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Attorneys for Plaintiff HELIO, LLC

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

12 HELIO, LLC,

14 Plaintiff,

15 vs.

17 PALM INC.

18 Defendant.

Case No. C 06-7754 SBA

**PLAINTIFF HELIO, LLC'S EX PARTE  
 APPLICATION FOR ORDER SHORTENING  
 TIME TO HEAR ITS MOTION TO DISMISS;  
 DECLARATION OF KEVIN C. TROCK**

Date Filed: December 19, 2006

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 PLAINTIFF HELIO'S EX PARTE APPLICATION FOR OST; DECLARATION OF  
 KEVIN C. TROCK; Case No. C 06-7754 SBA

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Pursuant to Local Rule 6-3, Defendant Helio, LLC ("Helio") hereby applies for an  
3 Order Shortening Time to hear its motion to dismiss on April 10, 2007, at 1:00 p.m. The  
4 attached declaration of Kevin C. Trock demonstrates that the hearing of the motion to  
5 dismiss on shortened time is necessary because dismissal of this case will obviate the need  
6 for this Court to consider Helio's motion for a preliminary injunction, which is also set for  
7 hearing on April 10. Counsel for Defendant Palm has stipulated to this Application.

8 This Application is supported by the attached Memorandum of Points and Authorities,  
9 the Declaration of Kevin C. Trock, and the Proposed Order.

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Dated: March 21, 2007

KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP

By: 

Deborah Bailey-Wells  
Kevin C. Trock  
Harold H. Davis, Jr.

ATTORNEYS FOR PLAINTIFF  
HELIO, LLC

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. ARGUMENT**

Plaintiff Helio seeks an order shortening time to hear its motion to dismiss. Defendant Palm has stipulated to this request. Declaration of Kevin C. Trock ("Trock Decl.") at ¶ 4. The application is warranted because by Helio now wishes to dismiss this trademark infringement suit given Palm's winding down of its accused advertising campaign.

Helio has pending a motion for preliminary injunction set for hearing on April 10, 2007. Trock Decl. at ¶ 2. Because the granting of Helio's motion to dismiss would obviate the need for the Court to consider the preliminary injunction motion, the parties have agreed to shorten time on the motion to dismiss to April 10. Trock Decl. at ¶ 2.

Furthermore, the parties have proposed to the following briefing schedule on Helio's motion to dismiss:

- 1. Opening Brief: March 21, 2007
- 2. Opposition Brief: March 29, 2007
- 3. Reply Brief: April 5, 2007.

Trock Decl. at ¶ 5.

**II. CONCLUSION**

For the foregoing reasons, Helio requests that the Court grant this Application for an Order Shortening Time to hear its motion to dismiss on April 10, 2007.

Dated: March 21, 2007

KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP

By: \_\_\_\_\_



Deborah Bailey-Wells  
Kevin C. Trock  
Harold H. Davis, Jr.

ATTORNEYS FOR PLAINTIFF  
HELIO, LLC

**DECLARATION OF KEVIN C. TROCK**

I, Kevin C. Trock, declare as follows:

1. I am a partner with the law firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP, counsel of record for Plaintiff Helio, LLC ("Helio") in this action. I make this declaration in support of Helio's ex parte application for an order shortening time to hear its motion to dismiss. I have personal knowledge of the facts herein and if called as a witness could and would competently testify thereto.

2. Helio's primary objective for filing this suit was to stop Palm from infringing Helio's protected trademark, "Don't Call it a Phone," in its current advertising campaign. Helio has pending a motion for preliminary injunction seeking to enjoin Palm from such use. That preliminary injunction motion is set for hearing on April 10, 2007. Palm, however, is now winding down its advertising campaign. Having met its litigation objective, Helio, therefore, seeks to dismiss this case without prejudice.

3. Rather than burden the Court with considering a motion that would be moot if the motion to dismiss is granted, Helio requests that this Court hear the motion to dismiss on April 10, 2007, instead of the motion for a preliminary injunction.

4. On March 20-21, 2007, I communicated with counsel for Palm, and informed them that Helio would be requesting for an order shortening time. Palm's counsel, Mr. Brian Cannon, agreed to stipulate to this motion.

5. Mr. Canon has informed me that Palm wishes to include certain conditions should the Court grant Helio's motion to dismiss. I do not know what those conditions are at this time.

6. The granting of this application will have no effect on the overall schedule of this case as it is still in a preliminary discovery phase and no trial date has been set.

7. The parties have proposed to the following briefing schedule on Helio's motion to dismiss:

1. Opening Brief: March 21, 2007

- 1           2.     Opposition Brief:    March 29, 2007
- 2           3.     Reply Brief:            April 5, 2007

3           I declare under penalty of perjury under the laws of the United States that the  
4 foregoing is true and correct and that this declaration was signed on March 21, 2007 in San  
5 Francisco, California.



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Kevin C. Trock

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