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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

-UNLIMITED JURISDICTION-

IN AND FOR THE COUNTY OF ALAMEDA

SUZANNE TONG; EVELYN TONG (A Minor, By and Through her GAL, SUZANNE TONG); and, MIRANDA TONG (A Minor, By and Through her GAL, SUZANNE TONG), Plaintiffs, vs. AMAZON, dba ONE MEDICAL, ALTA BATES SUMMIT MEDICAL CENTER, AURELIA A. CHENG, M.D. and DOES 1-100, Defendants.	CASE NO. 24CV094128 **COMPLAINT FOR DAMAGES** **MEDICAL MALPRACTICE** **WRONGFUL DEATH**

INTRODUCTION

1. At all times relevant to the care rendered by defendants, plaintiff SUZANNE TONG, was an adult person, wife of decedent Philip Tong, and mother to EVELYN TONG and MIRANDA TONG, residing in the State of California, County of Alameda.

2. At all times relevant to the care rendered by defendants, plaintiff EVELYN TONG, was a minor and daughter of Plaintiff SUZANNE TONG and Plaintiffs' Decedent, Philip Tong, residing in the State of California, County of Alameda.

3. At all times relevant to the care rendered by defendants, plaintiff MIRANDA TONG, was a minor and daughter of Plaintiff SUZANNE TONG and Plaintiffs' Decedent, Philip Tong, residing in the State of California, County of Alameda.

4. Upon information and belief, plaintiffs allege that at all times mentioned, AMAZON dba ONE MEDICAL (Hereinafter ONE MEDICAL), is a health care institution doing business in the State of California, County of ALAMEDA. Said ONE MEDICAL provides medical care and treatment services, among other services, which falls under the definition of Health Care Provider pursuant to California Code of Civil Procedure §340.5.

5. Upon information and belief, plaintiffs allege that at all times mentioned, ALTA BATES SUMMIT MEDICAL CENTER (Hereinafter SUMMIT), is health care institution doing business in the State of California, County of ALAMEDA. Said SUMMIT provides medical care and treatment services, among other services, which falls under the definition of Health Care Provider pursuant to California Code of Civil Procedure §340.5.

6. Upon information and belief, plaintiffs allege that at all times mentioned, defendant AURELIA A. CHENG, M.D. was a regularly licensed physician and/or surgeon, association, corporation, partnership, dba regularly licensed health care providers, engaged in the practice of medicine, who practices medicine at times within the State of California, County of Alameda.

7. That defendants DOES 1 through 100, inclusive, are sued herein under fictitious names because their true names, involvement, and capacities, whether individual, associate,

corporate or governmental, are not now known to plaintiffs; plaintiffs are informed and believe and upon such information and belief allege that each of the said defendants are negligent or responsible in some manner for the events herein alleged, either as manufacturers, suppliers, sellers, distributors, physicians, surgeons, anesthetists, nurses, therapists, consultants or other medical practitioners, pharmacists, hospitals or hospital attendants, ambulance companies or attendants, or otherwise, and said defendants negligently acted or failed to act in one or more of said occupations or businesses, which negligence proximately caused the injuries and damages hereinafter set forth. Plaintiffs are uncertain as to the manner or function of said defendants, whether as manufacturers, suppliers, sellers, distributors, physicians, surgeons, anesthetists, nurses, therapists, consultants or other medical practitioners, pharmacists, hospitals or hospital attendants, ambulance companies or attendants, or otherwise, and plaintiff will ask leave to amend this Complaint to insert same herein when such names, capacities, functions, occupations and businesses of said defendants have been more fully ascertained.

8. Plaintiffs are informed and believe and upon such information and belief allege that, at all times herein mentioned, defendants, including those sued by fictitious names, were unaffiliated entities acting on their own accord or were agents, servants, employees and/or representatives of each of their co-defendants who acted within the course and scope of said agency, employment and/or representation and acted with the knowledge, consent, approval and/or ratification of their co-defendants.

VENUE AND JURISDICTION

9. Plaintiffs reallege and incorporate by reference each and every allegation of paragraphs 1 thru 8 of this Complaint, inclusive, as if fully set forth here.

10. Venue in Alameda County is proper because each ONE MEDICAL, SUMMIT and

AURELIA A. CHENG, M.D. have as their place of business the State of California, County of Alameda; and, the acts and omissions which make up the basis for plaintiffs' claims in this complaint all took place in the State of California, County of Alameda.

11. The subject matter of this action is properly heard in this Court as the action herein incorporated has an amount in controversy which exceeds $25,000.00, the jurisdictional minimum for this Court.

FIRST CAUSE OF ACTION – MEDICAL MALPRACTICE - WRONGFUL DEATH
(Against AURELIA A. CHENG, M.D. and SUMMIT by all Plaintiffs)

12. Plaintiffs re-allege and incorporate by reference each and every allegation of paragraphs 1 thru 11 of this Complaint, inclusive, as if fully set forth here.

13. Plaintiffs are informed and believe and thereupon allege that at all times mentioned, defendants SUMMIT and AURELIA A. CHENG, M.D. were contracted by Plaintiffs' Decedent, Philip Tong, on or about December 17, 2023 and for a period of time before and after that date, to provide medical care and treatment integral to emergency medical services care related to general health, uncontrolled diabetes, stage 3 chronic kidney disease, infection and sepsis and, therefore, owed to them the duty to use reasonable, prudent and diligent care.

14. On or about December 17 and 18, 2023, and for some time prior thereto and thereafter, Plaintiffs' Decedent, Philip Tong, consulted defendants, and each of them, for the purpose of treating a chronic severe bacterial and viral illness while also suffering from uncontrolled diabetes and chronic kidney disease, among other treatments, and employed said defendants to provide said services, including those necessary for the successful diagnosis, care, and treatment, among other services to Plaintiffs' Decedent, Philip Tong, for compensation, which Plaintiff Decedent, Philip Tong agreed to pay. Defendants, and each of them, undertook, by and through their agents, servants and employees, to treat and care for Plaintiff's Decedent, Philip Tong,

including but not limited to medical management by way of, examining, monitoring, providing and prescribing for, advising for and performing various modes of medical care and treatment and said defendants, and each of them, did examine, monitor, advise for, provide, prescribe for and administer various modes of medical care and treatment, and in so doing did fail to properly care for Plaintiffs' Decedent although engaged for that purpose, by means of various actions, undertakings and procedures, and in general undertaking and failing to appropriately undertake to care for or recommend care, order testing and providing proper treatment for the plaintiff, without adequately trained and qualified staff and without proper protection.

15. At all times and places mentioned herein, and in particular including, December 17, and 18th, 2023, defendants and each of them, carelessly, recklessly and negligently performed, instructed, monitored, prescribed for, advised for, administered, cared for and treated Plaintiff's Decedent, Philip Tong, while he was suffering from a chronic and severe bacterial and viral illness, including his general medical condition, in a careless, reckless and negligent manner. More specifically, at all times and places mentioned herein, defendants and each of them, negligently failed to perform proper testing, order blood work or other studies while in the ER of SUMMIT despite the chronic nature of the illness, worsening symptoms, the diagnosis of sepsis and knowing of his prior medical history and discharged Plaintiff's Decedent, Philip Tong, to follow up with his primary medical provider; who also failed to perform proper testing, order blood work or other studies on December 17, 2024 and December 18, 2024 despite the chronic nature of the illness, worsening symptoms, the diagnosis of sepsis and knowing of his severe prior medical history including uncontrolled diabetes and chronic kidney disease. At all times and places mentioned herein, defendants and each of them, carelessly, recklessly and negligently failed to competently manage Plaintiffs' Decedent, Philip Tong's severe illness in a timely, competent and safe manner.

To a reasonable degree of medical certainty, if Plaintiff's Decedent, Philip Tong, would have received proper care, treatment and follow up from defendant on December 17, 2023, he would have survived.

16. Plaintiffs allege that defendants, and each of them, negligently, recklessly and carelessly failed to properly monitor, evaluate, control, advise for, perform, manage, supervise, treat or care for Plaintiff's Decedent, Philip Tong, all of which caused, among other things, the death of Plaintiffs' Decedent, Philip Tong, resulting in the severe and permanent injuries to Plaintiffs, and each of them, and including injury to their nervous systems, extreme suffering, severe emotional distress, and psychological trauma, all to Plaintiffs' general damage.

17. During the period of defendants' employ with Plaintiffs' Decedent, Philip Tong, and at all times relevant to this Complaint, defendants, and each of them, their agents, employees and representatives acted negligently and recklessly with respect to Plaintiffs' Decedent, Philip Tong, and through him, to Plaintiffs, to whom they owed a duty, which duty they breached, causing injury and economic loss to Plaintiffs.

18. As a further direct and proximate result of said negligence, acts, omissions and conduct of defendants, and each of them, and of said injuries caused, plaintiffs have lost monies and other financial advantages in an amount not now known to them.

19. As a further direct and proximate result of said negligence, acts, omissions and conduct of defendants, and each of them, and of said injuries caused, plaintiffs have incurred expenses and will incur expenses in an amount not now known to them.

SECOND CAUSE OF ACTION – MEDICAL MALPRACTICE - WRONGFUL DEATH

(Against ONE MEDICAL by all Plaintiffs)

20. Plaintiffs re-allege and incorporate by reference each and every allegation of paragraphs 1 thru 19 of this Complaint, inclusive, as if fully set forth here.

21. Plaintiffs are informed and believe and thereupon allege that at all times mentioned, defendant ONE MEDICAL was contracted by Plaintiffs' Decedent, Philip Tong, on or about December 18, 2023 and for a significant period of time before that date, to provide medical care and treatment integral to primary medical care related to general health, uncontrolled diabetes, stage 3 chronic kidney disease, infection and sepsis and, therefore, owed to them the duty to use reasonable, prudent and diligent care.

22. On or about December 18, 2023, and for some time prior thereto, Plaintiffs' Decedent, Philip Tong, consulted defendants for the purpose of treating a chronic severe bacterial and viral illness while also suffering from uncontrolled diabetes and chronic kidney disease, among other treatments, and employed said defendants to provide said services, including those necessary for the successful diagnosis, care, and treatment, among other services to Plaintiffs' Decedent, Philip Tong, for compensation, which Plaintiff Decedent, Philip Tong agreed to pay. Defendants, and each of them, undertook, by and through their agents, servants and employees, to treat and care for Plaintiff's Decedent, Philip Tong, including but not limited to medical management by way of, examining, monitoring, providing and prescribing for, advising for and performing various modes of medical care and treatment and said defendants, and each of them, did examine, monitor, advise for, provide, prescribe for and administer various modes of medical care, and treatment, and in so doing did fail to properly care for Plaintiffs' Decedent although engaged for that purpose, by means of various actions, undertakings and procedures, and in general undertaking and failing to appropriately undertake to care for or recommend care, order testing and providing proper treatment for the plaintiff, without adequately trained and qualified staff and without proper protection.

23. At all times and places mentioned herein, and in particular including, December 18, 2023, defendants and each of them, carelessly, recklessly and negligently performed, instructed,

monitored, prescribed for, advised for, administered, cared for and treated Plaintiff's Decedent, Philip Tong, while he was suffering from a chronic and severe bacterial and viral illness, including his general medical condition, in a careless, reckless and negligent manner. More specifically, on or about December 18, 2023, Plaintiffs' Decedent, Philip Tong, developed worsening new symptoms including coughing up blood in his sputum but was simply told to participate in a video appointment several hours later. At that visit, in addition to other symptoms, he was short of breath and had blue feet, but was simply told to take an inhaler. Despite this, Plaintiff's Decedent went to the Emergency Room at SUMMIT where he collapsed in the waiting room and expired. To a reasonable degree of medical certainty, if Plaintiff's Decedent, Philip Tong, would have received proper care, treatment and follow up from defendant on December 18, 2023, he would have survived.

24. Plaintiffs allege that defendant, ONE MEDICAL, negligently, recklessly and carelessly failed to properly monitor, evaluate, control, advise for, perform, manage, supervise, treat or care for Plaintiff's Decedent, Philip Tong, all of which caused, among other things, the death of Plaintiffs' Decedent, Philip Tong, resulting in the severe and permanent injuries to Plaintiffs, and each of them, and including injury to their nervous systems, extreme suffering, severe emotional distress, and psychological trauma, all to Plaintiffs' general damage.

25. During the period of defendants' employ with Plaintiffs' Decedent, Philip Tong, and at all times relevant to this Complaint, defendants, and each of them, their agents, employees and representatives acted negligently and recklessly with respect to Plaintiffs' Decedent, Philip Tong, and through him, to Plaintiffs, to whom they owed a duty, which duty they breached, causing injury and economic loss to Plaintiffs.

26. As a further direct and proximate result of said negligence, acts, omissions and conduct of defendant, and of the injuries caused thereby, plaintiffs have lost monies and other financial advantages in an amount not now known to them.

27. As a further direct and proximate result of said negligence, acts, omissions and conduct of defendants, and of the injuries caused thereby, plaintiffs have incurred expenses and will incur expenses in an amount not now known to them.

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as set forth below:

1. For general damages against AMAZON dba ONE MEDICAL in a sum according to proof at trial;

2. For general damages against ALTA BATES SUMMIT MEDICAL CENTER in a sum according to proof at trial;

3. For general damages against AURELIA A. CHENG, M.D. in a sum according to proof at trial;

4. For special damages in a sum according to proof at trial;

5. For costs of suit incurred herein;

6. For pre-judgment interest pursuant to Civil Code Section 3291;

7. For funeral and burial expenses; and

8. For such further and other relief as the Court deems proper.

DATED: September 27, 2024

LAW OFFICES OF BRUCE L. AHNFELDT

By _____
Bruce L. Ahnfeldt