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

11 HELIO, LLC,

12 Plaintiff,

13 vs.

14 PALM INC.

15 Defendant.

Case No. C 06-7754 SBA

DECLARATION OF HAROLD H. DAVIS, JR. IN SUPPORT OF ADMINISTRATIVE MOTION TO SEAL EXHIBITS

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 Administrative Motion Pursuant
7 to Civ. L.R. 79-5(b) To File Under Seal Documents Designated Attorneys' Eyes Only in this
8 case.

9 3. The documents that Helio asks to be filed under seal are Exhibits 4-6, 10-13,
10 15-29, 33-34, 36-37, 39 submitted in connection with Helio's Motion for a Preliminary
11 Injunction.

12 4. The documents at issue are Exhibit 4 which contains copies of documents
13 labeled PALM 3338, showing the phrase "Treo by Palm" and PALM10214, showing the
14 phrase "Only Looks Serious."; Exhibit 5 which contains copies of documents labeled PALM
15 003329, an e-mail string between Palm and AKQA employees from during June 2006; a
16 PowerPoint presentation dated "6/21/06" labeled PALM 000035-90; and AKQA 3242, a July
17 17, 2006 e-mail from Page Murray to Rose Rodd and Scott Hancock labeled PALM 003336-
18 3339, and a August 1, 2006 e-mail from Julie Patterson to Bob Pullum regarding the
19 changing Palm advertising campaign; Exhibit 6 which is a copy of a Palm organization chart
20 that is labeled PALM 009241; Exhibit 10 which is a copy of a document titled Treo Online
21 Advertising" dated August 2, 2006; Exhibit 11 which is a copy of a series of June 2006 e-
22 mails labeled PALM 003329-003333; Exhibit 12 which is a copy of a July 14, 2006 e-mail to
23 Scott Hancock that is labeled PALM 003338; Exhibit 13 which is a copy of a series of July
24 2006 e-mails labeled AKQA 004661-4663; Exhibit 15 which contains copies of documents
25 labeled AKQA 5415, 5419, 5220, 5227, 5420, 5422, 5416 and consist of various e-mails
26 sent to and/or from AKQA employees; Exhibit 16 which is a copy of an August 15, 2006 e-
27 mail, labeled AKQA 3246, from Gina Cold to "palmteam" regarding Helio's opening of a
28

1 Helio branded store; Exhibit 17 which is a copy of an August 16, 2006 e-mail, labeled AKQA
2 3249, referencing Helio's retail store, and Palm's advertising strategy in light of Helio's new
3 retail store; Exhibit 18 which is a copy of an August 24, 2006 e-mail, labeled AKQA 3244;
4 Exhibit 19 which is a copy of excerpts from the May 2006 Mobile Services Watch
5 publication, labeled PALM 20458-20493; Exhibit 20 which is copy of excerpts from the April
6 2006 Mobile Services Watch publication, labeled PALM 20420, 20424, and 20425; Exhibit
7 21 which is a copy of a June 16, 2006 e-mail to Julie Peterson from CNet mentioning Helio's
8 Hero device; Exhibit 22 which is a copy of a July 26, 2006 e-mail from Kate Harris to
9 "palmteam", labeled AKQA 3778, containing a link to an AdWeek article about Helio; Exhibit
10 23 which contains copies of November 2006 e-mails from AKQA to Palm which include
11 articles that mention Helio; Exhibit 24 which is a copy of a July 31, 2006 e-mail scheduling a
12 meeting regarding "Discuss POV on Helio campaign."; Exhibit 25 which is a copy of August
13 9, 2006 e-mail from Kate Harris, an AKQA employee, regarding "Not Just a tell phone";
14 Exhibit 26 which is a copy of a document entitled "Palm OOH Rotation", dated December
15 19, 2006 and labeled PALM 023007-023010; Exhibit 27 which is a copy of a document with
16 the tag "Media Plan Master" and labeled PALM 015584-15612; Exhibit 28 which is a copy of
17 a series of e-mails labeled PALM 002519-2523; Exhibit 29 which is a copy of a document
18 titled "Palm Treo 680 Launch Campaign Activity" that is labeled PALM 021614-21617;
19 Exhibit 33 which contains copies of three December 2006 e-mails which include the
20 AdWeek article in which Mr. Hancock concedes the similarity between Helio and Palm's
21 advertising; Exhibit 34 which is a copy of a November 28, 2006 e-mail from Scott Hancock
22 to all Palm employees worldwide discussing the launch of Palm's "Not Just a Cell Phone"
23 advertising campaign; Exhibit 36 which is a copy of a series of e-mails labeled PALM 2826
24 through 2827; Exhibit 37 which is a copy of a document entitled "Sequence Descriptions",
25 labeled AKQA 004824-4825, that contains a listing of all the different lifestyle features that
26 Palm advertises for its Treo 680 including Fandango, Orbitz, E-Bay, G-mail, Chat, Yahoo
27
28

1 Music, Google Maps, and Treo Camera; Exhibit 39 which is a true and correct copy of a
2 brand equity study commissioned by Helio.

3 5. The above cited exhibits have been designated "Attorneys' Eyes Only"
4 pursuant to the pending protective order.

5 6. Helio has not taken a position on whether this material actually constitutes
6 "sensitive confidential technical information", but because Palm has designated the material
7 "Attorneys' Eyes Only," and for the purposes of submitting Helio's Preliminary Injunction
8 motion in a timely fashion, Helio has agreed to file the documents under seal for purposes
9 of the motion only.

10 7. Accordingly, Exhibits 4-6, 10-13, 15-29, 33-34, 36-37, 39 constitute "sealable"
11 material within the meaning of Civil Local Rule 79-5(a) at this time, though Helio reserves
12 the right to challenge this designation at a future time.

13
14 I declare under penalty of perjury under the laws of the United States of America that
15 the foregoing is true and correct.

16
17 Executed this 6th day of March, 2007 in San Francisco.

18 

19 _____
20 Harold H. Davis, Jr.