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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AFFILIATED FM INSURANCE  
COMPANY,

Plaintiff(s),

v.

EARTHQUAKE ENTERPRISES,

Defendant(s).

No. C 11-04925 DMR

**ORDER RE PARTIES' JOINT  
DISCOVERY LETTER [DOCKET NO.  
33]**

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This discovery dispute arises out of a fire sprinkler system failure in Unit 607 of 733 Front Street ("the Property"). On October 6, 2010, the 733 Front Street Home Owners Association ("HOA") hired Defendant Earthquake Enterprises, Inc. to inspect and repair a leak in Unit 607 of the Property. After cutting a hole in the ceiling to access the leak, Defendant noticed that the leak was coming from T-shaped pipe fitting. Defendant depressurized the sprinkler system, removed the leaking portion,<sup>1</sup> and installed new piping. Shortly after Defendant repressurized the system, an elbow pipe adjacent to the T-shaped pipe in the sprinkler system failed, causing significant damage to Unit 607, other units of the Property, and the Property's common areas. Plaintiff Affiliated FM Insurance Company reimbursed the HOA for the repairs and restoration, and pursuant to the terms of their insurance policy, brought this negligence action against Defendant to recover the damages.

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<sup>1</sup> The parties do not agree on which portion of the sprinkler system Defendant removed.

1 Currently at issue is Defendant's request to obtain glue samples from fire sprinkler pipes for  
2 comparison testing, which may illuminate whether Defendant performed any work on the elbow  
3 pipe that failed. The court held a discovery hearing on October 17, 2012. This order memorializes  
4 the rulings made during the hearing.

5 **A. Defendant's Argument**

6 Defendant wants to obtain glue samples so that it can compare the glue from the failed pipe  
7 to the glue on nearby pipes that originally were installed in 2007, as well as to those pipes which  
8 Defendant installed during its repairs. Defendant's expert will test the samples to determine the  
9 chemical compounds, formulas, manufacturers, and/or ages of the respective glues. Defendant  
10 argues that this information will aid in assessing whether the failed pipe came from the original  
11 installation or from Defendant's repairs. According to Defendant, the samples would weigh less  
12 than a tenth of a gram, would be "no larger than a couple of pin heads in size," and would take no  
13 more than several minutes to complete. Defendant warrants that the sampling would pose no danger  
14 to the sprinkler system, nor would it require that the system be taken offline. Because the procedure  
15 would necessitate opening the ceiling of Unit 607, Defendant has offered to pay reasonable costs for  
16 opening and repairing the ceiling, using a contractor of Plaintiff's choice. Defendant insists that the  
17 entire procedure could take place on one day, or perhaps even half a day, since the sampling itself  
18 would take very little time, and the opening and closing of the ceiling would be straightforward.  
19 Defendant also wishes to obtain glue samples from other areas of the original fire sprinkler piping in  
20 readily accessible areas of the Property's common areas.

21 **B. Plaintiff's Argument**

22 Plaintiff objects to the sampling and inspection requests, asserting that Defendant has  
23 presented no credible justification for the procedures. Plaintiff also insists that taking glue samples  
24 would threaten the integrity of the fire sprinkler system and may cause unforeseen damage  
25 elsewhere. It therefore concludes that taking samples from Unit 607 would be unreasonably  
26 burdensome and intrusive to the Property, the HOA, and the unit's owner and possible tenant.  
27 Moreover, Plaintiff insists that neither it nor the HOA has ownership, custody, or control of the  
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1 ceiling of Unit 607; the HOA may access to the fire sprinkler system for only repair and emergency  
2 purposes.

3 **C. Discussion**

4 Defendant's sought-after discovery is relevant. Comparing the glue from the pipe that  
5 reportedly failed with the glue from the original pipes, as well as those from Defendant's repairs will  
6 help Defendant more accurately ascertain if the failed pipe was a product of its repairs – the factual  
7 question at the heart of this matter. The benefits that Defendant may reap from its findings outweigh  
8 any potential burden, particularly in light of the \$700,000 in controversy in this action. *See* Fed. R.  
9 Civ. P. 26(b). The court therefore grants Defendant's motion.

10 To minimize any inconvenience and possible damage to Plaintiff, the court orders that  
11 Defendant provide Plaintiff with a protocol for performing the sampling by 5:00 p.m. on October 19,  
12 2012. The sampling procedure shall occur by no later than October 27, 2012 absent extraordinary  
13 and unforeseen circumstances. When the sampling occurs, Defendant may remove only a  
14 reasonable portion of the ceiling in Unit 607 (anticipated to be approximately 3' by 3'), and Plaintiff  
15 may have a representative witness and video tape the procedure. Plaintiff may select the contractor  
16 who will open and close the ceiling, as long as the contractor is reputable and charges a reasonable  
17 fee. Defendant shall reimburse Plaintiff for the costs of the procedure and for any injury or damage  
18 incurred as a result of the sampling process, but not including the work performed by the contractor.  
19 Defendant shall complete the procedure in one day, or shorter if possible. The court also orders that  
20 Defendant may take glue samples from the Property's common areas, subject to the same conditions,  
21 as long as the procedures remain non-invasive and involve glue samples from piping that is similar  
22 to the pipes at issue in this case.

23  
24 IT IS SO ORDERED.

25  
26 Dated: October 19, 2012

