



1                   This order is intended to supplement the court's summary  
2 judgment ruling and does not alter any of the court's previous  
3 holdings. The parties are familiar with the factual record,  
4 available at Doc #131 at 1-4.

5                   Riverport asks the court to rule that: (1) Riverport has  
6 no duty to indemnify defendants Oakland Community Housing (OCHI),  
7 Cahon Associates (Cahon), Charles Fowlkes or the intervenors on any  
8 punitive damages claim in the Scroggins complaint; (2) Riverport  
9 has no duty to indemnify OCHI, Cahon, Fowlkes or the intervenors  
10 for claims of 47 of the 60 plaintiffs in Scroggins; and (3)  
11 Riverport has no duty to indemnify OCHI, Cahon, Fowlkes or the  
12 intervenors for any damages awarded to the other 13 Scroggins  
13 plaintiffs arising from injury or damage suffered after May 29,  
14 2006. Doc #136 at 3. For the following reasons, the court GRANTS  
15 Riverport the relief it seeks.

16                   The court agrees that Riverport is entitled to relief on  
17 its first issue because California public policy "prohibits  
18 indemnification for punitive damages." PPG Industries, Inc v  
19 Transamerica Ins Co, 20 Cal 4th 310, 317 (1999). Riverport thus  
20 has no duty to indemnify any punitive damages claim in Scroggins.

21                   Riverport's second and third issues relate to the  
22 habitability exclusion in Riverport's insurance policy with  
23 defendants. Riverport seeks a declaration that it has no duty to  
24 indemnify defendants or intervenors for the second, third, fourth,  
25 fifth, sixth and tenth claims in Scroggins for 47 of the 60  
26 plaintiffs in Scroggins, because these claims arose after the  
27 habitability exclusion went into effect on May 29, 2006. Doc #53  
28

1 at 25-29; Doc #136 at 3. Riverport also seeks declaratory relief  
2 that it owes no duty to indemnify defendants or intervenors for any  
3 judgment obtained by the other 13 Scroggins plaintiffs for injuries  
4 arising after May 29, 2006. Doc #53 at 29; Doc #136 at 3.

5 The habitability exclusion expressly disclaims coverage  
6 for any claim relating to the conditions of the California Hotel  
7 arising on or after May 29, 2006. Doc #55-2 at 66-67. The second,  
8 third, fourth, fifth, sixth and tenth claims in Scroggins,  
9 including breach of warranty of habitability, negligent  
10 maintenance, intentional infliction of emotional distress,  
11 intentional nuisance, violation of statutory duty and conversion,  
12 relate solely to the conditions of the California Hotel. Doc #78-  
13 6. Through the explicit terms of the habitability exclusion,  
14 Riverport has no duty to indemnify OCHI, Cahon, Fowlkes or the  
15 intervenors for any of the claims asserted in Scroggins arising on  
16 or after May 29, 2006.

17 In its motion, Riverport demonstrates that 47 of the 60  
18 plaintiffs in Scroggins have either signed releases barring claims  
19 prior to May 29, 2006 or assert in the Scroggins complaint, Doc  
20 #78-6 at 38 ¶57-58, that their claims do not arise before May 29,  
21 2006. Doc #53 at 27-29. Accordingly, Riverport has no duty to  
22 indemnify defendants or intervenors for the claims of those 47  
23 plaintiffs. To the extent the Scroggins court awards damages to  
24 any Scroggins plaintiff for damages arising on or after May 29,  
25 2006, the habitability exclusion strips Riverport of any duty to  
26 indemnify those damages.

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II

For the foregoing reasons, Riverport has demonstrated it is entitled to the relief it seeks. Accordingly, the court GRANTS summary judgment on the three issues outlined above and raised in Riverport's summary judgment motion, Doc #53.

IT IS SO ORDERED.



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VAUGHN R WALKER  
United States District Chief Judge