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7
8 UNITED STATES DISTRICT COURT FOR THE
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 HELIO, LLC,

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13 Plaintiff,

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15 vs.

16 PALM INC.

17 Defendant.
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Case No. C 06-7754 SBA

**DECLARATION OF HAROLD H. DAVIS,
JR. IN SUPPORT OF PLAINTIFF HELIO
LLC'S MOTION FOR PRELIMINARY
INJUNCTION**

Date Filed: December 19, 2006

1 I, Harold H. Davis, do hereby declare as follows:

2 1. I am an attorney duly licensed to practice before the courts in the State of
3 California and this Court, and am an associate with the law firm of Kirkpatrick & Lockhart
4 Preston Gates Ellis LLP, attorneys of record herein for Plaintiff Helio LLC. I am personally
5 familiar with the facts set forth to competently testify to them if required to do so.

6 2. I submit this Declaration in support of Helio's Motion for Preliminary Injunction.

7 3. Attached as Exhibit 1 to this declaration is a true and correct copy of the
8 transcript of the hearing on Helio's Application for a Temporary Restraining order held on
9 December 21, 2006.

10 4. Attached as Exhibit 2 to this declaration are true and correct copies of
11 excerpts from the deposition transcript of Scott Hancock taken on Tuesday, February 27,
12 2007.

13 5. Attached as Exhibit 3 to this declaration are true and correct copies of
14 excerpts from the deposition transcript of AKQA's corporate representative, Julie Patterson,
15 taken on Friday, February 2, 2007.

16 6. Attached as Exhibit 4 to this declaration are true and correct copies of
17 documents labeled PALM 3338, showing the phrase "Treo by Palm" and PALM10214,
18 showing the phrase "Only Looks Serious."

19 7. Attached as Exhibit 5 to this declaration are true and correct copies of
20 documents labeled PALM 003329, an e-mail string between Palm and AKQA employees
21 from during June 2006; a PowerPoint presentation dated "6/21/06" labeled PALM 000035-
22 90; a July 17, 2006 e-mail from Page Murray to Rose Rodd and Scott Hancock labeled
23 PALM 003336-3339, and AKQA 3242, a August 1, 2006 e-mail from Julie Patterson to Bob
24 Pullum regarding the changing Palm advertising campaign.

25 8. Attached as Exhibit 6 to this declaration is a true and correct copy of a Palm
26 organization chart that is labeled PALM 009241.

1 9. Attached as Exhibit 7 to this declaration is a true and correct copy of Helio's
2 Application for a Temporary Restraining Order.

3 10. Attached as Exhibit 8 to this declaration is a true and correct copy of the
4 declaration of Jessica Weeks submitted in support of Helio's Application for a Temporary
5 Restraining Order.

6 11. Attached as Exhibit 9 to this declaration is a true and correct copy of the
7 declaration of Kathryn Wheble submitted in support of Helio's Application for a Temporary
8 Restraining Order.

9 12. Attached as Exhibit 10 to this declaration is a true and correct copy of a
10 document titled "Treo Online Advertising" dated August 2, 2006.

11 13. Attached as Exhibit 11 to this declaration is a true and correct copy of a series
12 of June 2006 e-mails labeled PALM 003329-003333.

13 14. Attached as Exhibit 12 to this declaration is a true and correct copy of a July
14 14, 2006 e-mail to Scott Hancock that is labeled PALM 003338.

15 15. Attached as Exhibit 13 to this declaration is a true and correct copy of a series
16 of July 2006 e-mails labeled AKQA 004661-4663.

17 16. Attached as Exhibit 14 to this declaration is a true and correct copy of the
18 declaration of Scott Hancock submitted in opposition to Helio's Application for a Temporary
19 Restraining Order.

20 17. Attached as Exhibit 15 to this declaration are true and correct copies of
21 documents labeled AKQA 5415, 5419, 5220, 5227, 5420, 5422, 5416 and consist of various
22 e-mails sent to and/or from AKQA employees.

23 18. Attached as Exhibit 16 to this declaration is a true and correct copy of an
24 August 15, 2006 e-mail, labeled AKQA 3246, from Gina Cold to "palmteam" regarding
25 Helio's opening of a Helio branded store.

1 19. Attached as Exhibit 17 to this declaration is a true and correct copy of an
2 August 16, 2006 e-mail, labeled AKQA 3249, referencing Helio's retail store, and Palm's
3 advertising strategy in light of Helio's new retail store.

4 20. Attached as Exhibit 18 to this declaration is a true and correct copy of an
5 August 24, 2006 e-mail, labeled AKQA 3244, asking whether to approach Friendster, a
6 social networking website, to create a partnership with Palm along the lines of the "deal
7 MySpace did with Helio".

8 21. Attached as Exhibit 19 to this declaration is are true and correct copies of
9 excerpts from the May 2006 Mobile Services Watch publication, labeled PALM 20458-
10 20493, that was highlighted in the copy produced to Helio.

11 22. Attached as Exhibit 20 to this declaration are true and correct copies of
12 excerpts from the April 2006 Mobile Services Watch publication, labeled PALM 20420,
13 20424, and 20425.

14 23. Attached as Exhibit 21 to this declaration is a true and correct copy of a June
15 16, 2006 e-mail to Julie Peterson from CNet mentioning Helio's Hero device.

16 24. Attached as Exhibit 22 to this declaration is a true and correct copy of a July
17 26, 2006 e-mail from Kate Harris to "palmteam", labeled AKQA 3251, containing a link to an
18 AdWeek article about Helio.

19 25. Attached as Exhibit 23 to this declaration are true and correct copies of
20 November 2006 e-mails from AKQA to Palm which include articles that mention Helio.

21 26. Attached as Exhibit 24 to this declaration is a true and correct copy of a July
22 31, 2006 e-mail scheduling a meeting regarding "Discuss POV on Helio campaign."

23 27. Attached as Exhibit 25 to this declaration is a true and correct copy of August
24 9, 2006 e-mail from Kate Harris, an AKQA employee, regarding "Not Just a tell phone".
25 Palm's "Not Just a Cell Phone" advertising did not stop, and is still being published within
26 this district. For example:

1 28. Attached as Exhibit 26 to this declaration is a true and correct copy of a
2 document entitled "Palm OOH Rotation", dated December 19, 2006 and labeled PALM
3 023007-023010 .

4 29. Attached as Exhibit 27 to this declaration is a true and correct copy of a
5 document with the tag "Media Plan Master" and labeled PALM 015584-15612.

6 30. Attached as Exhibit 28 to this declaration is a true and correct copy of a series
7 of e-mails labeled PALM 002519-2523 .

8 31. Attached as Exhibit 29 to this declaration is a true and correct copy of a
9 document titled "Palm Treo 680 Launch Campaign Activity" that is labeled PALM 021614-
10 21617 .

11 32. Attached as Exhibit 30 to this declaration is a true and correct copy of a
12 December 12, 2006 BrandWeek article by Gregory Solman entitled "Fresh Push Begins for
13 Palm's Treo 680.

14 33. Attached as Exhibit 31 to this declaration is a true and correct copy of a
15 December 14, 2006 MediaPost article by Emily Burg entitled "Palm Launches \$25 Million
16 Campaign For Treo".

17 34. Attached as Exhibit 32 to this declaration is a true and correct copy of a
18 December 11, 2006 article by Michael Kwan, entitled "Palm Goes viral, markets the new
19 Treo 680 smartphone" from the website www.mobilemag.com/content/100/333/C10874.

20 35. Attached as Exhibit 33 to this declaration are true and correct copies of three
21 December 2006 e-mails which include the AdWeek article in which Mr. Hancock concedes
22 the similarity between Helio and Palm's advertising.

23 36. Attached as Exhibit 34 to this declaration is a true and correct copy of a
24 November 28, 2006 e-mail from Scott Hancock to all Palm employees worldwide discussing
25 the launch of Palm's "Not Just a Cell Phone" advertising campaign.
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1 37. Attached as Exhibit 35 to this declaration is a true and correct copy of a
2 December 11, 2006 press release I obtained from Palm's website entitled "Palm Kicks Off
3 Worldwide Treo Smartphone Marketing Campaign."

4 38. Attached as Exhibit 36 to this declaration is a true and correct copy of a series
5 of e-mails labeled PALM 2826 through 2827.

6 39. Attached as Exhibit 37 to this declaration is a true and correct copy of a
7 document entitled "Sequence Descriptions", labeled AKQA 004824-4825, that contains a
8 listing of all the different lifestyle features that Palm advertises for its Treo 680 including
9 Fandango, Orbitz, E-Bay, G-mail, Chat, Yahoo Music, Google Maps, and Treo Camera.

10 40. Attached as Exhibit 38 to this declaration is a true and correct copy of a
11 printout from the Palm Treo 680 products page of Palm's website.

12 41. Attached as Exhibit 39 to this declaration is a true and correct copy of a brand
13 equity study commissioned by Helio.

14 42. Attached as Exhibit 40 to this declaration is a true and correct copy of a
15 December 12, 2006 article by William Lozito, entitled "Palm Treo and Helio Follow Same
16 Road", at the website www.namedevelopment.com/blog/.

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18 I declare under penalty of perjury under the laws of the United States of America that
19 the foregoing is true and correct.

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21 Executed this 6th day of March, 2007 in San Francisco.

22 

23 _____
24 Harold H. Davis, Jr.