

SECRET

SHORT TITLE:

Tello et al. v. Almaden 1930 Apartments et al.

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*): Almaden 1930(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (*describe*):(4) ☐ a public entity (*describe*):(5) ☐ other (*specify*):c. ☐ except defendant (*name*):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (*describe*):(4) ☐ a public entity (*describe*):(5) ☐ other (*specify*):b. ☒ except defendant (*name*): VPM Management(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (*describe*):(4) ☐ a public entity (*describe*):(5) ☐ other (*specify*):d. ☐ except defendant (*name*):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (*describe*):(4) ☐ a public entity (*describe*):(5) ☐ other (*specify*):☐ 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*): 1-25 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*): 26-50 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*):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (*specify*):

SHORT TITLE:

Tello et al. v. Alamden 1930 Apartments et al.

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*):

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:

13. The relief sought in this complaint is within the jurisdiction of this court.

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*):

1-14

Date: October 16, 2017

JOHANNA CARVAJAL

(TYPE OR PRINT NAME)

SIGNATURE OF PLAINTIFF OR ATTORNEY

SHORT TITLE:

Alexis Medina et al. v. Alamaden 1930 Apartments et al.

CASE NUMBER:

1 **CAUSE OF ACTION—Premises Liability**

Page _____

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

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

Prem.L-1. Plaintiff (name): Alexis Medina, Christian Tello, and Erika Tello

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): October 28, 2015 plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

Defendants Almaden and VPM knew of its tenant Defendant Smith's alcoholism, drug use, violent rages, including incidents of domestic violence and criminal activities. Despite having knowledge of prior incidents of Defendant Smith, Defendants Alamaden and VPM did nothing to abate the unreasonable risk of harm Smith posed to Plaintiffs. On October 28, 2015, Smith while intoxicated and in a rage, discharged his rifle shooting threw the floor of his apartment. The bullet struck Plaintiff Alexis Medina in the legs causing great bodily injury.

Prem.L-2. ☒ **Count One—Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names):

Almaden 1930 Apartments (Alamaden) and VPM Management, Inc. (VPM)

☒ Does 1 to 20Prem.L-3. ☒ **Count Two—Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names):

Alamaden 1930 Apartments (Alamaden) and VPM Management (VPM)

☒ Does 21 to 40Plaintiff, a recreational user, was ☐ an invited guest ☐ a paying guest.Prem.L-4. ☐ **Count Three—Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):☐ Does _____ to _____a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.b. ☐ The condition was created by employees of the defendant public entity.Prem.L-5. a. ☒ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

Managers for Alamaden 1930

☒ Does 41 to 50b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are ☐ described in attachment Prem.L-5.b ☐ as follows (names):

SHORT TITLE:

Alexis Medina et al. v. Alamaden 1930 Apartments et al.

CASE NUMBER:

2

(number)

CAUSE OF ACTION—General Negligence

Page _____

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint*(Use a separate cause of action form for each cause of action.)*

GN-1. Plaintiff (name): Alexis Medina, Christian Tello, and Erika Tello

alleges that defendant (name): Almaden 1930 Apartments, VPM Management, Inc. and Eric Smith

☒ Does 1 to 50

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): October 28, 2015

at (place): Almaden 1930 Apartments in San Jose California

(description of reasons for liability):

Defendants Almaden and VPM had a duty of care to protect Plaintiffs from tenants such as Defendant Smith who posed a threat to the safety and security of Plaintiffs. Plaintiffs and other neighboring tenants informed Almaden managers of Smith's threatening nature and violent behavior towards Plaintiff and others. Despite complaints by Plaintiffs and others to Almaden's manager, Defendants took no action to abate the unreasonable risk of harm posed by Defendant Smith to Plaintiffs.

On the night of October 28, 2015, defendant Smith came home to his apartment owned and managed by Almaden and VPM. Smith was intoxicated and became violent once again. While in his apartment, Defendant Smith took out his rifle and recklessly discharged his fire arm. The bullet pierced the floor of his apartment, traveled through the ceiling of Plaintiffs' apartment below and struck Plaintiff Alexis Medina in both legs while he lay sleeping in bed. Plaintiffs Christian Tello and Alexis Medina's mother Erika Tello witnessed the incident.

As a proximate cause of Defendants Almaden, VPM, and Smith negligence, Plaintiff Alexis Medina suffered great bodily harm.

As a proximate cause of Defendant Almaden, VPM, and Smith's negligence, Plaintiffs Alexis Medina, Christian Tello and Erika Tello suffered severe emotional distress.

SHORT TITLE: Alexis Medina et al. v. Almaden Apartments et al.	CASE NUMBER
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3 **CAUSE OF ACTION—Intentional Tort** Page _____
(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

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

IT-1. Plaintiff (name): Alexis Medina, Christian Tello, and Erika Tello

alleges that defendant (name): Eric Smith

☒ Does 1 to 50

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff
on (date) October 28, 2015

at (place) Almaden 1930 Apartments located in San Jose, California

(description of reasons for liability):

On October 28, 2015, Defendant Smith discharged his rifle into Plaintiffs' apartment while they were home.

Defendant Smith acted intending to cause harmful to Plaintiffs when he discharged his rifle in Plaintiffs' apartment while they were home. The bullet struck Plaintiff Alexis Medina in both his legs while he was asleep in his bedroom.

Plaintiff Alexis Medina did not consent to the touching and a reasonable person in Plaintiff Alexis Medina's situation would have been offended by the touching.

As a proximate cause of Defendant Smith's intentional conduct, Plaintiff Alexis Medina suffered serious bodily injury.