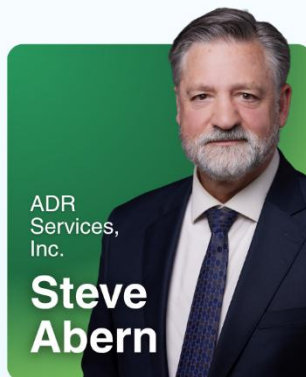




MEDIATING WRONGFUL EVICTION & HABITABILITY CLAIMS **PART 2**

THE DYNAMIC INTERPLAY BETWEEN TENANTS, LANDLORDS AND CARRIERS



**SEPT. 1, 2026
12 PM - 1PM**

**1 HOUR CLE CREDIT
\$0 - COMPLIMENTARY**

**ZOOM
WEBINAR**

Program Outline:

I. FRAMING THE MEDIATION: CLAIMS, REMEDIES, AND COVERAGE ARE INTERDEPENDENT

A. Common Landlord-Tenant Claim Types

- Habitability
- Wrongful eviction / constructive eviction
- Tenant harassment
- Displacement by fire
- Illegal units
- Nuisance-neighbor claims

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B. Claim Bundling Is the Norm, Not the Exception

- In jurisdictions with extensive tenant protections—such as San Francisco, Oakland, Berkeley, Santa Monica, and Los Angeles—habitability claims often carry harassment and/or constructive-eviction theories.
- Harassment may be based on overt conduct or, under some local ordinances, a bad-faith failure to diligently make repairs or efforts to influence a tenant to vacate involuntarily.
- Illegal-unit cases frequently combine habitability, harassment, and constructive-eviction theories; nuisance-neighbor cases may likewise overlap with habitability and harassment.

C. Why the Claim Mix Matters in Mediation

- Coverage often turns on how claims and damages are characterized. Newer policies may contain broad habitability exclusions or other exclusions that affect mixed claims.
- Treble damages, statutory penalties, attorney's fees, rent abatement, and rent differential may create substantial exposure while presenting separate coverage questions.
- The resulting coverage issues create a settlement subtext that may be loosely connected to the merits, but can materially control what money is actually available.

II. EXAMPLE FACT PATTERN AT MEDIATION

- Main Facts:
 - For more than three years, Plaintiffs resided in an unpermitted in-law unit located beneath Defendant's single-family home in San Francisco. Defendant owned the property, lived in the main house, and personally managed Plaintiffs' tenancy.
 - The unit suffered from recurring water intrusion, mold, inadequate ventilation, plumbing defects, unsafe electrical conditions, and inadequate heat. Plaintiffs repeatedly complained to Defendant, but repairs were delayed, incomplete, or temporary. The mold aggravated one Plaintiff's asthma.
 - The City eventually inspected and issued Defendant a Notice of Violation citing both the unpermitted nature of the in-law unit and several habitability defects. Defendant failed to promptly legalize the unit or correct all of the cited conditions. Despite the outstanding NOV, Defendant continued collecting Plaintiffs' full monthly rent.
 - After the NOV was issued, Defendant repeatedly told Plaintiffs the unit was "illegal," that the City might require them to leave, and that things would be easier if they simply moved out. When Plaintiffs requested

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repairs, Defendant responded with statements such as, “If you don’t like it here, you should find somewhere else to live,” and “The City says this unit isn’t legal, so you may have to leave anyway.”

- **Secondary Facts:**
 - Scenario 1: Plaintiffs did not move out. They had lived in the unit for years and could not easily find comparable affordable housing.
 - Scenario 2: Plaintiffs moved because of the conditions and landlord’s behavior.

III. MAP DAMAGES AND REMEDIES BEFORE TALKING NUMBERS

A. Habitability: Liability Framework

- Implied warranty of habitability: premises must be fit for human occupancy; the obligation is implied in residential leases and cannot be waived by an “as-is” clause.
- Typical conditions include weatherproofing, plumbing, heat, electrical service, structural integrity, and vermin control. *Green v. Superior Court*, 10 Cal. 3d 616 (1974); *Stoiber v. Honeychuck*, 101 Cal. App. 3d 903 (1980); Civil Code § 1941.1; Health & Safety Code § 17920; Civil Code § 1942.4.
- Local anti-harassment ordinances may provide stronger remedies than state law, including fee shifting, statutory damages, and possible trebling.

B. Habitability Damages

- Rent refund = rent abatement for uninhabitable conditions. *Green* is foundational; *Stoiber* expanded available tort remedies.
- Property damage = value of damaged personal belongings, often arising from water intrusion, mold, infestations, or similar conditions.
- Out-of-pocket costs = tenant-paid repairs, temporary housing, storage, and similar expenses.
- Loss of use = loss of ability to use and enjoy the home. Potentially qualifying as property damage: see *Thee Sombrero v. Scottsdale*, 28 Cal. App. 5th 729 (2018).
- Bodily injury = illness or injury tied to the conditions (but note: possible condition-specific exclusions, including mold and lead).
- Emotional distress = a meaningful damages category, with a recurring coverage question when there is no associated physical injury.
- Attorney’s fees = potentially contractual and/or statutory. Often a major value driver and sometimes more significant than the compensatory damages.
- Rent differential = Can become important when the tenant loses a rent-controlled unit and the case shifts from a repair dispute to a long-term economic-loss case.

C. Wrongful Eviction / Constructive Eviction

- Damages may include the habitability categories above, plus future rent differential.
- Future rent differential = difference between the tenant's rent-controlled rate and fair-market rent for a comparable unit, multiplied over the period the tenant would have remained. See *Chacon v. Litke*, 181 Cal. App. 4th 1234 (2010). Note: alternative calculation based on tenant's out-of-pocket differential. See *DeLise v. Lam*, 39 Cal. App. 5th 663 (2019).

D. Tricky Remedy Issues: Statutory Penalties, Right to Return, Punitives, etc.

- Local rent-control and tenant-protection ordinances may impose statutory penalties or mandatory trebling for unlawful eviction or harassment.
- State laws re retaliation, collecting rent while there are outstanding government-issued citations, lock outs, and utility shut offs also carry penalties. For example, Civil Code §§ 1942.4 and 1942.5.
- Displacement by fire: right to re-rent / return to the unit can become part of the liability and settlement analysis.
- Illegal units: full refund of rent instead of just partial for typical habitability case. See *Gruzen v. Henry*, 84 Cal. App. 3d 515 (1978) (but this was in the unlawful-detainer context).
- Punitive damages and intentional conduct: not covered / often walking the line here with intentional-leaning facts and coverage.
- Similarly, statutory penalties / trebles are generally disputed or outright denied for insurance coverage because carriers may contend they are not "damages."
- SOL Note: statutory-penalty claims may present significant statute-of-limitations issues that directly affect mediation value. Generally, limited to a one-year SOL unless the statute provides otherwise.

E. Attorney's Fees as a Cross-Cutting Value Driver

- Check the lease: many leases contain prevailing-party fee provisions. Note: one-way contractual fee provisions are generally reciprocal under Civil Code § 1717.
- Newer leases may omit fees, cap them, or condition fee recovery on pre-litigation mediation. Contractual limitations do not necessarily limit statutory or ordinance-based fee awards.
- Check statutes and local ordinances for fee-shifting provisions, including provisions that may operate differently from contractual prevailing-party clauses.
- Coverage for an adverse fee award typically turns on the policy's supplementary-payments provision.

IV. UNDERSTAND THE INSURANCE PICTURE

A. Common Policy Types

- Homeowners policies: frequently implicated for “mom-and-pop” landlords with a single rental unit. Homeowners forms may not cover “personal injury” offenses such as wrongful eviction or invasion of the right of occupancy absent a specific rider.
- Landlord-protector policies: typically, though not invariably, covering wrongful eviction.
- Commercial general liability (CGL) policies: typically providing the broadest coverage, but still subject to exclusions, including possible broad habitability exclusions.

B. Coverage Mapping

- Habitability exclusions: increasingly important and sometimes broadly applied to mixed lawsuits.
- Condition exclusions: mold, lead, asbestos, and pollution-type exclusions may affect bodily-injury and property-damage claims.
- Conduct-based exclusions: intentional acts, harassment, and failure-to-maintain theories may create separate coverage disputes.
- Economic losses: policies commonly define property damage as physical injury to tangible property, creating disputes over items such as retroactive rent abatement or rent differential.
- Statutory penalties: carriers commonly deny coverage on the ground that penalties are not damages. See *Bullock v. Maryland Casualty Co.*, 85 Cal. App. 4th 1435, 1448–1449 (2001).
- Punitive damages: not covered as a matter of law / public policy.
- Attorney’s fees: coverage depends on specific language in the policy, typically supplementary-payments language.

C. Duty to Defend, Duty to Indemnify, and Reservation of Rights

- The duty to defend is broader than the duty to indemnify. For that reason, a carrier-funded defense does not establish that the carrier will ultimately fund a judgment or settlement.
- A reservation-of-rights (ROR) letter identifies the carrier’s stated indemnity objections and gives notice to the insured. Unreserved coverage grounds may be deemed waived for lack of notice. RORs are typically confidential and not discoverable by Plaintiffs.
- When the ROR identifies broad exclusions, it is especially important for defendants to hire personal counsel for mediation.
- If a covered-versus-uncovered dispute survives through verdict, a declaratory-relief action may follow to determine what portions of the

judgment are covered. The expense, delay, and uncertainty of a future declaratory-relief action can itself become leverage toward settlement.

D. Other Settlement Strategies To Consider Before, During, or After Mediation

- CCP § 998 Offers, “999” Demands, and Policy-Limits Demands: can affect prevailing-party fee and cost exposure and/or additional carrier risk if mishandled.
- Buyouts: particularly useful when the tenant remains in possession and the parties want to resolve ongoing exposure rather than merely price past damages. It can also be a mechanism for insured contribution, encourage additional carrier contribution, and reduce the carrier’s perceived risk of a repeat claim.
 - Beware! Buyouts must address enforceability, notice periods, rescission rights, and local buyout ordinances (particularly strong in San Francisco, Oakland, Berkeley, and some Los Angeles-area jurisdictions).
- Ellis Act: can be used to cut off future rent-differential damages with there is otherwise a right to re-rent.

V. GLOSSARY OF TERMS

- **Panel Counsel:** Carrier-selected defense counsel for the insured after the duty to defend is triggered. The insured—not the carrier—is the client. Panel counsel reports and evaluates for the carrier but does not advocate for or against coverage.
- **Cumis Counsel:** Independent defense counsel retained where a qualifying conflict exists between insured and insurer; the source materials identify Civil Code § 2860 and San Diego Navy Federal Credit Union v. Cumis Insurance Society, Inc. (1984) 162 Cal. App. 3d 358.
- **Personal Counsel:** Counsel retained by the insured, typically at the insured’s expense, to protect the insured’s interests where indemnity coverage is disputed but Cumis counsel has not been triggered. May advocate on coverage and facilitate settlement.
- **Claims Representative:** Carrier employee who manages the claim, coordinates defense, sets/evaluates reserves, and negotiates settlement. Often the most important defense-side participant with respect to actual settlement authority.
- **Reservation of Rights:** Carrier notice identifying grounds on which indemnity may be disputed despite a defense being provided. The source materials treat it as confidential and emphasize its importance to personal-counsel and settlement strategy.

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- **Declaratory Relief Action:** Later coverage litigation seeking a judicial determination of which claims or damages are covered. Its cost, delay, and uncertainty can be used as settlement leverage.
- **Statutory Penalties:** Enhanced remedies, often including mandatory trebling under local ordinances or statutes. The source materials distinguish penalties from ordinary damages and note recurring carrier disputes over coverage.
- **Attorney's Fee Award:** Potentially contractual, statutory, or ordinance-based. Coverage may depend on the policy's supplementary-payments language and can materially change settlement value.

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State Farm Insurance Companies
Fire Claims
PO BOX 106169
Atlanta, GA 30348-6169
Fax 844 236 3646

RE: Claim Number:
Our Insured:

Policy Number/Type:
Date of Loss:

Dear

You have tendered your defense and indemnity brought against you by
We have completed our review and will agree to defend

A Reservation of Rights provides notice of the fact that the insurer may ultimately decline to defend or indemnify for some or all of the damages that might be awarded in an action. A Reservation of Rights also provides the reasons why there might not be an obligation to defend or indemnify under the policy. The terms of this particular Reservation of Rights are explained below.

We sent a copy of your claim file to the firm

brought against you by the Plaintiffs.

This firm will defend the lawsuit

You do not have to appear in court at the present time as the law firm will appear for you. They will notify you when any action or appearance on your part is required. Members of this law firm

will discuss the case with you. Under the terms of your policy, this firm is entitled to your complete cooperation throughout the handling of this litigation. Please comply with all requests this law firm may make.

Your policy provides the following benefit:

Section II – Supplementary Payments

1. We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which **Coverage L – Business Liability** for “bodily injury” applies. We do not have to furnish these bonds.
 - c. The premium for bonds to release attachments, but only for bond premiums within our Limit Of Insurance. We do not have to furnish, finance, arrange for, guarantee or collateralize these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$250 a day because of time off from work.
 - e. Any cost taxed against the insured in the “suit”, except for attorney fees and expenses.
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit Of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit Of Insurance.

These payments will not reduce the Limit Of Insurance.

If you incur such costs or loss of earnings, please forward verification for our consideration.

The plaintiff’s claims postdate the policy. Please notify the new insurance carrier promptly if you have not done so already. Please update us with the carrier name, contact information and claim number as soon as possible and please let us know if you have other policies with State Farm under which we should consider coverage.

Although State Farm is agreeing to participate in your defense under the policy, we are reserving our right to deny coverage to you, or to anyone claiming coverage under the policy, at any time. There is a question whether we have a duty under the terms of the policy to defend or indemnify you for a loss which is alleged to have occurred at

The plaintiffs are alleging constructive eviction due to water leaks, rodent infestations and a broken elevator.

There is a question whether we have a duty, under the terms of the CMP-4101 – Apartment Policy, to defend or indemnify you. State Farm specifically reserves its right to deny defense or

indemnity to you (and anyone claiming defense or indemnity under the policy), for the following reasons:

- There is a question of whether some or all of the claims made meet the policy insuring agreement, meaning it is questionable whether some or all of the allegations arise from “bodily injury”, “property damage”, or “personal and advertising injury” as these terms are defined in the policy.
- There is a question of whether Section II policy exclusions for “property damage” to property owned by or in the care of an insured removes coverage.

Please be aware while we are providing you a defense under your policy, the following damages would not be covered:

- Bodily injury, property damage, or personal and advertising injury arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any “fungi”.
- Medical Payments Coverage is not available to a person injured on that part of the premises you own or rent that the person normally occupies.
- Claims for Restitution of Rental Monies as addressed in Business and Professions Code 17200 are not covered as this claim is an economic claim and does not meet the policy insuring agreement.
- The Plaintiffs make claim for attorney fees and if awarded as taxed costs against an Insured these amounts are not covered by your policy – Please see Section II Supplemental Payments 1.e.
- Punitive damages, civil penalties, statutory penalties, and trebled damages are not covered in the State of California as a matter of public policy.

The Business Policy, Form CMP-4101, in part, contains the following insuring agreement:

SECTION II — LIABILITY

Coverage L – Business Liability

1. When a Limit Of Insurance is shown in the Declarations for **Coverage L – Business Liability**, we will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured by counsel of our choice against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury”, “property damage” or “personal and advertising injury”, to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” or offense and settle any claim or “suit” with or without the insured’s consent, for any reason and at any time. But:
 - a. The amount we will pay for damages is limited as described in **SECTION II — LIMITS OF INSURANCE**; and

- b. Our right and duty to defend end when we have used up the applicable Limit Of Insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Section II – Supplementary Payments**.

2. This insurance applies:

- a. To “bodily injury” and “property damage” only if:

- (1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

- (2) The “bodily injury” or “property damage” occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1.a. of **SECTION II — WHO IS AN INSURED** and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known before the policy period.

- b. To “personal and advertising injury” caused by an offense arising out of your business, but only if the offense was committed in the “coverage territory” during the policy period.

3. “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1.a. of **SECTION II — WHO IS AN INSURED** or any “employee” authorized by you to give or receive notice of an “occurrence” or claim, includes any continuation, change or resumption of “bodily injury” or “property damage” after the end of the policy period.

4. “Bodily injury” or “property damage” will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1.a. of **SECTION II — WHO IS AN INSURED** or any “employee” authorized by you to give or receive notice of an “occurrence” or claim:

- a. Reports all, or any part, of the “bodily injury” or “property damage” to us or any other insurer;

- b. Receives a written or verbal demand or claim for damages, or other relief, because of the “bodily injury” or “property damage”; or

- c. Becomes aware by any other means that “bodily injury” or “property damage” has occurred or has begun to occur.

5. Damages because of “bodily injury” include damages claimed by any person or organization for care, loss of services or death resulting at any time from the “bodily injury”.

It is questionable whether there is any coverage or potential for coverage because of the following exclusions in the policy:

Section II – Exclusions

Applicable to **Coverage L – Business Liability**, this insurance does not apply to:

12. Damage To Property

“Property damage” to:

- a. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

20. Fungi

- a. "Bodily injury", "property damage", or "personal and advertising injury" arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi":
 - (1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured; or
 - (2) At or from any premises, site or location on which any insured or any contractor or subcontractor working directly or indirectly on behalf of any insured is or was at any time performing operations;
- b. Any loss, cost or expense arising out of any:
 - (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate or dispose of or in any way respond to or assess the effects of "fungi"; or
 - (2) Claim or "suit" for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of "fungi".

This exclusion does not apply to any "fungi" that are, are on, or are contained in, a good or product intended for bodily consumption.

SECTION II — MEDICAL EXPENSES

Coverage M – Medical Expenses

1. When a Limit Of Insurance is shown in the Declarations for **Coverage M – Medical Expenses** we will pay medical expenses as described below for "bodily injury" caused by an accident:
 - a. On premises you own or rent;
 - b. On ways next to premises you own or rent; or
 - c. Because of your operations;provided that:
 - a. The accident takes place in the "coverage territory" and during the policy period;
 - b. The expenses are incurred and reported to us within one year of the date of the accident;
 - c. The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require; and
 - d. The injured person, or, when appropriate, someone acting on behalf of that person:
 - (1) Gives us written proof of claim, under oath if required, as soon as practicable;
 - (2) Executes authorization to allow us to obtain copies of medical reports or other records; and
 - (3) Submits to us all information we need to comply with state or federal law.

2. We will make these payments regardless of fault. The amount we will pay for medical expenses is limited as described in **SECTION II — LIMITS OF INSURANCE**. We will pay reasonable expenses for:
 - a. First aid administered at the time of an accident;
 - b. Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - c. Necessary ambulance, hospital, professional nursing and funeral services.

While the policy contains a provision for Medical Expenses coverage, the following exclusion removes Medical Expenses coverage for the plaintiff in this instance. It is questionable whether there is any coverage or potential for coverage because of the following exclusions in the policy:

Coverage M – Medical Expenses Exclusions

Under **Coverage M – Medical Expenses**, we will not pay expenses for “bodily injury”:

1. Excluded under **Section II – Exclusions** applicable to **Coverage L – Business Liability**.
4. To a person injured on that part of the premises you own or rent that the person normally occupies.

Certain words and phrases are defined as follows:

SECTION II — DEFINITIONS

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. “Bodily injury” includes mental anguish or other mental injury caused by the “bodily injury”.
7. “Fungi” means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by “fungi”.
18. “Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of privacy, of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
 - f. The use of another’s advertising idea in your “advertisement”;
 - g. Infringing upon another’s trade dress or slogan in your “advertisement”; or
 - h. Infringement of another’s copyright, patent, trademark or trade secret.

Amendatory Endorsement (California) CMP-4260.1 is part of your policy. It includes the

following modifications:

AMENDATORY ENDORSEMENT (California)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM1.**SECTION I — EXCLUSIONS** is amended as follows:

3. SECTION II — LIABILITY is amended as follows:

d. SECTION II — DEFINITIONS is amended as follows:

(1) Paragraphs **18.f.** and **18.g** are replaced by the following:

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

(2) Paragraph **18.h.** is deleted.

21. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured or destroyed, provided such loss of use is caused by physical injury to or destruction of other tangible property. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

All other policy provisions apply.

There is no coverage for an award of attorney's fees taxed as costs against you. Please refer to the following:

Section II – Supplementary Payments

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

e. Any cost taxed against the insured in the "suit", except for attorney fees and expenses.

For these reasons and for other reasons which may become known, the defense of this action by this law firm on your behalf is not to be considered a waiver of such policy defense(s) or of any policy defenses which may be involved in the case.

We are reserving the right to supplement or amend this reservation of rights to add or remove any policy defenses.

A portion of the amount claimed against you in this action is for punitive damages or civil penalties. By law, such damages are presently uninsurable in this state as a matter of public policy. Therefore, we are unable to provide coverage for this portion of the damages being claimed in this lawsuit. Any claim for punitive damages or civil penalties presents the potential for financial exposure on your part. You may want to consult with another attorney, at your expense, about your personal exposure.

A portion of the amount claimed against you in this case is for restitution of rental monies paid by the plaintiff while a tenant on your premises. Such damages may be recovered pursuant to California Business and Professions Code, Section 17200 et seq., one of the statutes alleged by plaintiff to have been violated. Insurable damages do not include the statutory restoration of amounts obtained through violations of Business and Professions Code, Section 17200. Therefore, we are unable to provide coverage for the restitution of rental monies portion of the damages being sought in this lawsuit. The potential for uninsured damages presents the possibility for financial exposure on your part. You may want to consult with an attorney, at your expense, about your personal exposure. The law firm we selected to represent you has experience and specializes in defending lawsuits of this nature. They will represent your interest only and will not act in the interest of this company in any way that may conflict with your interest.

If you wish to assert any claim for damages arising out of this incident, you must file a cross complaint in this action. If this lawsuit is settled or tried without your having filed a cross complaint, you will have no right to file a separate lawsuit against the plaintiffs for the collection of your damages. If you present any claim for damages against the plaintiffs, or any other parties, please discuss the matter with Phillips Spallas & Angstadt at once. We cannot be responsible for expenses incurred in such actions.

We are required by California Insurance Regulations, Section 2695.7(b)(3), to advise you that if you believe this claim, or any part of this claim, has been wrongfully denied or rejected, you may have the matter reviewed by the California Department of Insurance, Claims Services Bureau, 300 South Spring Street, Los Angeles, California 90013. Their phone number is 800 927 4357.

We are willing to consider any additional information you believe may impact our coverage decision. We will also consider any new claims arising out of this matter. If the Complaint is amended, please forward a copy of the amended complaint for our review.

It may be necessary to contact you on short notice. Please notify us and Phillips Spallas & Angstadt of any change in your present address.

If you have any questions, please contact your claim representative,

Sincerely,

Counsel:

This is to confirm the settlement of the ____ v. ____ matter (____ County Superior Court Case No. _____) on the following terms:

- Defendant _____ will pay Plaintiffs a total amount of \$_____ within 30 days of Plaintiffs signing and returning to Defendant's counsel a formal settlement agreement to be prepared by Defendant's counsel.
- Plaintiffs shall, on behalf of themselves and all occupants of the property, release Defendant _____, his employees and agents, from any and all claims concerning Plaintiffs' tenancy at _____, California.
- Plaintiffs agree to be responsible for satisfying any and all liens that may be extant (specifically including but not limited to attorney liens, physician liens, and associated claims) in connection with, relating to or arising out of the facts and allegations in the lawsuit. They will defend and indemnify Defendant, his attorneys and insurer, and hold them harmless from any and all such liens, including but not limited to those created by: California Code of Civil Procedure Section 708.410 et seq. (relating to liens of judgment creditors), California Welfare and Institution Code Section 14124.70 et seq. (relating to Medi-Cal liens and liabilities) and or any other state or federal statutory lien or liability rights relating to or arising from any claims against or benefits advanced to or for the benefit of Releasers, California Civil Code Section 3045.1 et seq. (relating to hospital liens) and/or any other state or federal statutory lien or liability, or any contractual or common law lien or liability with particular but not exclusive reference to liens pertaining to or arising under Medicare or Social Security (including but not limited to disability insurance benefits) or laws or pertaining to physicians, hospitals or other healing arts, persons or institutions, relating to or arising from claims against or benefits provided to or for the benefit of Plaintiffs or either of them.
- **CONFIDENTIALITY.** The terms of this Settlement Agreement are confidential. The Parties expressly understand and agree that it shall constitute a breach of this Settlement Agreement to disclose or communicate the terms of the settlement or to disseminate this Settlement Agreement to any other person or entity except when 1) disclosure is required by law, by court order, or by statute; 2) pursuant to an action to enforce the terms of this Settlement Agreement; 3) for tax preparation reporting; or 4) when requested by a governmental agency or licensing board, including, but not limited to, providing the City of and County of Santa Cruz, or any of its officers or agencies with a copy of this Agreement. If and when third parties inquire about the released matters and/or this Agreement, the Parties may advise such third parties only that such matters were resolved as between the Parties and have been concluded. The Parties may discuss the amount and terms of this Settlement Agreement with their attorneys, insurers, immediate family members, tax advisors,

and/or financial consultants. The amount of consideration provided to Claimants for this clause is \$100.00.

- **NON-DISPARAGEMENT.** The Parties agree and warrant that they will not disparage, defame, belittle, ridicule, discredit, denigrate or in any other way harm or damage the reputation of each other or their successors and assigns. The Parties further agree and warrant that they will not make, file, prepare, report, or assist in the making, filing, preparing, or reporting of any disparaging remarks regarding each other. The Parties further agree and warrant that they will refrain from any comment, in any manner, to another individual and/or organization, either in fact or opinion, as to the honesty, integrity, ethics, honor, standard(s) or care owed to each other, regarding any aspect of this Agreement.
- Plaintiffs will execute CMS affidavits, which will be provided by Defendant's counsel, and will provide Defendant's counsel with their social security numbers and dates of birth that shall be used *solely* for the purpose of an inquiry to Medicare/CMS.
- Defendant's counsel will prepare a formal settlement agreement which will contain: (1) the terms outlined above; (2) a waiver of Civil Code §1542; (3) a provision that the settlement shall be enforceable per CCP § 664.6; and (4) a provision that each party is to bear her/ its own fees and costs.
- Per CCP § 664.6(b)(2), the parties' agreement to these settlement terms via counsels' acknowledgement of agreement via email to this Confirmation of Settlement is enforceable pursuant to CCP § 664.6. Pursuant to Evidence Code § 1123, the parties acknowledge that this agreement is exempt from the confidentiality provisions of Evidence Code § 1152 et seq. and is admissible in evidence to enforce the settlement.
- In any proceeding to enforce this settlement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred therein.

Please confirm your agreement to these terms by replying "AGREED" to all.