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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CASE NO. C 06 7754 SBA

HELIO LLC

Plaintiff,

vs.

PALM, INC.

Defendant.

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

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

1 2. **DEFINITIONS**

2 2.1 Party: any party to this action, including all of its officers, directors,
3 employees, consultants, retained experts, and outside counsel (and their support staff).

4 2.2 Disclosure or Discovery Material: all items or information, regardless of the
5 medium or manner generated, stored, or maintained (including, among other things, testimony,
6 transcripts, or tangible things) that are produced or generated in disclosures or responses to
7 discovery in this matter.

8 2.3 "Confidential" Information or Items: information (regardless of how
9 generated, stored or maintained) or tangible things that qualify for protection under standards
10 developed under F.R.Civ.P. 26(c)

11 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:
12 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-
13 party would create a substantial risk of serious injury that could not be avoided by less restrictive
14 means.

15 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
16 a Producing Party.

17 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
18 Material in this action.

19 2.7 Designating Party: a Party or non-party that designates information or items
20 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential
21 — Attorneys' Eyes Only."

22 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
23 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

24 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
25 retained to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
28 their support staffs).

1 2.12 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
4 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee
5 of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant
6 retained in connection with this litigation.

7 2.13 Professional Vendors: persons or entities that provide litigation support
8 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
9 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
10 subcontractors.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also any information copied or extracted there from, as well as all copies,
14 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
15 parties or counsel to or in court or in other settings that might reveal Protected Material.

16 **4. DURATION**

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

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
22 Party or non-party that designates information or items for protection under this Order must take
23 care to limit any such designation to specific material that qualifies under the appropriate standards.
24 A Designating Party must take care to designate for protection only those parts of material,
25 documents, items, or oral or written communications that qualify – so that other portions of the
26 material, documents, items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this Order.

28

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

5 If it comes to a Party's or a non-party's attention that information or items that it
6 designated for protection do not qualify for protection at all, or do not qualify for the level of
7 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
8 withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
11 material that qualifies for protection under this Order must be clearly so designated before the
12 material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (apart from transcripts of
15 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each
17 page that contains protected material. If only a portion or portions of the material on a page qualifies
18 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
19 making appropriate markings in the margins) and must specify, for each portion, the level of
20 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
21 ATTORNEYS' EYES ONLY").

22 A Party or non-party that makes original documents or materials available for
23 inspection need not designate them for protection until after the inspecting Party has indicated
24 which material it would like copied and produced. During the inspection and before the
25 designation, all of the material made available for inspection shall be deemed "HIGHLY
26 CONFIDENTIAL –ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which documents,
28 or portions thereof, qualify for protection under this Order, then, before producing the specified

1 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
2 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") on each page that contains
3 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
4 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins) and must specify, for each portion, the level of protection being asserted
6 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

7 (b) for testimony given in deposition or in other pretrial or trial
8 proceedings: such testimony may be designated in whole or in part, as "Confidential" or
9 "Confidential-Attorneys' Eyes Only" Information by (i) oral designation on the record, in which case
10 the person making the designation shall instruct the Court Reporter to bind the "Confidential" and
11 "Highly Confidential-Attorneys' Eyes Only" portion of the deposition transcript separately and to
12 stamp the words "Confidential" or "Highly Confidential-Attorneys' Eyes Only," as appropriate, on
13 each transcript page so designated; or (ii) by written notice of such designation sent by counsel to all
14 parties within seven (7) days after receipt by designating counsel of the transcript of the deposition.
15 The parties shall treat all testimony as "Highly Confidential-Attorneys' Eyes Only" hereunder until
16 the expiration of seven (7) days after the deposition transcript becomes available to counsel. If any
17 document or information designated as "Confidential" or "Highly Confidential-Attorneys' Eyes
18 Only" is used during the course of a deposition, that portion of the deposition record reflecting such
19 confidential information shall be sealed and stamped with the designated degree of confidentiality,
20 and access shall be limited pursuant to the other terms of this Protective Order.

21
22 (c) for information produced in some form other than documentary, and
23 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
24 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information
26 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
27 portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Attorneys'
28 Eyes Only."

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified testimony, information, documents or items as “Confidential” or “Highly
3 Confidential – Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right
4 to secure protection under this Order for such material. If material is appropriately designated as
5 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
6 produced, the Receiving Party, on timely notification of the designation, must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
10 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
11 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
12 its right to challenge a confidentiality designation by electing not to mount a challenge promptly after
13 the original designation is disclosed.

14 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
15 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
16 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
17 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
18 that the confidentiality designation was not proper and must give the Designating Party an
19 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
20 designation is offered, to explain the basis for the chosen designation. A challenging Party may
21 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
22 process first.

23 6.3 Judicial Intervention. A Party that elects to press a challenge to a
24 confidentiality designation after considering the justification offered by the Designating Party may
25 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
26 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
27 Each such motion must be accompanied by a competent declaration that affirms that the movant has
28 complied with the meet and confer requirements imposed in the preceding paragraph and that sets

1 forth with specificity the justification for the confidentiality designation that was given by the
2 Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the Producing Party's
6 designation.

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

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a non-party in connection with this case only for
10 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
11 disclosed only to the categories of persons and under the conditions described in this Order. When
12 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
19 disclose any information or item designated CONFIDENTIAL only to:

20 (a) the Receiving Party's Outside Counsel of record in this action, as well
21 as employees of said Counsel.

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

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

28 (d) the Court and its personnel;

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

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

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

10 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

11 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

14 (a) the Receiving Party's Outside Counsel of record in this action, as well
15 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
16 litigation;

17 (b) House Counsel of a Receiving Party (1) who has no involvement in
18 competitive decision-making or advertising strategy (as distinguished from legal approval of
19 advertising or advertising strategy), (2) to whom disclosure is reasonably necessary for this
20 litigation, and (3) who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A).

21 Each party shall be entitled to designate one (1) such in-house attorney and shall provide opposing
22 counsel with an executed copy of Exhibit A upon such designation and five (5) business days prior
23 to disclosure of material to so designated House Counsel. Should any dispute arise with respect to
24 the identity of such house counsel, the parties agree to negotiate in good faith to resolve the dispute.
25 Nothing herein shall prevent a party from seeking a protective order or other relief with respect to
26 disclosure to such house counsel should grounds so exist

27 (c) Experts (as defined in this Order) (1) to whom disclosure is
28 reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by

1 Protective Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below,
2 have been followed;

3 (d) the Court and its personnel;

4 (e) court reporters, their staffs, and professional vendors to whom
5 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
6 Bound by Protective Order” (Exhibit A); and

7 (f) the author of the document or the original source of the information.

8 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

10 Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party
11 that seeks to disclose to an “Expert” (as defined in this Order) any information or item that has been
12 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” must (1) provide the
13 name of the expert, the name of the expert’s current employer, and a copy of the Exhibit A signed by
14 the expert to opposing counsel via email; and (2) refrain from providing such materials to the Expert
15 for a period of five (5) business days to permit the opposing Party to object to the disclosure and, if
16 necessary, seek a protective order from the Court. Should any dispute arise with respect to the
17 disclosure of such information to the Expert, the parties agree to negotiate in good faith to resolve
18 the dispute. Nothing herein shall prevent a party from seeking a protective order or other relief with
19 respect to disclosure of confidential materials to an Expert should grounds so exist.

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

22 If a Receiving Party is served with a subpoena or an order issued in other litigation that
23 would compel disclosure of any information or items designated in this action as
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
25 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
26 and in no event more than ten court days after receiving the subpoena or order. Such notification
27 must include a copy of the subpoena or court order. In no event shall the Receiving Party produce
28 any materials in response to any subpoena or court order until such notice has been provided.

1 The Receiving Party also must immediately inform in writing the Party who caused the
2 subpoena or order to issue in the other litigation that some or all the material covered by the
3 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
4 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
5 caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the existence of
7 this Protective Order and to afford the Designating Party in this case an opportunity to try to
8 protect its confidentiality interests in the court from which the subpoena or order issued. The
9 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
10 confidential material – and nothing in these provisions should be construed as authorizing or
11 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

12 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

24 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the
25 Producing Party, within sixty (60) days after the final termination of this action, each Receiving
26 Party must return all Protected Material to the Producing Party. As used in this subdivision, “all
27 Protected Material” includes all copies, abstracts, compilations, summaries or any other form of
28 reproducing or capturing any of the Protected Material. With permission in writing from the

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


12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
14 to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
16 Order no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

20 **SO STIPULATED**

21 DATED: 1/24, 2007

22
23 By 
24 Claude M. Stern
25 Quinn Emanuel Urquhart Oliver & Hedges, LLP
26 Attorneys for Defendant Palm Inc.

27 DATED: 1-24, 2007

28 By _____

KEVIN C. TROCK (HW)

Kevin Trock
K&L Gates LLP
Attorneys for Plaintiff Helio LLC

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SO ORDERED

DATED: . 2007

The Honorable Sandra Brown Armstrong
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ 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 Northern District of
California on [date] in the case of *Helio LLC v. Palm, Inc.* I agree to comply with and to be bound
by all the terms of this 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 this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions
of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____