

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAMARN OLSEN, et al.,  
Plaintiffs,  
v.  
UNITED STATES,  
Defendant.

Case No. [14-cv-05601-SI](#)

**ORDER RE: DISCOVERY DISPUTE**  
Re: Dkt. No. 29

Now before the Court is a discovery letter submitted by the parties. Docket No. 29. This is the first discovery letter submitted in this case.

Plaintiffs filed this action arising out of the death of Sterling Olsen on November 22, 2012. Pursuant to Federal Rule of Civil Procedure 30(b)(6), plaintiff served notices of deposition on the following topics: “(1) design and construction of the ramps and walkways adjacent to Building AB-4 before November 22, 2012; (2) modifications depicted in a photograph taken in April 2013; and (3) modifications depicted in a photograph taken May 3, 2015.” Dkt. No. 29 at 1. Defendants have not designated a deponent on these topics, arguing that Federal Rule of Evidence 407 bars the admission of subsequent remedial measures to prove: “negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction.” *See* Fed. R. Evid. 407; Dkt. No. 29 at 3.

“Rule 407 governs admissibility. It does not preclude discovery.” *Granberry v. Jet Blue Airways*, 228 F.R.D. 647, 651 n. 2 (N.D. Cal. 2005) (citing *Stalling v. Union Pac. R.R. Co.*, No. 01 C 1056, 2003 WL 21317297 (N.D. Ill. June 6, 2003)). Evidence of subsequent remedial measures may be admissible at trial for purposes other than those precluded by Rule 407. Further, “[t]he standard of admissibility established by Rule 407 for evidence of subsequent remedial measures is

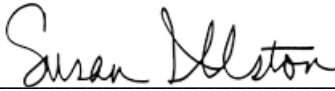
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

more stringent than that for permitting pretrial discovery . . . because inadmissible material often leads to the discovery of admissible evidence.” 2-407 Weinstein’s Fed. Evid. § 407.09.

After consideration of the arguments raised on the joint discovery letter, the Court GRANTS plaintiffs’ discovery request and **ORDERS defendant to designate a deponent for the three topics listed in the letter no later than October 30, 2015.**

**IT IS SO ORDERED.**

Dated: October 20, 2015



---

SUSAN ILLSTON  
United States District Judge