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MELINDA BIRKE, a minor by and through her Guardian ad  
Litem

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES, NORTHWEST DISTRICT**

10 MELINDA BIRKE, a minor by and through )  
her Guardian ad Litem, )

11 Plaintiff, )

12 vs. )

13 OAKWOOD WORLDWIDE, an entity of )  
unknown form; OAKWOOD )  
14 RESIDENTIAL RENTALS, LLC, a )  
Delaware Limited Liability Company; )  
15 OAKWOOD WOODLAND HILLS )  
LESSEE, LLC, a Delaware Limited Liability )  
16 Company; and, DOES 1 to 100, inclusive, )

17 Defendants. )  
18 \_\_\_\_\_ )

CASE NO.:

**COMPLAINT FOR PUBLIC  
NUISANCE**

19 Plaintiff, MELINDA BIRKE, by and through her Guardian ad Litem, alleges as follows:  
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1           1.       Plaintiff, MELINDA BIRKE (“Melinda”), is a 5 year old girl, who, at all relevant  
2 times, lived and lives as a tenant in an apartment at the Oakwood Garden Apartments (the “OGA”),  
3 in Woodland Hills, California, with her mother and father. Since she was about 18 months old,  
4 Melinda has suffered from asthma and chronic allergies. Melinda has also suffered three bouts of  
5 pneumonia since late 2003. John Birke (“John”) is Melinda’s father and her duly appointed  
6 Guardian ad Litem in this action.

7           2.       Defendant, OAKWOOD WORLDWIDE (“Worldwide”), is an entity of unknown  
8 form, which, plaintiff is informed and believes, and on that basis alleges, owns, operates and/or  
9 controls the OGA, or is otherwise legally liable to plaintiff for the damages alleged and proved in  
10 this action.

11          3.       Defendant, OAKWOOD RESIDENTIAL RENTALS, LLC (“ORR, LLC”), is a  
12 Delaware limited liability company, licensed to do and doing business in the County of Los  
13 Angeles, which, plaintiff is informed and believes, and on that basis alleges, owns, operates and/or  
14 controls the OGA, or is otherwise legally liable to plaintiff for the damages alleged and proved in  
15 this action.

16          4.       Defendant, OAKWOOD WOODLAND HILLS LESSEE, LLC (“OWHL, LLC”), is  
17 a Delaware limited liability company, licensed to do and doing business in the County of Los  
18 Angeles, which, plaintiff is informed and believes, and on that basis alleges, owns, operates and/or  
19 controls the OGA, or is otherwise legally liable to plaintiff for the damages alleged and proved in  
20 this action.

21          5.       Plaintiff is informed and believes, and on that basis alleges, Defendants are parts of  
22 a conglomerate entity which owns thousands of units of rental housing throughout California, and  
23 hundreds of thousands of such units throughout the United States. Accordingly, the acts and  
24 omissions of Defendants affect literally millions of residents and guests of rental housing in this  
25 state and nation, and other owners of such housing look to Defendants as an example of how to  
26 operate rental housing complexes.

27          6.       The true names and capacities, whether individual, corporate, associate or  
28 otherwise, of defendants, DOES 1 through 100, inclusive, are unknown to Plaintiff, who therefore

1 sues those defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this  
2 Complaint to show their true names and capacities when she has ascertained them. All references  
3 to any defendant in the following allegations shall be interpreted to include a reference to any and  
4 or all of these DOE defendants. Plaintiffs are informed and believe, and on that basis allege, each  
5 of the defendants designated herein as a DOE defendant is in some manner responsible for the  
6 events and happenings herein referred to, either contractually or tortiously, and caused damages to  
7 plaintiffs as herein alleged.

8         7. Plaintiff is informed and believes, and on that basis alleges, at all relevant times,  
9 DOES 1 through 50, inclusive, were the agents, servants and/or employees of their codefendants,  
10 and in doing the things alleged below were acting within the scope of their authority as such  
11 agents, servants and/or employees and with the permission, consent and/or ratification of their  
12 codefendants.

13         8. From May 1993 to the present day, Defendants have allowed, encouraged and  
14 approved a toxic, noxious, hazardous, offensive -- and in fact carcinogenic -- condition to be  
15 present in all of the outdoor common areas of the complex, including partially enclosed areas. This  
16 condition is secondhand tobacco smoke and results from tenants' and visitors' smoking cigarettes  
17 and cigars all over the grounds. As a result, secondhand smoke often pervades, among other areas,  
18 the swimming pools, the common barbecue areas, the children's playground, the outdoor dining  
19 areas, and the areas immediately outside the entrances to the rental office/clubhouse. In addition,  
20 there is no area in the entire OGA complex where one cannot find multiple cigarette butts,  
21 including all of the walkways, planted areas, and the stairwells, as well as the areas identified  
22 above. As a result, Melinda has picked up butts from the sidewalks. Melinda also is informed and  
23 believes, and on that basis alleges that other toddlers have come into hand or oral contact with the  
24 pervasive butts littering the OGA grounds.

25         9. By their alleged acts and omissions, Defendants have created and continue to create  
26 conditions that were and are: 1) harmful to health; 2) indecent and offensive to the senses; and, 3)  
27 obstructed the free use of the property, so as to interfere with the comfortable enjoyment of life or  
28 property by residents of OGA.

1           10.     The conditions have affected a substantial number of people at the same time, i.e.,  
2 all residents and guests at OGA whenever any of them were present at any of the described areas of  
3 the grounds, among others.

4           11.     An ordinary person would reasonably be offended, annoyed or disturbed by these  
5 conditions. Indeed, Melinda and John were so offended, annoyed and disturbed -- to the point  
6 where John complained repeatedly and vociferously to Defendants. Although Defendants have it  
7 within their power to eliminate this condition entirely by simply prohibiting smoking on their  
8 property and enforcing such prohibition, Defendants have summarily dismissed John's regular and  
9 repeated entreaties over the past four years to abate these conditions. Instead, for example,  
10 Defendants' representative, Leo Henggeler, admitted to John in a telephone conversation in or  
11 about July 2003 that Defendants have made a business decision not to in any way restrict smokers  
12 from lighting up in any outdoor areas at any time. The predictable result of this decision -- apart  
13 from the miasma of toxic and carcinogenic smoke that often surrounds the pool, dining tables, etc.  
14 -- is that smokers feel free, even encouraged, to treat OGA's grounds, including the sidewalks,  
15 landscaping, pool decks, and children's sandbox, as their ashtrays. Further, Defendants implicitly  
16 encourage and facilitate smoking in the most used common areas, e.g., the swimming pools, by  
17 placing ashtrays around such areas.

18           12.     The harm attendant to these conditions is serious. On January 26, 2006, the  
19 California Air Resources Board (the "CARB") identified environmental tobacco smoke (ETS), or  
20 second-hand smoke, as a Toxic Air Contaminant: "an airborne toxic substance that may cause  
21 and/or contribute to death or serious illness."

22           13.     On June 27, 2006, the Office of the Surgeon General of the United States (the  
23 "Surgeon General"), the nation's highest public health officer, issued a comprehensive scientific  
24 report which concludes that there is no risk-free level of exposure to secondhand smoke, and that  
25 nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart  
26 disease by 25 to 30 percent and lung cancer by 20 to 30 percent, a finding the Surgeon General  
27 described as "of major public health concern due to the fact that nearly half of all nonsmoking  
28 Americans are still regularly exposed to secondhand smoke."

1           14.     Because of Defendants' alleged acts and omissions, Melinda is one of those  
2 nonsmoking Americans regularly exposed to this known Toxic Air Contaminant whenever she  
3 tries to enjoy the outdoor amenities available to OGA tenants. The substantial harm she has  
4 suffered and will continue to suffer if the conditions are not immediately abated vastly outweighs  
5 the social utility of Defendants' conduct. This is evidenced by Mr. Henggeler's admitting that such  
6 harm results from a business decision made without regard for the health of tenants and guests at  
7 OGA.

8           15.     Melinda did not consent and has not consented to Defendants' alleged acts and  
9 omissions.

10          16.     In addition to the harm suffered by the general public, e.g., tenants and guests at the  
11 OGA, Melinda has suffered injury and harm of a different kind, in the form of aggravation of her  
12 asthma and allergic symptoms.

13          17.     Defendants' alleged acts and omissions were substantial factors in causing  
14 Melinda's harm.

15          18.     In a letter of February 10, 2006, Defendants, through their counsel, Dale Kinsella,  
16 Esq., acknowledged the CARB's findings. Yet, in that same letter Defendants refused to take any  
17 steps to ameliorate this condition for the health and well-being of their child tenants and those with  
18 respiratory disease, such as Melinda. In fact, Defendants' counsel made clear that Defendants see  
19 no need to do anything to protect the health and safety of Melinda and others from the serious and  
20 documented health risk. Defendants' refusal to act is therefore demonstrably malicious and  
21 oppressive, and in frank disregard of the rights and safety of others, and warrants imposing against  
22 Defendants punitive damages, to punish and make examples of Defendants and to deter them and  
23 others from similar future acts.

24           WHEREFORE, Plaintiff request the following judgment and relief;

- 25           1.     General damages, in an amount according to proof;
- 26           2.     Special damages in an amount according to proof;
- 27           3.     Interest on compensatory damages at the legal rate from the date of injury or  
28 pursuant to C.C.P. §3291;

