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17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 QDOS, INC., a Delaware Corporation,
 20
 21 Plaintiff,

22 vs.

23 JAMES H. DONELL, RECEIVER
 24 FOR J.T. WALLENBROCK &
 25 ASSOCIATES and CITADEL
 26 CAPITAL MANAGEMENT GROUP,
 27 INC.,

28 Defendants.

) Case No.: 8:16-cv-01472-R-KES
) Assigned To: Hon. Manuel Real

) **STIPULATED PROTECTIVE**
) **ORDER**

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

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 **B. GOOD CAUSE STATEMENT**

12 This action is likely to involve trade secrets, trademarks, patents, customer
13 lists, pricing lists and other valuable research, development, commercial,
14 financial, technical and/or proprietary information for which special protection
15 from public disclosure and from use for any purpose other than prosecution of this
16 action is warranted. Such confidential and proprietary materials and information
17 consist of, among other things, confidential business or financial information,
18 information regarding confidential business practices, or other confidential
19 research, development, or commercial information (including information
20 implicating privacy rights of third parties), information otherwise generally
21 unavailable to the public, or which may be privileged or otherwise protected from
22 disclosure under state or federal statutes, court rules, case decisions, or common
23 law. Accordingly, to expedite the flow of information, to facilitate the prompt
24 resolution of disputes over confidentiality of discovery materials, to adequately
25 protect information the parties are entitled to keep confidential, to ensure that the
26 parties are permitted reasonable necessary uses of such material in preparation for
27 and in the conduct of trial, to address their handling at the end of the litigation,
28 and serve the ends of justice, a protective order for such information is justified in

1 this matter. It is the intent of the parties that information will not be designated as
2 confidential for tactical reasons and that nothing be so designated without a good
3 faith belief that it has been maintained in a confidential, non-public manner, and
4 there is good cause why it should not be part of the public record of this case.

5 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
6 **UNDER SEAL**

7 The parties further acknowledge, as set forth in Section 12.3, below, that
8 this Stipulated Protective Order does not entitle them to file confidential
9 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
10 be followed and the standards that will be applied when a party seeks permission
11 from the court to file material under seal.

12 There is a strong presumption that the public has a right of access to judicial
13 proceedings and records in civil cases. In connection with non-dispositive
14 motions, good cause must be shown to support a filing under seal. *See Kamakana*
15 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
16 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
17 *Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
18 protective orders require good cause showing), and a specific showing of good
19 cause or compelling reasons with proper evidentiary support and legal
20 justification, must be made with respect to Protected Material that a party seeks to
21 file under seal. The parties' mere designation of Disclosure or Discovery Material
22 as CONFIDENTIAL does not—without the submission of competent evidence by
23 declaration, establishing that the material sought to be filed under seal qualifies as
24 confidential, privileged, or otherwise protectable—constitute good cause.
25 Further, if a party requests sealing related to a dispositive motion or trial, then
26 compelling reasons, not only good cause, for the sealing must be shown, and the
27 relief sought shall be narrowly tailored to serve the specific interest to be
28 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.

1 2010). For each item or type of information, document, or thing sought to be filed
2 or introduced under seal in connection with a dispositive motion or trial, the party
3 seeking protection must articulate compelling reasons, supported by specific facts
4 and legal justification, for the requested sealing order. Again, competent evidence
5 supporting the application to file documents under seal must be provided by
6 declaration.

7 Any document that is not confidential, privileged, or otherwise protectable
8 in its entirety will not be filed under seal if the confidential portions can be
9 redacted. If documents can be redacted, then a redacted version for public
10 viewing, omitting only the confidential, privileged, or otherwise protectable
11 portions of the document, shall be filed. Any application that seeks to file
12 documents under seal in their entirety should include an explanation of why
13 redaction is not feasible.

14 **2. DEFINITIONS**

15 2.1 Action: This pending federal lawsuit with Case No.: 8:16-cv-01472-
16 R-KES

17 2.2 Challenging Party: A Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: Information (regardless
20 of how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
22 the Good Cause Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
24 their support staff).

25 2.5 Designating Party: A Party or Non-Party that designates information
26 or items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL.”
28

1 2.6 Disclosure or Discovery Material: All items or information,
2 regardless of the medium or manner in which it is generated, stored, or maintained
3 (including, among other things, testimony, transcripts, and tangible things), that
4 are produced or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: A person with specialized knowledge or experience in a
6 matter pertinent to the litigation who has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this Action.

8 2.8 House Counsel: Attorneys who are employees of a party to this
9 Action. House Counsel does not include Outside Counsel of Record or any other
10 outside counsel.

11 2.9 Non-Party: Any natural person, partnership, corporation, association
12 or other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: Attorneys who are not employees of a
14 party to this Action but are retained to represent or advise a party to this Action
15 and have appeared in this Action on behalf of that party or are affiliated with a law
16 firm that has appeared on behalf of that party, and includes support staff.

17 2.11 Party: Any party to this Action, including all of its officers,
18 directors, employees, consultants, retained experts, and Outside Counsel of
19 Record (and their support staffs).

20 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
21 Discovery Material in this Action.

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

26 2.14 Protected Material: Any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL.”
28

1 2.15 Receiving Party: A Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 **3. SCOPE**

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also (1) any information copied or
6 extracted from Protected Material; (2) all copies, excerpts, summaries, or
7 compilations of Protected Material; and (3) any testimony, conversations, or
8 presentations by Parties or their Counsel that might reveal Protected Material.
9 Any use of Protected Material at trial shall be governed by the orders of the trial
10 judge. This Order does not govern the use of Protected Material at trial.

11 **4. DURATION**

12 Once a case proceeds to trial, information that was designated as
13 CONFIDENTIAL or maintained pursuant to this protective order used or
14 introduced as an exhibit at trial becomes public and will be presumptively
15 available to all members of the public, including the press, unless compelling
16 reasons supported by specific factual findings to proceed otherwise are made to
17 the trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81
18 (distinguishing “good cause” showing for sealing documents produced in
19 discovery from “compelling reasons” standard when merits-related documents are
20 part of court record). Accordingly, the terms of this protective order do not extend
21 beyond the commencement of the trial.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for
24 Protection.

25 Each Party or Non-Party that designates information or items for protection
26 under this Order must take care to limit any such designation to specific material
27 that qualifies under the appropriate standards. The Designating Party must
28 designate for protection only those parts of material, documents, items or oral or

1 written communications that qualify so that other portions of the material,
2 documents, items or communications for which protection is not warranted are not
3 swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified or that have been made for
6 an improper purpose (e.g., to unnecessarily encumber the case development
7 process or to impose unnecessary expenses and burdens on other parties) may
8 expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that
10 it designated for protection do not qualify for protection, that Designating Party
11 must promptly notify all other Parties that it is withdrawing the inapplicable
12 designation.

13 5.2 Manner and Timing of Designations.

14 Except as otherwise provided in this Order (see, e.g., second paragraph of
15 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
16 Discovery Material that qualifies for protection under this Order must be clearly
17 so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix at a minimum, the legend
22 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
23 that contains protected material. If only a portion of the material on a page
24 qualifies for protection, the Producing Party also must clearly identify the
25 protected portion(s) (e.g., by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for
27 inspection need not designate them for protection until after the inspecting
28 Party has indicated which documents it would like copied and produced.

1 During the inspection and before the designation, all of the material made
2 available for inspection shall be deemed “CONFIDENTIAL.” After the
3 inspecting Party has identified the documents it wants copied and produced,
4 the Producing Party must determine which documents, or portions thereof,
5 qualify for protection under this Order. Then, before producing the
6 specified documents, the Producing Party must affix the “CONFIDENTIAL
7 legend” to each page that contains Protected Material. If only a portion of
8 the material on a page qualifies for protection, the Producing Party also
9 must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 (b) for testimony given in depositions that the Designating Party identifies
12 the Disclosure or Discovery Material on the record, before the close of the
13 deposition all protected testimony.

14 (c) for information produced in some form other than documentary and for
15 any other tangible items, that the Producing Party affix in a prominent place
16 on the exterior of the container or containers in which the information is
17 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
18 information warrants protection, the Producing Party, to the extent
19 practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate.

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

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges.

3 Any Party or Non-Party may challenge a designation of confidentiality at
4 any time that is consistent with the Court’s Scheduling Order.

5 6.2 Meet and Confer.

6 The Challenging Party shall initiate the dispute resolution process under
7 Local Rule 37.1 et seq.

8 6.3 The burden of persuasion in any such challenge proceeding shall be
9 on the Designating Party. Frivolous challenges, and those made for an improper
10 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
11 parties) may expose the Challenging Party to sanctions. Unless the Designating
12 Party has waived or withdrawn the confidentiality designation, all parties shall
13 continue to afford the material in question the level of protection to which it is
14 entitled under the Producing Party’s designation until the Court rules on the
15 challenge.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 7.1 Basic Principles.

18 A Receiving Party may use Protected Material that is disclosed or produced
19 by another Party or by a Non-Party in connection with this Action only for
20 prosecuting, defending or attempting to settle this Action. Such Protected
21 Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the Action has been terminated, a
23 Receiving Party must comply with the provisions of section 13 below (FINAL
24 DISPOSITION).

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

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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated

4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
6 as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this Action;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom
11 disclosure is reasonably necessary for this Action and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional
16 Vendors to whom disclosure is reasonably necessary for this Action and
17 who have signed the “Acknowledgment and Agreement to Be Bound”
18 (Exhibit A);

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the
21 information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the
24 deposing party requests that the witness sign the form attached as Exhibit 1
25 hereto; and (2) they will not be permitted to keep any confidential
26 information unless they sign the “Acknowledgment and Agreement to Be
27 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
28 ordered by the court. Pages of transcribed deposition testimony or exhibits

1 to depositions that reveal Protected Material may be separately bound by
2 the court reporter and may not be disclosed to anyone except as permitted
3 under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement
6 discussions.

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

9 If a Party is served with a subpoena or a court order issued in other
10 litigation that compels disclosure of any information or items designated in this
11 Action as “CONFIDENTIAL,” that Party must:

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

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

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

21 If the Designating Party timely seeks a protective order, the Party served
22 with the subpoena or court order shall not produce any information designated in
23 this action as “CONFIDENTIAL” before a determination by the court from which
24 the subpoena or order issued, unless the Party has obtained the Designating
25 Party’s permission. The Designating Party shall bear the burden and expense of
26 seeking protection in that court of its confidential material and nothing in these
27 provisions should be construed as authorizing or encouraging a Receiving Party in
28 this Action to disobey a lawful directive from another court.

1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
5 information produced by Non-Parties in connection with this litigation is
6 protected by the remedies and relief provided by this Order. Nothing in
7 these provisions should be construed as prohibiting a Non-Party from
8 seeking additional protections.

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

- 13 (1) promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a
15 confidentiality agreement with a Non-Party;
16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this Action, the relevant discovery request(s), and
18 a reasonably specific description of the information requested; and
19 (3) make the information requested available for inspection by the
20 Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court within
22 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information
24 responsive to the discovery request. If the Non-Party timely seeks a
25 protective order, the Receiving Party shall not produce any information in
26 its possession or control that is subject to the confidentiality agreement with
27 the Non-Party before a determination by the court. Absent a court order to
28

1 the contrary, the Non-Party shall bear the burden and expense of seeking
2 protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
4 **MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
9 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
10 inform the person or persons to whom unauthorized disclosures were made of all
11 the terms of this Order, and (d) request such person or persons to execute the
12 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
13 A.

14 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
15 **OTHERWISE PROTECTED MATERIAL**

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

26 **12. MISCELLANEOUS**

27 **12.1 Right to Further Relief.**

1 Nothing in this Order abridges the right of any person to seek its
2 modification by the Court in the future.

3 **12.2 Right to Assert Other Objections.**

4 By stipulating to the entry of this Protective Order, no Party waives any
5 right it otherwise would have to object to disclosing or producing any information
6 or item on any ground not addressed in this Stipulated Protective Order.

7 Similarly, no Party waives any right to object on any ground to use in evidence of
8 any of the material covered by this Protective Order.

9 **12.3 Filing Protected Material.**

10 A Party that seeks to file under seal any Protected Material must comply
11 with Local Civil Rule 79-5. Protected Material may only be filed under seal
12 pursuant to a court order authorizing the sealing of the specific Protected Material
13 at issue. If a Party's request to file Protected Material under seal is denied by the
14 court, then the Receiving Party may file the information in the public record
15 unless otherwise instructed by the court.

16 **13. FINAL DISPOSITION**

17 After the final disposition of this Action, as defined in paragraph 4, within
18 60 days of a written request by the Designating Party, each Receiving Party must
19 return all Protected Material to the Producing Party or destroy such material,
20 except to the extent that James H. Donell, Receiver, is required either by court
21 order or by virtue of his duties as a Receiver appointed by the United States
22 District Court to retain any such Protected Material, he shall be entitled to refuse
23 to comply with such a written request by notifying QDOS, Inc. in writing of such
24 refusal within five court days. QDOS, Inc. shall file any objection to such refusal
25 within ten court days of receiving notice of such refusal. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

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

13 **14. VIOLATION**

14 Any violation of this Order may be punished by appropriate measures
15 including, without limitation, contempt proceedings and/or monetary sanctions.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED: October 7, 2016

18 TURNER & MODARELLI PC

19 

20 By: Anthony C. Modarelli
21 Attorney for Plaintiff, QDOS, Inc.

22
23 DATED: October 7, 2016

24 ERVIN COHEN & JESSUP LLP

25 /s/ Byron Z. Moldo

26 By: Byron Z. Moldo
27 Attorneys for Defendant, James H. Donell,
28 Receiver

1 As the filer of this document, I attest that all other signatories listed on
2 whose behalf the filing is submitted, concur in the filing's content and have
3 authorized the filing.

4 DATED: October 7, 2016

TURNER & MODARELLI, PC

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7 By: Anthony C. Modarelli Attorney for
8 Plaintiff, QDOS, Inc.

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10
11 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

12
13 DATED: October 11, 2016

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16 HON. MANUEL L. REAL

17 United States District Court Judge
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