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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11 MARK A. O'BRIEN, an individual,) Case No.
12)
Plaintiff,) [Case filed on _____, 2021; assigned
13 v.) to Hon. _____, Dept. ____]
14)
ELISHA FARA LANDMAN, an individual; and) **VERIFIED COMPLAINT FOR**
DOES 1 through 10, inclusive,) **NUISANCE**
15)
Defendants.)
16)
17)
_____)
18

19 Plaintiff Mark A. O'Brien ("Plaintiff") alleges as follows:

20 **PARTY, JURISDICTIONAL, AND VENUE ALLEGATIONS**

21 1. Plaintiff was and is a male individual and a resident of Los Angeles County,
22 California. Since October 2018, Plaintiff has lawfully resided at 28608 Conejo View Dr.,
23 Agoura Hills, CA 91301 ("Plaintiff's Unit").

24 2. Defendant Elisha Fara Landman ("Landman") was and is a female individual and
25 a resident of Los Angeles County, California. Since approximately March 2020, Landman has
26 resided at [REDACTED] ("Landman's Unit"). Plaintiff is
27 informed and believes that Landman is an administrative law judge with the state workers'
28 compensation system, employed by the State of California at 320 W. 4th St., Los Angeles, CA

1 90013.

2 3. Plaintiff and Landman are next-door neighbors (part of a detached, two-unit
3 townhouse) who share a common wall between their two units in the Annandale II common-
4 interest development.

5 4. The true names and capacities of the Defendants named herein as Does 1 through
6 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious
7 names. Plaintiff will amend this Complaint to show the Doe Defendants' true names and
8 capacities when they have been ascertained. Plaintiff is informed and believes, and thereon
9 alleges, that each fictitiously named Defendant is responsible in some manner for the acts and
10 conduct alleged herein and for proximately causing Plaintiff's injuries and damages as alleged
11 herein. Each reference in this Complaint to "Defendant" or "Defendants" also refers to all
12 Defendants sued under such fictitious names.

13 5. At all times herein mentioned, each Defendant, including all Defendants sued
14 under fictitious names, was and is the agent and employee of the remaining Defendants. In
15 committing the acts and engaging in the conduct hereinafter mentioned, each Defendant was
16 acting within the course and scope of such agency and employment, with the knowledge and
17 consent of each other Defendant, and as authorized or ratified by each of the remaining
18 Defendants.

19 6. Venue lies in this District because Defendants created a nuisance and caused
20 personal injury to Plaintiff here.

21 **COMMON FACTUAL ALLEGATIONS**

22 7. Plaintiff's Unit and Landman's Unit are subject to CC&Rs recorded in Los
23 Angeles County on June 6, 2008 as Doc. No. 20081006417. The CC&Rs are equitable
24 servitudes that bind and control all members and residents of the Annandale II common-interest
25 development. True and correct copies of key portions of the CC&Rs are attached as Exhibit A.
26 Art. VIII, sect. 8.4 of the CC&Rs prohibits noxious activities:

27 No illegal, noxious or offensive activities shall be carried on or conducted upon
28 any Condominium or Common Area nor shall anything be done within the

1 Property which is or could become an unreasonable annoyance or nuisance to
2 other residents.

3 8. Landman chain-smokes at all hours whenever she is home, often late after
4 midnight. Due to the COVID-19 pandemic, she apparently now works from home, which means
5 she smokes even more. Her cigarette smoke passes through gaps or weaknesses in the parties'
6 common wall, ceiling, vents, or other features and enters Plaintiff's Unit. The smoke stinks and
7 contains carcinogens. When Landman smokes, it seems to Plaintiff as if she is smoking in the
8 same room as him. The smoke makes Plaintiff's eyes red, hurts his lungs, makes him cough,
9 causes Plaintiff to have trouble breathing, ruins Plaintiff's appetite and meals, makes it difficult
10 or impossible for Plaintiff to sleep, forces Plaintiff to sleep on the sofa in the front living room
11 instead of the back master bedroom (which abuts the common wall), and otherwise harms
12 Plaintiff's health and well-being. Landman's smoking is noxious and offensive to Plaintiff, a
13 person of average and normal sensitivity, and unreasonably annoys and is a nuisance to Plaintiff.
14 Plaintiff is informed and believes that Landman's colleagues, co-workers, friends, social visitors,
15 and family are witnesses to and can testify about her smoking.

16 9. Plaintiff has repeatedly written to, emailed, texted, and spoken to Landman about
17 her smoking and its harmful effects on Plaintiff and implored her to stop. In response, Landman
18 has either falsely denied that she is at fault or failed to do anything to stop or ameliorate the
19 smoking. Landman has even blamed the parties' other neighbors, but there are outdoor, open-air
20 spaces between the nearby buildings of some twenty-five to forty feet, so that cigarette smoke
21 could not travel between the buildings and into Plaintiff's Unit, as if Landman were smoking
22 inside it.

23 10. Plaintiff also has repeatedly written to, emailed, texted, and spoken to Annandale
24 II's board and offsite management about Landman's smoking and its harmful effects on Plaintiff
25 and implored them to enforce the CC&Rs and to get Landman to stop smoking (at least so that it
26 doesn't affect and harm Plaintiff). Annandale II's board and offsite management either have
27 done nothing or, despite whatever they have done, Landman continues to chain-smoke.

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11. Art. XV, sect. 15.1 of the CC&Rs provides:

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner or Tenant of any Unit, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

12. Art. XV, sect. 15.2 of the CC&Rs provides:

Without limiting the generality of the foregoing section [15.1], the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

FIRST CAUSE OF ACTION

(Nuisance Against Defendants Landman and Does 1-10)

13. Plaintiff incorporates by reference Paragraphs 1 through 12 above.

14. Defendants Landman and Does 1-10's chain-smoking and failure and refusal to stop or ameliorate the smoking, which have directly affected and harmed Plaintiff, created and create a private nuisance within the meaning of Civ. C. sect. 3479. Art. XV, sect. 15.2 of the CC&Rs states that any violation of the CC&Rs shall be deemed a nuisance. Defendants' acts and failure to act have created and create conditions that interfere with Plaintiff's comfortable enjoyment of Plaintiff's Unit. Defendants' nuisance has been a continuing violation, with ongoing harm to Plaintiff and Plaintiff's Unit.

15. As a proximate result of the acts of Defendants Landman and Does 1-10, Plaintiff

1 has been and is being injured in his health, strength, and activity, sustaining injury to his eyes,
2 nose, lungs, nervous system, and person, which have caused and continue to cause Plaintiff great
3 physical and mental pain and suffering. As a result of such injuries, Plaintiff has suffered general
4 damages in an amount exceeding the jurisdictional minimum of this Court, such amount to be
5 precisely determined according to proof at trial.

6 16. Defendants' acts and omissions were intentional (not accidental), deliberate,
7 willful, and done knowing they would create a nuisance to Plaintiff.

8 17. Defendants Landman and Does 1-10 knew that their smoking was bothering and
9 harming Plaintiff, knew that it violated the CC&Rs, yet, despite multiple complaints from
10 Plaintiff, still refused to stop smoking and continued to harm Plaintiff. Defendants Landman and
11 Does 1-10 committed, allowed, encouraged, tolerated, and ratified the above-described nuisance
12 with oppression, fraud, or malice, with a conscious disregard for Plaintiff's rights, and with the
13 intent to vex, injure, and annoy Plaintiff. Defendants' acts therefore warrant the assessment of
14 punitive damages in a sum appropriate to punish and set an example of Defendants Landman and
15 Does 1-10.

16 18. Plaintiff also seeks and requests preliminary and permanent injunctive relief
17 against Defendants, requiring them to abate and ameliorate the nuisance, by not smoking (at least
18 so that it doesn't affect and harm Plaintiff), by modifying the common wall between the parties'
19 Units so that smoke doesn't enter Plaintiff's Unit, and by immediately and forever ending and
20 preventing Landman's breach of Art. VIII, sect. 8.4 of the CC&Rs.

21 19. Plaintiff has no adequate remedy at law and ordinary monetary damages would
22 not adequately compensate Plaintiff for the losses he has suffered and will suffer due to such
23 nuisance, in that the impact of the same is ongoing and Defendants' acts and failure to act are
24 likely to be repeated into the future if not enjoined. Plaintiff therefore faces undue hardship if the
25 Court does not enjoin Defendants as requested herein. Plaintiff is entitled to such injunctive
26 relief under the common law and under Art. XV, sects. 15.1 and 15.2 of the CC&Rs.

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1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 3 1. General damages, in a sum exceeding the jurisdictional minimum of the Court,
4 according to proof;
- 5 2. Special damages, according to proof;
- 6 3. Punitive damages, in a sum appropriate to punish and make an example of
7 Defendants;
- 8 4. Interest on Plaintiff's damages, if allowed by the Court, from date of injury;
- 9 5. Preliminary and permanent injunctive relief;
- 10 6. Costs of suit; and
- 11 7. Such other and further relief as is just and proper.
- 12

13 Dated: March 17, 2021

THE RUTTENBERG LAW FIRM, P.C.

14 By: Mark A. O'Brien
15 Mark A. O'Brien
16 Attorneys for Plaintiff
MARK A. O'BRIEN

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VERIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct, except as to those matters stated on information and belief, which I am informed and believe are true and correct.

Executed on March 17, 2021, at Los Angeles, California.

Mark A. O'Brien
Mark A. O'Brien

EXHIBIT A

RECORDING REQUESTED BY

RAPKIN GITLIN & BEAUMONT

06/06/08



20081006417

WHEN RECORDED MAIL TO

NAME RAPKIN GITLIN & BEAUMONT

MAILING 21650 OXNARD ST. SUITE 1620
ADDRESS

CITY, STATE WOODLAND HILLS, CA 91367
ZIP CODE

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Amended and Restated Declaration of Covenants, Conditions and Restrictions of

Annandale Townhouse Association, Inc. a California Non-Profit Corporation

Legal
Solutions
Co. Plus

ORIGINAL

36

7.9 Compliance With Governmental Regulations. Review and approval by the Board of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install or modify the Improvement.

7.10 No Waiver of Future Approvals. The approval of the Board in any matter requiring the approval and consent of the Board shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar matter subsequently submitted for approval.

ARTICLE VIII

RESTRICTIONS ON USE OF CONDOMINIUMS AND COMMON AREA

In addition to the restrictions established by law and Association Rules, which are not inconsistent with this Declaration, the following restrictions are hereby imposed upon the use of Condominiums and Common Areas within the Property.

8.1 Residential Use/Single Occupancy. The use of the Condominiums within the Property is restricted to Residential Use, as defined in Article II hereof, and no Unit may be occupied by more than two individuals per bedroom, plus one.

8.2 Interior Improvements. No interior Improvement to any Condominium involving structural components of the building structure, other than non-load-bearing interior walls, shall be commenced without the prior written approval of the Board. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Condominium that will impair the structural soundness or integrity of another Condominium or impair any easement.

8.3 Damage to Common Area. No Owner, Tenant, invitee, guest, or contractor employed by anyone other than the Board may make any improvement to the Common Area or Common Area Facilities or remove or alter any furnishings, structure or landscaping materials. The Common Area shall not be obstructed by any person. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligent or intentional conduct of that Owner, that Owner's family members, contract purchasers, Tenants, guests, or invitees. Each Owner, by acceptance of his or her deed, agrees personally and for family members, contract purchasers, Tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such other Owner harmless from, and to defend him or her against any claim of any person for personal injury or property damage occurring within the Condominium of the Owner, including Exclusive Use Common Area, except to the extent that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or Tenant.

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8.4 Prohibition of Noxious Activities. No illegal, noxious or offensive activities shall be carried on or conducted upon any Condominium or Common Area nor shall anything be done within the Property which is or could become an unreasonable annoyance or nuisance to other residents. Without limiting the foregoing, no Owner shall permit unreasonable noise, including, but not limited to, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Unit or from activities within the Common Area, which would unreasonably disturb any other Owner's or Tenant's enjoyment of his or her Unit or the Common Area.

8.5 Pets. No animals, livestock, or poultry of any kind, shall be raised, bred or kept in any Unit or Exclusive Use Common Area, except that domesticated dogs, cats, birds and aquatic animals kept within an aquarium, or other animal as agreed to between the Association and the Owner, may be kept in the Units or Exclusive Use Common Areas, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the properties which result in an annoyance or are a nuisance or obnoxious to residents in the vicinity. The Association, in its sole discretion, shall have the right to determine what are reasonable numbers and what constitutes a threat or nuisance. Pet owners shall be responsible for the prompt disposal of pet wastes deposited by their pets in the Common Areas. Every Owner shall be liable to each and all remaining Owners, their families, guests, invitees, and Tenants, for any damages and unreasonable noise or odors to person or property caused by any animals brought or kept upon the Property by an Owner or by members of his or her family, Tenants, guests, and invitees.

A. Leash Required. No Owner who possesses a dog or other animal shall permit, allow, or cause the dog or other animal to run, stray, be uncontrolled or in any manner be in, upon, or at large upon any part of the Common Area, unless it is restrained by a substantial leash and under the control of a responsible adult.

B. Dangerous Dogs.

(1) Notwithstanding the foregoing, no domestic dogs shall be within the Common Area that are deemed by the Board to be vicious or potentially dangerous dogs. All vicious and potentially dangerous dogs must be kept indoors or in a securely fenced area within the Owner's Exclusive Use Common Area from which it cannot escape, and into which children or other individuals cannot trespass. A dog shall be deemed "vicious" for purposes of this Section if, when unprovoked: 1) it has bitten a person (however, a dog may be vicious even though it is not proven to have bitten any person); 2) in an aggressive manner, it inflicts severe injury on or kills a human being; or 3) it is previously determined to be and currently listed as a potentially dangerous dog (as determined by the Board of Directors or local governmental authority) and, after its owner or keeper has been notified of this determination, it continues to engage in behavior deemed potentially dangerous. For purposes of determining if a dog is "vicious," "severe injury" means any physical injury to a human

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ARTICLE XV

BREACH AND DEFAULT

15.1 Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner or Tenant of any Unit, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

15.2 Nuisance. Without limiting the generality of the foregoing section, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

15.3 Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner, Tenant or Lessee of any Unit, the court may award to the prevailing party in any such action such attorneys' fees and other costs as the court deems just and reasonable. An Owner shall be responsible for attorneys' fees and costs incurred by the Association to cure the Owner's defaults and Owner's Tenants' or Lessees' defaults.

15.4 Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or Tenant or others to perform or observe any provision of this Declaration.

15.5 Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

15.6 Rights and Remedies of the Association.

A. Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's Tenants, guests, employees, invitees, or contractors, the Board, for and on behalf of all other Owners, may enforce the