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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 NEWPATH NETWORKS, LLC, A NEW)
JERSEY LIMITED LIABILITY COMPANY,)

12 Plaintiff,)

13 v.)

14)
15 THE CITY OF DAVIS, CALIFORNIA, A)
GENERAL LAW MUNICIPALITY)

16 Defendant.)

Case No. 2:10-CV-00236-GEB-KJM

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANT CITY
OF DAVIS' OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION AND, IN THE
ALTERNATE, REQUEST FOR BOND**

Date: March 8, 2010

Time: 9:00 a.m.

Dept: 10

Judge: Hon. Garland E. Burrell, Jr.

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20 Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant City of Davis ("City")
21 respectfully requests that this Court take judicial notice of the following documents:

22 1. Order Denying Plaintiff's Motion for Summary Judgment filed in *NewPath Networks,*
23 *LLC v. City of Irvine*, U.S. District Court, Central District of California, Case No. SACV 06-550-
24 JVS (ANx) on December 23, 2009. A true and correct copy of the Order is attached hereto as
25 **Exhibit A.**

26 2. City of Davis Resolution No. 10-010, Series 2010, *Resolution Adopting Findings and*
27 *Determinations re: NewPath Networks, LLC's Appeal of Permit Rescission.* A certified copy of
28 Resolution No. 10-010, Series 2010, is attached hereto as **Exhibit B.**

1 3. Exhibit 5 to NewPath's supplemental appeal letter to the City Council, dated January
2 14, 2009 [sic] – pages 03-135 through 03-173 of the agenda packet for the January 19, 2010 appeal
3 meeting before the City Council. A certified copy of Exhibit 5, pages 03-135 through 03-173 of the
4 January 19, 2010 agenda packet, is attached hereto as **Exhibit C**.

5 4. *Petition to the City of Davis City Council to Disallow the Cell Tower Installation in*
6 *Village Homes* submitted to the City Clerk for the January 19, 2010 appeal meeting. A certified
7 copy of the *Petition to the City of Davis City Council to Disallow the Cell Tower Installation in*
8 *Village Homes*, is attached hereto as **Exhibit D**.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 Rule 201 of the Federal Rules of Evidence sets forth the authority of the Court to take
11 judicial notice of adjudicative facts. "A judicially noticed fact must be one not subject to reasonable
12 dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or
13 (2) capable of accurate and ready determination by resort to sources whose accuracy cannot
14 reasonably be questioned." Fed. R. Evid. 201(b). The second alternative refers to facts that,
15 although not generally known, are easily verified. Because the accuracy of these facts is certain,
16 they can be judicially noticed.

17 One type of easily verifiable fact that courts often judicially notice is the official acts of the
18 legislative, executive, and judicial departments of the United States, of any state or political
19 subdivision, or of any other public entity in the United States. Specifically, federal courts may take
20 judicial notice of proceedings in other courts, both within and without federal judicial system, if
21 those proceedings have a direct relation to matters at issue. *Allen v. City of Los Angeles*, 92 F.3d 842
22 (9th Cir. 1992). Likewise, federal courts may take judicial notice of state agency records that are not
23 subject to reasonable dispute. *See City of Sausalito v. O'Neill*, 386 F.3d 1186, 1224 n. 2 (9th Cir.
24 2004).

25 Pursuant to these rules, the City requests that this Court take judicial notice of the order
26 attached hereto as Exhibit A filed with the United States District Court, Central District of California
27 in the civil action filed by NewPath against the City of Irvine.

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