

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NEWPATH NETWORKS, LLC,

Plaintiff,

V.

CITY OF DAVIS, CALIFORNIA,

Defendants.

NO. 2:10-CV-00236-GEB-KJM

ORDER SETTING STATUS  
(PRETRIAL SCHEDULING)  
CONFERENCE

This action has been assigned to Judge Garland E. Burrell, Jr. Pursuant to the provisions of Federal Rule of Civil Procedure 16, IT IS ORDERED that:

1. A status (pretrial scheduling) conference is set for May 24, 2010 at 09:00 AM, before Judge Burrell in Courtroom 10 of the above-entitled court;

2. All parties to the action shall appear by counsel (or in person if acting without counsel; however, pursuant to Local Rule 183, a corporate party or other entity may not appear in propria persona and must appear through counsel);

3. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s) shall serve upon each of the parties named herein, and upon all parties subsequently joined by plaintiff, a copy of this order, and shall file with the Clerk of Court a certificate reflecting such service. Any party who impleads a third party defendant shall serve upon that party a copy of this order, and shall file with the Clerk of Court a certificate reflecting such service;

1 state court and was thereafter removed to this court, the removing  
2 party or parties shall, immediately following such removal, serve  
3 upon each of the other parties named herein and upon all parties  
4 subsequently joined, a copy of this order and shall file with the  
5 Clerk of Court a certificate reflecting such service;

6  
7 5. At least twenty-one (21) calendar days before the  
8 scheduling conference is held, the parties shall confer and develop  
9 a proposed discovery plan, as required by Federal Rule of Civil  
10 Procedure 26(f);

11  
12 6. The parties shall file a Joint Status Report with the  
13 court not later than fourteen (14) days prior to the scheduling  
14 conference.<sup>1</sup> The report shall briefly set forth the views of each  
15 party on the following matters:

16 a) Status of service of process on parties not yet  
17 served;

18 b) Possible joinder of additional parties;<sup>2</sup>

19 c) Anticipated amendment of pleadings;

20 d) The basis for jurisdiction and venue;

21 e) Anticipated motions with suggested dates;

22 f) Anticipated and outstanding discovery;<sup>3</sup>

23 g) A written report outlining the proposed discovery  
24 plan required by Federal Rule of Civil Procedure 26(f). The  
25 discovery plan shall indicate the parties' views and  
26 proposals concerning:

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27 <sup>1</sup> The failure of one or more of the parties to participate in  
28 the preparation of the Joint Status Report does not excuse the other  
parties from their obligation to timely file a status report in  
accordance with this Order. In the event a party fails to participate  
as ordered, the party timely submitting the status report shall  
include a declaration explaining why it was unable to obtain the  
cooperation of the other party or parties.

<sup>2</sup> Plaintiff(s) shall indicate in the Joint Status Report a  
date by when the identities of any "Doe" defendants are expected to be  
discovered. Failure to set forth specific information regarding the  
time Plaintiff(s) needs to identify any "Doe" defendants will be  
deemed an abandonment of any claims against such defendants, and a  
dismissal order will follow.

<sup>3</sup> Federal Rule of Civil Procedure 26 requires, absent a contrary  
stipulation, initial disclosures to be made as provided in that Rule.  
Any objection to the initial disclosures and the basis therefor  
must be included in the Joint Status Report.

1 what changes should be made in the timing,  
2 form, or requirement for disclosures under Rule  
3 26(a), including a statement as to when  
disclosures under subdivision (a) (1) were made  
or will be made;

4 (2) the subjects on which discovery may be  
5 needed, when discovery should be completed, and  
6 whether discovery should be conducted in phases  
or be limited to or focused upon particular  
issues; and

7 (3) what changes should be made in the  
8 limitations on discovery imposed under the  
9 Federal Rules of Civil Procedure or the Local  
Rules, and what other limitations should be  
imposed;

- 10 h) Scheduling of future proceedings, including  
11 suggested timing of the disclosures of expert  
12 witnesses and information required by Rule 26(a)(2),  
completion dates for discovery and law and motion,  
and dates for final pretrial conference and trial;<sup>4</sup>
- 13 i) Estimate of trial time;
- 14 j) Appropriateness of special procedures such as  
15 reference to a special master or agreement to try  
the matter before a magistrate judge pursuant to 28 U.S.C.  
16 § 636(c);
- 17 k) Modification of standard pretrial procedures because  
of the simplicity or complexity of the case;
- 18 l) Whether the case is related to any other case  
19 on file in this district, including the bankruptcy  
courts of this district;
- 20 m) Prospects for settlement, including whether a  
21 settlement conference should be scheduled and  
22 whether the parties will stipulate to the trial  
judge acting as settlement judge;

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23 <sup>4</sup> In completing this portion of the status report, the parties  
24 are advised that Judge Burrell's typical pretrial scheduling  
25 procedures require: 1) that initial expert disclosures be made 150  
26 days prior to the completion of discovery; 2) that rebuttal expert  
27 disclosures be made 120 days prior to the completion of discovery; 3)  
that discovery be completed 90 days prior to the final pretrial  
28 conference; 4) that law and motion is cut off 60 days before the final  
pretrial conference; and 5) that the final pretrial conference will be  
held 90 days before the trial.

7. Following the status conference, a formal order will be issued regarding future proceedings in the case. Requests to modify or vacate any date set forth in the order are not favored and will not be granted absent good cause.

8. The parties are advised that failure to file a Joint Status Report in accordance with this order may result in the imposition of sanctions.

9. The parties are required to immediately notify the courtroom deputy and chambers of any settlement or other disposition of the case. L.R. 160. In addition to notifying chambers orally, the parties shall file a notice of settlement in the Clerk's Office within three (3) days which sets forth a date by which dispositional documents will be filed.

10. Motions shall be filed in accordance with Local Rule 230(b). Opposition papers shall be filed in accordance with Local Rule 230(c). Any party that does not oppose the granting of the motion shall file a statement of non-opposition as required by Local Rule 230(c). The failure to file an opposition or statement of non-opposition in accordance with Local Rule 230(c) may be deemed consent to the granting of the motion and the Court may dispose of the motion summarily. *Brydges v. Lewis*, 18 F.3d 651, 652-53 (9th Cir. 1994).

IT IS SO ORDERED.

DATE: January 29, 2010

GARLAND E. BURRELL, JR.  
UNITED STATES DISTRICT JUDGE

by: /s/ K. Engbretson  
Deputy Clerk