6 Materials. If a motion to seal is pending, any materials filed under seal shall
7 remain under seal and shall not be disclosed to any person other than Court
8 personnel, opposing counsel, and any other person permitted under the terms of
9 this Protective Order to have access to the sealed materials until the Court has
10 ruled on that motion. If the Court grants the motion to file under seal, the
11 documents shall remain under seal and shall not be disclosed except as provided
12 in this Protective Order or other Court Order. A complete, unredacted set of
13 documents filed under seal shall be provided by the filing party to opposing
14 counsel.

15 (d) Any Designated Materials produced in a non-paper media (e.g.
16 videotape, audiotape, computer disk, etc.) may be designated by labeling the
17 outside of such non-paper media as “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL.” In the event a party receiving information designated as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” (a “Receiving Party”)
20 generates any “hard copy,” transcription, or printout from any such designated
21 non-paper media, such party must stamp each confidential or highly confidential
22 page “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and the hard copy,
23 transcription or printout shall be treated as it is designated.

24 10. A Designating Party’s inadvertent failure to designate qualified
25 information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” does not
26 waive the Designating Party’s right to secure protection under this Order for such
27 materials. If the Designating Party discovers that information should have been but was
28 not appropriately designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,”

1 the Designating Party must promptly notify all other Parties in writing in order to secure
2 protection under this Order. Upon notification, the Receiving Party must make
3 reasonable efforts to assure that the Designated Materials are treated in accordance with
4 the updated designations by the Designating Party.

5 11. A party who has designated information as CONFIDENTIAL or HIGHLY
6 CONFIDENTIAL may withdraw the designation by written notification to all other
7 parties.

8 12. A party shall not be obligated to challenge the propriety of a
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation at the time made,
10 and failure to do so shall not preclude a subsequent challenge thereto at any time
11 consistent with the court’s scheduling order. In the event that any party to this litigation
12 disagrees with such designation, such party shall provide to the Designating Party
13 written notice of its disagreement with the designation. The parties shall first try to
14 dispose of such dispute in good faith on an informal basis within ten (10) business days
15 of notice of the disagreement unless a different time period is agreed upon by counsel.
16 If the dispute has not been resolved within this time period, the party seeking to de-
17 designate the information may within ten (10) business days initiate preparation of the
18 joint stipulation pursuant to L.R. 37-2.2. Completion and filing of the joint stipulation
19 shall be as set forth in L.R. 37-2.2. If the disputing party does not initiate preparation
20 of the joint stipulation within that time, the objection shall be deemed waived and the
21 information shall remain as designated by the Designating Party. The burden of proving
22 that information has been properly designated as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL” is on the Designating Party. Discovery Material designated as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall retain their designation
25 until such time as either: (a) the parties expressly agree otherwise in writing, or (b) the
26 Court orders otherwise.

27 13. In the event that any Designated Materials are used in any Court
28 proceeding in connection with this litigation (other than trial), it shall not lose its

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” status through such use, and the
2 parties shall take all steps reasonably required to protect its confidentiality during such
3 use.

4 14. In the event the case proceeds to trial, a separate order must be entered by
5 this Court governing the confidentiality of any Discovery Material designated as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

7 15. If Designated Materials are inadvertently disclosed to any person other
8 than in the manner authorized by this Order, the person responsible for the disclosure
9 must immediately bring all pertinent facts relating to such disclosure to the attention of
10 counsel for the Designating Party and, without prejudice to any other rights and
11 remedies of the parties, make every effort to prevent further disclosure by it or by the
12 person who was the recipient of such information.

13 16. In the event any Receiving Party having possession, custody or control of
14 any Discovery Materials provided by the Designating Party receives a subpoena or other
15 process or order to produce in another legal proceeding the Discovery Materials, such
16 Receiving Party shall notify counsel for the Designating Party of the subpoena or other
17 process or order, furnish counsel for the Designating Party with a copy of said subpoena
18 or other process or order unless prohibited by law, and cooperate with respect to all
19 reasonable procedures sought to be pursued by the Designating Party whose interests
20 may be affected. The Designating Party shall have the burden of defending against such
21 subpoena, process or order. The Receiving Party shall be entitled to comply with the
22 subpoena or other process or order except to the extent the Designating Party is
23 successful in obtaining an order modifying or quashing the subpoena or other process
24 or order.

25 17. Producing or receiving information designated as “CONFIDENTIAL” or
26 “HIGHLY CONFIDENTIAL” or otherwise complying with the terms of this Protective
27 Order shall not:

28 (a) operate as an admission by any party that any material designated

1 by another party or non-party actually contains or reflects confidential
2 information;

3 (b) reduce in any way the rights of the parties or non-parties from whom
4 discovery may be sought to object to a request for discovery or to the production
5 of documents or materials that they may consider not subject to discovery or
6 subject to a claim of privilege and thus immune from discovery;

7 (c) prejudice in any way the rights of any party to object to the
8 authenticity or admissibility of any document, materials, or testimony that is
9 subject to this Protective Order;

10 (d) prejudice in any way the rights of any party to seek a determination
11 by the Court as to the appropriateness of a designation; and/or

12 (e) prevent the parties from agreeing to alter or waive the protections or
13 remedies provided in this Protective Order with respect to any particular
14 Designated Materials or Discovery Materials, provided that such agreement,
15 alteration, or waiver is in writing and signed by both parties. Any such alteration
16 will not have the force or effect of a court order.

17 18. This Protective Order is without prejudice to the right of any party to seek
18 relief from the Court, upon good cause shown, from any of the provisions contained in
19 this Protective Order.

20 19. Nothing contained herein shall preclude a producing entity or person from
21 using his, her, or its own confidential information, documents, or materials in any
22 manner he, she, or it sees fit, or from revealing such confidential information,
23 documents, or materials to whomever he, she, or it chooses.

24 20. After termination of this action, the restrictions on the communication and
25 disclosure provided for herein shall continue to be binding upon the parties and all other
26 persons to whom Designated Materials or information contained therein have been
27 communicated or disclosed pursuant to the provisions of this Protective Order or any
28 other Order of this Court. The Court shall retain continuing jurisdiction to enforce the

1 terms of this Protective Order.

2 21. All Designated Material subject to this Protective Order shall be returned
3 to the Designating Parties upon termination of this action or destroyed. Termination of
4 this action shall be taken and construed as the date forty-five (45) days following (a)
5 the filing of a stipulated dismissal or the entry of a voluntary dismissal; (b) a final non-
6 appealable order disposing of this case; or (c) the expiration of the time for any appeal.
7 Upon such termination, counsel of record for the Receiving Party shall notify counsel
8 for the Designating Party of compliance. Counsel for the Receiving Party shall make a
9 reasonable effort to retrieve any documents or information subject to this Protective
10 Order from any person to whom such information has been given, and shall notify
11 counsel for the Designating Party of the failure to retrieve any such information.

12 Such information shall include descriptive detail of any document not returned
13 or destroyed. Nothing in this paragraph shall preclude outside counsel from retaining
14 after termination of this action one copy of (a) pleadings, motions, and memoranda filed
15 with the Court; and (b) deposition, hearing and trial transcripts and exhibits, provided,
16 however, that such counsel may not disclose retained materials that contain Designated
17 Materials to any unauthorized person and shall keep such retained materials in a manner
18 reflecting their confidential nature.

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22 SO ORDERED:

23 DATED: January 29, 2019



24 Honorable Jean P. Rosenbluth
25 United States Magistrate Judge
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EXHIBIT 1

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of EDGEWELL PERSONAL CARE BRANDS, LLC and INTERNATIONAL REFILLS COMPANY, LTD. v. MUNCHKIN, INC., Case No. 2-18-CV-03005-PSG-JPR. I agree to comply with and to be bound by all the terms of the Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

Date: _____

Signature: _____