1 2 3 4 5 6 7 IN THE UNITED STATES DISTRICT COURT 8 FOR THE NORTHERN DISTRICT OF CALIFORNIA 9 RIVERPORT INSURANCE COMPANY, a C 08-3883 VRW 10 No Minnesota corporation, 11 ORDER Plaintiff, 12 v 13 OAKLAND COMMUNITY HOUSING, INC, a California corporation; CAHON 14 ASSOCIATES, a California limited partnership; THE JOHN STEWART 15 COMPANY, a California 16 corporation; CHARLES FOWLKES, an individual; GREG HYSON, an 17 individual; and LOREN SANBORN, an individual, 18 Defendants 19 20 On June 15, 2009, plaintiff Riverport Insurance Company 21 (Riverport) moved for clarification regarding the court's summary 22 judgment ruling, Doc #131. Doc #136. Riverport asks the court to 23 rule on three outstanding issues originally raised in its motion 24 for summary judgment, Doc #53, that the court failed to address in 25 its ruling on the summary judgment motion, Doc #131. The court 26 authorized Riverport to file the motion pursuant to Civ LR 7-11. 27 Doc #139. 28

United States District Court For the Northern District of California

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

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

The court agrees that Riverport is entitled to relief on 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.

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 <u>Scroggins</u>, because these claims arose after the 27 habitability exclusion went into effect on May 29, 2006. Doc #53 28

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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 <u>Scroggins</u> 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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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