

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ERIC P. NORLAND, ESQ. (SBN 101170) Law Office of Eric P. Norland 1435 Koll Circle #106 San Jose, CA 95112 TELEPHONE NO: (408) 993-8100 FAX NO. (Optional): E-MAIL ADDRESS (Optional): eric@norlandlaw.com ATTORNEY FOR (Name): Augustin Ponce, Angelica Ponce and Augustin Ponce, Jr., a minor	E-FILED FOR COURT USE ONLY 2/25/2020 10:32 AM Clerk of Court Superior Court of CA, County of Santa Clara 20CV364149 Reviewed By: Y. Chavez
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Courthouse	
PLAINTIFF: AUGUSTIN PONCE, ANGELICA PONCE and AUGUSTIN PONCE, JR., a minor, by and through his Guardian ad litem, AUGUSTIN PONCE DEFENDANT: FOXDALE APARTMENTS, AHA FOXDALE, LLC, KDF COMMUNITIES FOXDALE, LLC, KDF FOXDALE, L.P. <input checked="" type="checkbox"/> DOES 1 TO 100	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input checked="" type="checkbox"/> Property Damage <input checked="" type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER: 20CV364149

1. Plaintiff (name or names): AUGUSTIN PONCE, ANGELICA PONCE, and AUGUSTIN PONCE, JR., a minor

alleges causes of action against defendant (name or names): FOXDALE APARTMENTS, AHA FOXDALE, LLC, KDF COMMUNITIES FOXDALE, LLC, KDF FOXDALE, L.P.

2. This pleading, including attachments and exhibits, consists of the following number of pages: four

3. Each plaintiff named above is a competent adult

a. ☒ except plaintiff (name): AUGUSTIN PONCE, JR.

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☒ a minor ☐ an adult
 - (a) ☒ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: PONCE v. FOXDALE APARTMENTS

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): FOXDALE APARTMENTS(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☒ an unincorporated entity (describe):

Fictitious Business Name (DBA)

(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☒ except defendant (name): KDF COMMUNITIES FOXDALE, LLC(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify): A California Limited Liability Companyb. ☒ except defendant (name): AHA FOXDALE, LLC(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify): A California Limited Liability Companyd. ☒ except defendant (name): KDF FOXDALE, L. P.(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☒ other (specify): A California Limited Partnership☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1 to 100 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1 to 100 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☒ other (specify): Wrongful death occurred at 1310 Foxdale Loop, San Jose, CA9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

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CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☒ Other (*specify*): Negligent Infliction of Emotional Distress

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☐ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☐ loss of earning capacity
- g. ☐ other damage (*specify*):

12. ☒ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☒ as follows:

ARNITA PONCE, deceased: mother of ANGELICA PONCE and AUGUSTIN PONCE, JR., a minor; husband of AUGUSTIN PONCE. Plaintiffs claim loss of financial support, loss of gifts, funeral and burial expenses, household services, loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support, sexual relations, training and guidance.

13. The relief sought in this complaint is within the jurisdiction of this court. and in excess of \$25,000.00

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: February 24, 2020

ERIC P. NORLAND, ESQ. (SBN 101170)
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

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FIRST _____ CAUSE OF ACTION—General Negligence
(number)

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ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): AUGUSTIN PONCE, ANGELICA PONCE, and AUGUSTIN PONCE, JR., a minor
 alleges that defendant (name): FOXDALE APARTMENTS, AHA FOXDALE, LLC, KDF COMMUNITIES FOXDALE, LLC, KDF FOXDALE, L.P.

☒ Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): January 14, 2019

at (place): 1310 Foxdale Loop, San Jose, CA

(description of reasons for liability):

Defendants, and each of them, negligently owned, managed, maintained, constructed, and repaired the FOXDALE APARTMENTS so as to cause a fire to occur in Apartment 111 which led to the death of ARNITA PONCE.

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SECOND CAUSE OF ACTION—General Negligence
(number)

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ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): AUGUSTIN PONCE

alleges that defendant (name): FOXDALE APARTMENTS, AHA FOXDALE, LLC, KDF COMMUNITIES
FOXDALE, LLC, KDF FOXDALE, L.P.☒ Does 1 to 100was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant
negligently caused the damage to plaintiff

on (date): January 14, 2019

at (place): 1310 Foxdale Loop, San Jose, CA

(description of reasons for liability):

Plaintiff, AUGUSTIN PONCE, was married to ARNITA PONCE. ARNITA PONCE died in a fire at the FOXDALE APARTMENTS on the above-referenced date. Defendants, and each of them, negligently owned, managed, maintained, constructed and repaired said apartments causing the fire which killed ARNITA PONCE. AUGUSTIN PONCE was on his way to work when his phone rang. The call was from his wife, ARNITA. Plaintiff AUGUSTIN PONCE could hear noises in the background. The phone then went dead. Shortly thereafter, AUGUSTIN PONCE received a phone call notifying him of the fire. Plaintiff rushed home to the apartments and witnessed emergency personnel dealing with the aftermath of the fire. Plaintiff was told that his wife had perished in the fire. He asked to see her body but was prevented from doing so by first responders. The contemporaneous observance of these events resulted in severe and persistent emotional distress to Plaintiff AUGUSTIN PONCE.