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 11 Attorneys for Plaintiff
 LES CONCIERGES, INC.,

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 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

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 17 LES CONCIERGES, INC., a California
 corporation,

18 Plaintiff,

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 20 vs.

21 MARK ROBESON, an individual; LES
 22 CONCIERGES SERVICES PVT. LTD. an
 Indian corporation; CLUB CONCIERGE
 23 SERVICES, INC., a Delaware corporation;
 and CLUB CONCIERGE LOYALTY
 24 SERVICES, INC., a business organization of
 unknown form and unknown citizenship,

25 Defendants.

Case No.: CV 09 1510 MMC

STIPULATED PROTECTIVE ORDER

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 STIPULATED PROTECTIVE ORDER

Case No.: CV 09 1510 MMC

1 1. PURPOSES AND LIMITATIONS. Disclosure and discovery activity in this
2 action are likely to involve production of confidential, proprietary, or private information for
3 which special protection from public disclosure and from use for any purpose other than
4 prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and
5 petition the court to enter the following Stipulated Protective Order. The parties acknowledge
6 that this Order does not confer blanket protections on all disclosures or responses to discovery
7 and that the protection it affords extends only to the limited information or items that are
8 entitled under the applicable legal principles to treatment as confidential. The parties further
9 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
10 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and reflects the standards that will be applied when a party
12 seeks permission from the court to file material under seal.

13 2. DEFINITIONS.

14 2.1 **Party:** any party to this action, including all of its officers, directors,
15 employees, consultants, retained experts, and outside counsel (and their support staff).

16 2.2 **Disclosure or Discovery Material:** all items or information, regardless of
17 the medium or manner generated, stored, or maintained (including, among other things,
18 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
19 responses to discovery in this matter.

20 2.3 **“Confidential” Information or Items:** information (regardless of how
21 generated, stored or maintained) or tangible things that qualify for protection under standards
22 developed under F.R.Civ.P. 26(c).

23 2.4 **“Highly Confidential – Attorneys’ Eyes Only” Information or Items:**
24 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
25 nonparty would create a substantial risk of serious injury that could not be avoided by less
26 restrictive means.

27 2.5 **Receiving Party:** a Party that receives Disclosure or Discovery Material
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1 from a Producing Party.

2 2.6 **Producing Party:** a Party or non-party that produces Disclosure or
3 Discovery Material in this action.

4 2.7. **Designating Party:** a Party or non-party that designates information or
5 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
6 Confidential — Attorneys’ Eyes Only.”

7 2.8 **Protected Material:** any Disclosure or Discovery Material that is designated
8 as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

9 2.9. **Outside Counsel:** attorneys who are not employees of a Party but who are
10 retained to represent or advise a Party in this action.

11 2.10 **House Counsel:** attorneys who are employees of a Party.

12 2.11 **Counsel (without qualifier):** Outside Counsel and House Counsel (as well
13 as their support staffs).

14 2.12 **Expert:** a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
16 witness or as a consultant in this action and who is not a past or a current employee of a Party or
17 of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an
18 employee of a Party or a competitor of a Party’s. This definition includes a professional jury or
19 trial consultant retained in connection with this litigation.

20 2.13 **Professional Vendors:** persons or entities that provide litigation support
21 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
22 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
23 subcontractors.

24 3. SCOPE. The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also any information copied or extracted therefrom,
26 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
27 conversations, or presentations by parties or counsel to or in court or in other settings that might
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1 reveal Protected Material.

2 4. DURATION. Even after the termination of this litigation, the confidentiality
3 obligations imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.
7 Each Party or non-party that designates information or items for protection under this Order
8 must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. A Designating Party must take care to designate for protection only those
10 parts of material, documents, items, or oral or written communications that qualify – so that
11 other portions of the material, documents, items, or communications for which protection is not
12 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
13 routinized designations are prohibited. Designations that are shown to be clearly unjustified, or
14 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
15 development process, or to impose unnecessary expenses and burdens on other parties), expose
16 the Designating Party to sanctions. If it comes to a Party’s or a non-party’s attention that
17 information or items that it designated for protection do not qualify for protection at all, or do
18 not qualify for the level of protection initially asserted, that Party or non-party must promptly
19 notify all other parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this
21 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or
22 ordered, material that qualifies for protection under this Order must be clearly so designated
23 before the material is disclosed or produced. Designation in conformity with this Order requires:

24 (a) for information in documentary form (apart from transcripts of
25 depositions or other pretrial or trial proceedings), that the Producing Party affix the
26 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY” at the top of each page that contains protected material. If only a portion or
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1 portions of the material on a page qualifies for protection, the Producing Party also must
2 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins) and must specify, for each portion, the level of protection being asserted (either
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
5 A Party or non-party that makes original documents or materials available for inspection
6 need not designate them for protection until after the inspecting Party has indicated which
7 material it would like copied and produced. During the inspection and before the
8 designation, all of the material made available for inspection shall be deemed “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this Order,
12 then, before producing the specified documents, the Producing Party must affix the
13 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected Material.
15 If only a portion or portions of the material on a page qualifies for protection, the
16 Producing Party also must clearly identify the protected portion(s) (e.g., by making
17 appropriate markings in the margins) and must specify, for each portion, the level of
18 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
22 the record, before the close of the deposition, hearing, or other proceeding, all protected
23 testimony, and further specify any portions of the testimony that qualify as “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify
25 separately each portion of testimony that is entitled to protection, and when it appears
26 that substantial portions of the testimony may qualify for protection, the Party or non-
27 party that sponsors, offers, or gives the testimony may invoke on the record (before the
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1 deposition or proceeding is concluded) a right to have up to 20 days to identify the
2 specific portions of the testimony as to which protection is sought and to specify the level
3 of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are
5 appropriately designated for protection within the 20 days shall be covered by the
6 provisions of this Stipulated Protective Order. Transcript pages containing Protected
7 Material must be separately bound by the court reporter, who must affix to the top of
8 each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering or
10 sponsoring the witness or presenting the testimony.

11 (c) for information produced in some form other than documentary, and
12 for any other tangible items, that the Producing Party affix in a prominent place on the
13 exterior of the container or containers in which the information or item is stored the
14 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY.” If only portions of the information or item warrant protection, the Producing
16 Party, to the extent practicable, shall identify the protected portions, specifying whether
17 they qualify as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items as “Confidential” or “Highly Confidential –
20 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
21 protection under this Order for such material. If material is appropriately designated as
22 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
23 produced, the Receiving Party, on timely notification of the designation, must make reasonable
24 efforts to assure that the material is treated in accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
27 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
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1 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
2 waive its right to challenge a confidentiality designation by electing not to mount a challenge
3 promptly after the original designation is disclosed.

4 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
5 Designating Party's confidentiality designation must do so in good faith and must begin the
6 process by conferring directly (in voice to voice dialogue; other forms of communication are not
7 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
8 explain the basis for its belief that the confidentiality designation was not proper and must give
9 the Designating Party an opportunity to review the designated material, to reconsider the
10 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
11 designation. A challenging Party may proceed to the next stage of the challenge process only if
12 it has engaged in this meet and confer process first.

13 6.3 Judicial Intervention. A Party that elects to press a challenge to a
14 confidentiality designation after considering the justification offered by the Designating Party
15 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
16 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for
17 the challenge. Each such motion must be accompanied by a competent declaration that affirms
18 that the movant has complied with the meet and confer requirements imposed in the preceding
19 paragraph and that sets forth with specificity the justification for the confidentiality designation
20 that was given by the Designating Party in the meet and confer dialogue. The burden of
21 persuasion in any such challenge proceeding shall be on the Designating Party. Until the court
22 rules on the challenge, all parties shall continue to afford the material in question the level of
23 protection to which it is entitled under the Producing Party's designation.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a non-party in connection with this case only for
27 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
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1 disclosed only to the categories of persons and under the conditions described in this Order.

2 When the litigation has been terminated, a Receiving Party must comply with the provisions of
3 section 11, below (FINAL DISPOSITION). Protected Material must be stored and maintained
4 by a Receiving Party at a location and in a secure manner that ensures that access is limited to
5 the persons authorized under this Order.

6 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
8 disclose any information or item designated CONFIDENTIAL only to:

9 (a) the Receiving Party's Outside Counsel, as well as employees of said
10 Counsel to whom it is reasonably necessary to disclose the information for this litigation
11 and who have signed the "Agreement to Be Bound by Protective Order" that is attached
12 hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
15 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

16 (c) experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
18 to Be Bound by Protective Order" (Exhibit A);

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to whom
21 disclosure is reasonably necessary for this litigation and who have signed the "Agreement
22 to Be Bound by Protective Order" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the "Agreement to Be Bound by Protective
25 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions
26 that reveal Protected Material must be separately bound by the court reporter and may not
27 be disclosed to anyone except as permitted under this Stipulated Protective Order;

1 (g) the author of the document or the original source of the information.

2 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by
4 the Designating Party, a Receiving Party may disclose any information or item designated
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

10 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
11 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by
12 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
13 7.4, below, have been followed;

14 (c) the Court and its personnel; (e) court reporters, their staffs, and
15 professional vendors to whom disclosure is reasonably necessary for this litigation and
16 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and (f)
17 the author of the document or the original source of the information. Procedures for
18 Approving Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items to “Experts” (a) Unless otherwise ordered by the court or agreed in
20 writing by the Designating Party, a Party that seeks to disclose to an “Expert” (as defined
21 in this Order) any information or item that has been designated “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a written request to
23 the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL
24 information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
25 forth the full name of the Expert and the city and state of his or her primary residence, (3)
26 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
27 employer(s), (5) identifies each person or entity from whom the Expert has received
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1 compensation for work in his or her areas of expertise or to whom the expert has
2 provided professional services at any time during the preceding five years, and (6)
3 identifies (by name and number of the case, filing date, and location of court) any
4 litigation in connection with which the Expert has provided any professional services
5 during the preceding five years;

6 (d) A Party that makes a request and provides the information specified in
7 the preceding paragraph may disclose the subject Protected Material to the identified
8 Expert unless, within seven court days of delivering the request, the Party receives a
9 written objection from the Designating Party. Any such objection must set forth in detail
10 the grounds on which it is based. (c) A Party that receives a timely written objection must
11 meet and confer with the Designating Party (through direct voice to voice dialogue) to try
12 to resolve the matter by agreement. If no agreement is reached, the Party seeking to make
13 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
14 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court
15 to do so. Any such motion must describe the circumstances with specificity, set forth in
16 detail the reasons for which the disclosure to the Expert is reasonably necessary, assess
17 the risk of harm that the disclosure would entail and suggest any additional means that
18 might be used to reduce that risk. In addition, any such motion must be accompanied by a
19 competent declaration in which the movant describes the parties' efforts to resolve the
20 matter by agreement (i.e., the extent and the content of the meet and confer discussions)
21 and sets forth the reasons advanced by the Designating Party for its refusal to approve the
22 disclosure. In any such proceeding the Party opposing disclosure to the Expert shall bear
23 the burden of proving that the risk of harm that the disclosure would entail (under the
24 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
25 Material to its Expert.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
27 OTHER LITIGATION. If a Receiving Party is served with a subpoena or an order issued in
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1 other litigation that would compel disclosure of any information or items designated in this
2 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
3 ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if
4 possible) immediately and in no event more than three court days after receiving the subpoena
5 or order. Such notification must include a copy of the subpoena or court order. The Receiving
6 Party also must immediately inform in writing the Party who caused the subpoena or order to
7 issue in the other litigation that some or all the material covered by the subpoena or order is the
8 subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this
9 Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or
10 order to issue. The purpose of imposing these duties is to alert the interested parties to the
11 existence of this Protective Order and to afford the Designating Party in this case an opportunity
12 to try to protect its confidentiality interests in the court from which the subpoena or order
13 issued. The Designating Party shall bear the burdens and the expenses of seeking protection in
14 that court of its confidential material – and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
16 another court.

17 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a
18 Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
19 any person or in any circumstance not authorized under this Stipulated Protective Order, the
20 Receiving Party must immediately (a) notify in writing the Designating Party of the
21 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
22 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
23 of this Order, and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25 10. FILING PROTECTED MATERIAL. Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested persons, a
27 Party may not file in the public record in this action any Protected Material. A Party that seeks
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1 to file under seal any Protected Material must comply with Civil Local Rule 79-5.

2 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
3 Producing Party, within sixty days after the final termination of this action, each Receiving
4 Party must return all Protected Material to the Producing Party. As used in this subdivision, "all
5 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
6 reproducing or capturing any of the Protected Material. With permission in writing from the
7 Designating Party, the Receiving Party may destroy some or all of the Protected Material
8 instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving
9 Party must submit a written certification to the Producing Party (and, if not the same person or
10 entity, to the Designating Party) by the sixty day deadline that identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
12 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
13 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
14 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
15 memoranda, correspondence or attorney work product, even if such materials contain Protected
16 Material. Any such archival copies that contain or constitute Protected Material remain subject
17 to this Protective Order as set forth in Section 4 (DURATION), above.

18 12. MISCELLANEOUS.

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

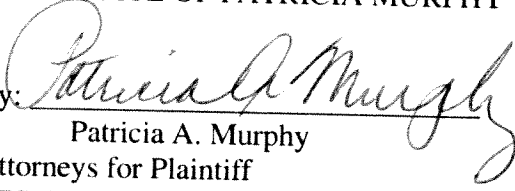
21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order no Party waives any right it otherwise would have to object to disclosing or
23 producing any information or item on any ground not addressed in this Stipulated Protective
24 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
25 the material covered by this Protective Order.
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: April 14, 2009

LAW OFFICE OF PATRICIA MURPHY

By: 
Patricia A. Murphy

Attorneys for Plaintiff
LES CONCIERGES, INC.

Dated: April __, 2009

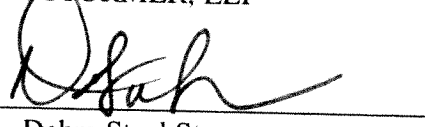
LAZARE POTTER & GIACOVAS LLP

By: 

David E. Potter
Attorneys for Defendants LES CONCIERGES
SERVICES PVT. LTD. and CLUB CONCIERGE
SERVICES, INC.

Dated: April 16, 2009

LERCH STURMER, LLP

By: 

Debra Steel Sturmer
Attorneys for Defendant MARK ROBESON

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 17, 2009



Hon. Maxine M. Chesney
United States District Court 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 read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States District Court
6 for the Northern District of California on _____ [date] in the case of LES
7 CONCIERGES, INC., a California corporation, Plaintiff, vs. MARK ROBESON, an individual;
8 LES CONCIERGES SERVICES PVT. LTD. an Indian corporation; CLUB CONCIERGE
9 SERVICES, INC., a Delaware corporation; and CLUB CONCIERGE LOYALTY SERVICES,
10 INC., a business organization of unknown form and unknown citizenship, Defendants, Case
11 No.: CV 09 1510 MMC. I agree to comply with and to be bound by all the terms of this
12 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
13 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
14 not disclose in any manner any information or item that is subject to this Stipulated Protective
15 Order to any person or entity 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 the
17 Northern District of California for the purpose of enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of this action.

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____
[printed name]

26 Signature: _____
[signature]