

1 motion given that NewPath did not amend its countercomplaint,
2 directed the parties to file a status update on the issue. Doc
3 #42.

4 On November 17, 2008, NextG filed a statement indicating
5 its position that the court should simply grant the anti-SLAPP
6 motion. Doc #44 at 4. On November 24, 2008, NewPath filed a
7 statement arguing that the anti-SLAPP motion should be denied or
8 deferred until the end of the case when it can be considered with
9 other attorney fee motions. Doc #45 at 4. Although NewPath
10 somewhat mischaracterized the court's earlier ruling on the anti-
11 SLAPP motion — the court did not hold that the state-law claims
12 were supported by evidence that would survive an anti-SLAPP motion,
13 but rather noted that NewPath *might* be able to present sufficient
14 evidence to defeat a motion, see Doc #45 at 3, Doc #40 at 14 —
15 NewPath is correct that its decision not to amend its
16 countercomplaint is not an admission that those abandoned claims
17 are unsupported. Doc #45.

18 Given the court's and the parties' interest in proceeding
19 to the merits of this case, the latter course of action suggested
20 by NewPath is appropriate. Accordingly, the court **DECLINES TO RULE**
21 on the anti-SLAPP motion until the case is resolved on the merits.

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23 IT IS SO ORDERED.

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26 VAUGHN R WALKER
27 United States District Chief Judge
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