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15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 OAKLAND DIVISION

18 **CASE NO. C 06 7754 SBA**

19 HELIO LLC

20 Plaintiff,

21 vs.

22 PALM, INC.

23 Defendant.

**DECLARATION OF DOUG COLT IN  
 SUPPORT OF DEFENDANT PALM,  
 INC.'S EMERGENCY MOTION TO  
 COMPEL DEPOSITION AND FOR  
 SANCTIONS**

24 I, Doug Colt, declare as follows:

25 1. I am an attorney licensed to practice law in the State of California. I am an  
 26 associate with the law firm of Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel of record  
 27 for Defendant Palm, Inc. in this matter. I make this declaration in support of Palm's Emergency  
 28 Motion to Compel Deposition and for Sanctions. I have personal knowledge of the facts stated  
 herein and if called to testify could and would competently testify thereto.

1           2.       On January 11, 2007, Palm served Helio with a Notice of Deposition pursuant to  
2 Federal Rule of Civil Procedure Rule 30(b)6, and requested testimony on the topics Palm believed  
3 were critical for the preliminary injunction hearing.

4           3.       In a telephone conversation on January 22, 2007, counsel for Helio stated that  
5 Helio would present a total of three witnesses in response to the notice of deposition, but that  
6 Helio was taking the position that Palm could spend only seven hours total among all three  
7 witnesses. I advised Helio's counsel that this position was unsupported by the federal rules, as  
8 well as this Court's order permitting each side to take two depositions.

9           4.       At a minimum, this Court's ruling would have permitted each side to take two  
10 separate depositions for a total of 14 hours under F.R.C.P. Rule 30(d)(2). I communicated this  
11 information to Helio's counsel and requested a stipulation that Palm be permitted a total of 10  
12 hours to depose all three witnesses. I viewed this as a very reasonable compromise, especially  
13 given that Palm would be entitled to 14 hours of deposition by simply serving a second notice of  
14 deposition. Helio's counsel refused to provide this stipulation.

15           5.       During the first week of February 2007, I had several telephone conversations  
16 regarding this issue with Helio's counsel, Kevin Trock. Mr. Trock eventually stated that Helio  
17 would permit Palm to depose Helio's 30(b)(6) witnesses for more than seven hours, provided that  
18 Palm's questioning was "reasonable," in Mr. Trock's opinion. I believed that Mr. Trock would act  
19 in good faith based upon these representations.

20           6.       At no point after the two depositions which took place on February 7, 2007 did  
21 Helio ever contact me or any of Palm's other counsel to advise that Helio would only permit Palm  
22 to spend an additional 1.5 hours with the third remaining witness, Jessica Weeks, whom Palm  
23 believes is the most important witness in this case.

24           7.       Ms. Weeks, one of Helio's senior marketing executives, is the sole Helio employee  
25 to have submitted a declaration in this case, and virtually every aspect of Helio's claim is based  
26 upon that declaration.

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1           8.       On February 27, 2007, Mr. Trock wrote to me and advised that Helio needed to  
2 delay the Weeks deposition, then scheduled for March 2, 2007, until March 9, 2007. I agreed to  
3 this request and the deposition was re-scheduled for 9:00 a.m. on March 9, 2007.

4           9.       On March 8, 2007, I traveled to Los Angeles and stayed overnight in advance of  
5 the deposition scheduled for March 9.

6           10.      On the morning of March 9, 2007, after arriving at the deposition at 9:15 a.m., Mr.  
7 Trock announced that Ms. Weeks would only be presented for a total of 1.5 hours.

8           11.      I advised Mr. Trock that this position was outrageous, especially given the fact that  
9 Helio had over a month in between the Weeks deposition and the previous depositions to inform  
10 Palm that Helio was taking this position, that Helio had made no such effort to contact Palm when  
11 it would have been possible for the parties to meet and confer on the issue.

12          12.      Mr. Trock asked me to "show [him] the law." I responded by reading the Advisory  
13 Committee notes to the 1993 and 2000 Amendments to the Federal Rules into the record,  
14 including the following provisions:

15                   A deposition under Rule 30(b)6 should, for purposes  
16 of this limit [the 10 deposition limit under 30(2)(A)]  
17 be treated as a single deposition even though more  
than one person may be designated to testify. (1993  
Advisory Committee Notes).

18                   Paragraph (2) imposes a presumptive durational  
19 limitation of one day of seven hours for any  
20 deposition....For purposes of this durational limit, the  
deposition of each person designated under Rule  
21 30(b)(6) should be considered a separate deposition.  
(2000 Advisory Committee Notes).

22          13.      Despite the clear language of the rules, Mr. Trock refused to permit the deposition  
23 to proceed and at approximately noon, he and Ms. Weeks left the deposition.

24          14.      I requested that Mr. Trock remain so that the parties could attempt to contact the  
25 Court, but Mr. Trock refused.

26          15.      I expected to spend approximately 5-6 hours deposing Ms. Weeks, and as a result  
27 of the departure of the witness at noon, I was unable to complete many key aspects of the  
28 deposition and was unable to complete approximately 3/5 of the questions I had anticipated for

1 Ms. Weeks. This remaining testimony is critical for Palm to oppose plaintiff's motion for a  
2 preliminary injunction.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is  
4 true and correct.

5 DATED: March 9, 2007

/s/ Doug Colt  
Doug Colt

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7 **ATTESTATION OF E-FILED SIGNATURE**

8 I, Andrea Pallios Roberts, attest that signatory Doug Colt has read and approved the  
9 Declaration of Doug Colt in Support of Defendant Palm, Inc.'s Emergency Motion to Compel  
10 Deposition and for Sanctions, and consents to its filing in this action.  
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13 /s/ Andrea Pallios Roberts  
14 Andrea Pallios Roberts  
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