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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JORDAN CROWLEY,
Plaintiff,

v.

STRONG MEMORIAL HOSPITAL OF THE
UNIVERSITY OF ROCHESTER; KALEIDA
HEALTH; and UBMD PHYSICIANS' GROUP,

Defendants.

Civ. No. 21-cv-1078

COMPLAINT

JURY TRIAL DEMANDED

Of all the forms of inequality, injustice in healthcare is the most shocking and inhumane.

– Martin Luther King, Jr., *Speaking before the Second National Convention of the Medical Committee for Human Rights. March 25, 1966.*

“By embedding race into the basic data and decisions of health care, these algorithms propagate race-based medicine ... in ways that may direct more attention or resources to white patients than to members of racial and ethnic minorities”

– D. A. Vyas, L. G. Eisenstein, D.S. Jones,
Hidden in Plain Sight – Reconsidering the Use of Race Correction in Clinical Algorithms

Plaintiff, JORDAN CROWLEY, by and through his undersigned counsel, hereby files this Complaint against Defendants STRONG MEMORIAL HOSPITAL OF THE UNIVERSITY OF ROCHESTER, KALEIDA HEALTH, and UBMD PHYSICIANS' GROUP, and alleges as follows:

NATURE OF CLAIM

1. Jordan is a 22-year-old college student studying psychology with dreams of pursuing a profession in mental health. Jordan is biracial – both Caucasian and Black. He was born with only a single shrunken kidney, which has been experiencing loss in function. Jordan's biracial mother, Jessica, and his white grandmother, Joyce, have been by his side, together seeking out the best treatment for him. Jordan's family has been waiting for him to be listed for kidney transplantation. During this already trying process, Jordan and his family were surprised to discover that the medical algorithms his medical providers were using to assess his kidney health yield different outcomes depending on whether Jordan is categorized as Black or non-Black. This medical algorithm adds on a race-specific multiplier to a Black person (and no other race) and “can make Black patients with kidney disease appear healthier than they are. It means that Black patients have to reach higher levels of kidney disease before they are considered sick enough to qualify for certain treatments or interventions.”¹ It has been known for decades in the scientific and medical community² that the use of this medical algorithm is not grounded in science, and that race is an

¹ Jenny Tsai, *Jordan Crowley Would Be in Line for a Kidney—if He Were Deemed White Enough* (June 27, 2021), <https://slate.com/technology/2021/06/kidney-transplant-dialysis-race-adjustment.html>

² Special recognition to individuals who tirelessly advocate against race-based medicine: The Institute for Healing and Justice and its members (including Ricky Grisson, MD; Rohan Khazanchi, MPH; Jenny Tsai, MD and many other medical students and doctors who devote research and literature to advocate for healthcare equity), 1in9 Foundation (Founders Analyn and Raymond Scott), and Jay Kaufman, Ph.D.

arbitrary and inaccurate indicator of a person's kidney health. This complaint alleges that, because Jordan was categorized as Black despite his biracial identity, the medical algorithm deemed him ineligible for a kidney transplant, resulting in Jordan being taken on and off the transplant list over the past few years. The knowing and intentional use of the race-based medical algorithm is at the core of this race-discrimination lawsuit. Jordan brings this action seeking permanent change and redress for the inequities he experienced.

2. This is an action to secure relief for violations of rights guaranteed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* ("Title VI"); Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 ("Section 1557") and the New York State Human Rights Act ("NYHRL") Article 15 of the New York Executive Law § 290, *et seq.* which prohibits discrimination in public accommodations on the basis of race, among other protected personal characteristics. It also alleges a breach of contract claim by the Defendants.

BACKGROUND

3. The kidney is an organ tasked to filter out waste and excess fluid in the body. The kidney regulates the level of byproducts, acid buildup, and blood pressure in the body.

4. A patient's level of kidney health and disease is based on the measurement of the Glomerular Filtration Rate ("GFR"). A person with a healthy kidney usually has a GFR level between 90 and 120. A lower GFR score means a lower level of kidney function.

5. Although GFR can be directly assessed by collecting a patient's 24-hour urine sample, such direct assessment remains a cumbersome, specialized, and expensive diagnostic test available only in major medical centers. Hence, in routine practice, GFR is estimated from the blood concentration of serum creatinine, a byproduct of muscle activity which should be removed from one's blood through the work of one's kidneys.

6. Many health providers and diagnostics labs estimate a patient's GFR ("estimated GFR" or "eGFR") through an algorithm that measures serum creatinine in the blood and considers individual factors. Some eGFR formulas, including the MDRD formula (1999) and CKD-EPI (2009) equation, take into account the patient's age, sex, and **race**.³ In particular, these equations apply a multiplier ("race correction") to the baseline GFR estimate of a Black person.⁴ As a result of this race-correction multiplier, a Black person's eGFR score is scored several points higher than a non-Black person with the same kidney function, manufacturing the appearance that the Black person's kidney is healthier.

7. The eGFR's race-correction is based on the false assumption that "on average, [B]lack persons have greater muscle mass than white persons."⁵ This assumption is not grounded in science or medicine. Instead, it is based on outdated socio-economic factors and social constructs surrounding race that harken back to the days of slavery. The use of the faulty race proxy in eGFR raises thorny questions, as pointed out by legal scholar Dorothy Roberts in 2015: "[W]hat sense does it make for a doctor to automatically assume I have more muscle mass than [a] female bodybuilder? Wouldn't it be far more accurate and evidence-based to determine the

³ The estimated GFR (eGFR) which is taken through a blood test is preferred over the measured GFR (mGFR) which requires a 24-hour urine collection, which is a cumbersome process for patients.

⁴ Two eGFR equations are used in clinical settings and apply a multiplier of 1.16 (CKD-EPI equation, 2009) and 1.21 (MDRD equation, 1999). See Chadha, Lim, Kane & Rowland, *Toward the Abolition of Biological Race in Medicine* at 25, Othering and Belonging Institute & Institute for Healing and Justice (May 2020), available at <https://bit.ly/3vs2Xgn>

⁵ Andrew Levey et al., "A More Accurate Method to Estimate Glomerular Filtration Rate from Serum Creatinine: A New Prediction Equation. Modification of Diet in Renal Disease Study Group," *Annals of Internal Medicine* 130, no. 6 (March 16, 1999). <https://doi.org/10.7326/0003-4819-130-6-199903160-00002>.

muscle mass of individual patients just by looking at them? . . . **Race is a bad proxy.** In many cases, race adds no relevant information at all. It's just a distraction."⁶

8. When it comes to indicating a patient's race for the eGFR, under the MDRD and CKD-EPI (2009) formula, there are only two options: Black or non-Black. No other race can be stated, and there is no option to indicate a person of mixed race.

9. In the clinical setting, patients cannot be listed for a kidney transplant unless their eGFR dips below a certain numeric threshold. Because the race-correction artificially inflates a Black patient's eGFR score, it contributes to the longer wait times that Black patients often face in receiving kidney transplants and other treatments.

10. According to a cohort study, the "inclusion of the race coefficient in the estimation of GFR was associated with greater bias in GFR estimation and with delayed achievement of a clinical threshold for kidney transplant referral and eligibility."⁷

11. The race-correction poses negative clinical implications for Black patients who "may not be diagnosed early enough, may not receive intervention at a critical period, and are more likely to progress to higher stages of kidney disease and poor health outcomes."^{8 9}

⁶ Dorothy Roberts, November 2015 TEDMED 2015, https://www.ted.com/talks/dorothy_roberts_the_problem_with_race_based_medicine?language=dv

⁷ Zelnick LR, Leca N, Young B, Bansal N., *Association of the Estimated Glomerular Filtration Rate With vs Without a Coefficient for Race With Time to Eligibility for Kidney Transplant*. JAMA Netw Open. 2021;4(1):e2034004. doi:10.1001/jamanetworkopen.2020.34004, available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2775076>

⁸ Chadha, Lim, Kane & Rowland, *Toward the Abolition of Biological Race in Medicine 25*, Othering and Belonging Institute & Institute for Healing and Justice (May 2020), available at <https://bit.ly/3vs2Xgn>.

⁹ On the other hand, a similar race-adjustment affects kidney transplantation by using the race of the donor as a proxy for predicting the risk that a kidney graft will fail. "The race adjustment is based on an empirical finding that black donors' kidneys perform worse than nonblack donors' kidneys, regardless of

12. Notably, Black individuals face 2–4 times greater age-adjusted risk of progression to end-stage kidney disease, higher rates of premature mortality, lower likelihood of receiving kidney transplantation, and more—all of which are driven and exacerbated by a broad array of social and structural determinants of health including structural racism.¹⁰

13. The National Kidney Foundation and the American Society of Nephrology has renounced the use of race-correction in assessing the eGFR and have called on healthcare providers to use the “eGFR 2021 CKD EPI creatinine equation that estimates kidney function without a race variable. The task force also recommended increased use of cystatin C combined with serum (blood) creatinine, as a confirmatory assessment of GFR or kidney function.”¹¹

14. Upon information and belief, many hospital systems across the country and in New York State including NYC Health + Hospitals¹² have changed to using a race-free equation or calculations solely based on creatinine levels.

the recipient’s race. The developers of the KDRI do not provide possible explanations for this difference. If the potential donor is identified as black, the KDRI returns a higher risk of graft failure, marking the candidate as a less suitable donor. Meanwhile, black patients in the United States still have longer wait times for kidney transplants than nonblack patients.” See D.A. Vyas, L.G. Eisenstein, and D. S. Jones *Hidden in Plain Sight – Reconsidering the Use of Race Correction in Clinical Algorithms*, N. Engl. J. Med. 2020 383:874-882, <https://www.nejm.org/doi/full/10.1056/NEJMms2004740>.

¹⁰ Mohottige et al., *Racism and Kidney Health: Turning Equity into a Reality*, *AJKD* Vol. 77-6, pp. 951-962, [https://www.ajkd.org/article/S0272-6386\(21\)00437-6/fulltext](https://www.ajkd.org/article/S0272-6386(21)00437-6/fulltext)

¹¹ National Kidney Foundation, *NKF and ASN Release New Way to Diagnose Kidney Diseases*, <https://www.kidney.org/news/nkf-and-asn-release-new-way-to-diagnose-kidney-diseases>

¹² NYC Health + Hospitals, *“Medical Eracism” Initiative Aims to Abolish Race-Based Assessments Used for Medical Decisions*, <https://www.nychealthandhospitals.org/pressrelease/medical-eracism-initiative-aims-to-abolish-race-based-assessments-used-for-medical-decisions/>

FACTUAL ALLEGATIONS

15. Plaintiff JORDAN CROWLEY (“Jordan” hereinafter) has been seeking medical care at Kaleida Health, UBMD Physicians Group, and Strong Memorial Hospital of the University of Rochester (“Strong Hospital” hereinafter) (collectively, “Defendants”).

16. Jordan self-identified as an individual of a mixed race at Defendants’ hospitals. Jordan’s parents are mixed race. Biologically, he has one Black grandparent on the maternal side, one Black grandparent on the paternal side, and two white grandparents on each side.

17. Jordan has suffered from kidney disease all his life and received treatment from various healthcare providers. Jordan has been seeking in-patient and out-patient care from the pediatric nephrologist at Kaleida Health (Oishei Children’s Hospital at Buffalo), pediatric nephrologist at Conventus UBMD Physicians Group, and from the pediatric urology and organ transplant team at Strong Hospital.

18. Since he was 15 years old, Jordan was told by doctors to consider kidney transplant.

19. Jordan’s kidney health significantly declined in the summer of 2016. In 2017, Jordan met with the Strong Hospital’s organ transplant team for an evaluation of his kidney function to determine eligibility for a kidney transplant. Having undergone several tests, Jordan was told by Strong Hospital’s transplant team that the hospital’s “computer system was having problems determining Jordan’s status” because it had to categorize Jordan as either Black or non-Black for the kidney assessment. Jordan’s mother challenged this and remarked, “surely there must be other biracial patients here.” Jordan and his family came back from the hospital without any answers.

20. Upon information and belief, Strong Hospital had used the MDRD formula until

2013, and the CKD-EPI-2009 formula until present.¹³ Both equations apply a race-correction multiplier for Black patients, which makes their kidneys appear healthier compared to non-Black patients' kidneys.

21. Several weeks after Jordan had met with the kidney transplant team at Strong Hospital, Jordan had an appointment to see his pediatric urologist at Strong Hospital. During that appointment, when Jordan's mother Jessica and grandmother Joyce challenged the application of the race-corrected eGFR formula, the medical staff replied that race-correction formula and its underlying assumptions about race harken back to slavery days, but comforted Jordan's family by stating that nothing bad would happen to Jordan.

22. At one point, between his initial kidney transplant evaluation at Strong Hospital in 2016 and 2018, Jordan was deemed to be eligible for a kidney transplant. Jordan and his family were filled with the hope that Jordan may be able to find a donor for a transplantation.

23. Then, on or around October 5, 2018, Jordan was told that he had been taken off the transplant list at Strong Hospital because his eGFR score which were sent to Strong Hospital were too high, indicating that his kidneys were stable.¹⁴

24. Upon information and belief, Jordan's eGFR results were sent to Strong Hospital by his pediatric nephrologist at UBMD Physicians' Group and Kaleida Health.

25. Upon information and belief, at Defendant Kaleida Health and UBMD Physicians'

¹³ URMCC, *New Formula for Calculating Estimated GFR*, 2/5/2013, https://www.urmc.rochester.edu/medialibraries/urmcmedia/urmc-labs/clinical/documents/ckd_epi_formula_announcement_f.pdf

¹⁴ Upon information and belief, Jordan would get regular lab tests through his pediatric nephrologist's office at UBMD Physicians' Group and Kaleida Health, and the lab results would be sent to Strong Hospital Transplant team's system.

Group's facilities, Jordan has been perceived and categorized as Black without being asked his racial identification. The medical records system at Defendant Kaleida Health and UBMD Physicians' Group's facilities recognize Jordan as Black.

26. Upon information and belief, Defendant Kaleida Health and UBMD Physicians' Group's use the race-corrected eGFR (MDRD formula). Because Jordan was categorized as Black at Kaleida Health and UBMD Physicians' Group, Jordan's eGFR was race-corrected, resulting in an inflated, higher score. Based on this inflated score, Plaintiff alleges that he was taken off the active transplant list.

27. Between January 25, 2019 and February 2, 2019, Jordan was hospitalized at Kaleida Health (Oishei Children's Hospital) due to a Urinary Tract Infection.

28. Between January 25, 2019 and February 2, 2019, Jordan's eGFR fell as low as 17 (or 20 with the race correction). At Jordan's mother's request, Kaleida Health's medical team sent a notification to Strong Hospital's Transplant Team to consider Jordan's candidacy for a kidney transplant, based on Jordan's race-corrected eGFR score.

29. In March 2019, Jordan received another transplant evaluation at Strong Hospital. At that appointment, Jordan's mother and grandmother voiced their concern about the eGFR race-correction formula, and its potential negative impact on Jordan's kidney transplant prospects. They felt that their concerns were ignored and unaddressed.

30. Since 2019, Jordan has been repeatedly removed from and reinstated to the active transplant list depending on how his race-corrected (and thus inflated) eGFR fluctuated. Currently, Jordan is off the active transplant list.

31. Upon information and belief, Defendants were made aware that the race-correction in the eGFR score was not medically sound, through the concerns raised by Plaintiff and his family,

widely published medical literature, and through the examples of many hospitals nationwide that have removed the race-correction formula. Despite such knowledge, Defendants' continued use of the race-correction in the eGFR score for patients who are (or perceived to be) Black constitutes intentional discrimination on the basis of race.

32. Defendants' policy and practice of imposing a racial categorization upon the patient based on their skin color or appearance constitutes intentional discrimination.

33. Upon information and belief, as a result of Defendants' policy and practice and use of the eGFR score for patients who are (or perceived to be) Black, Jordan is taken on and off the transplant list, which causes delays to his kidney transplantation process and limits opportunities to find a prospective kidney donor.

34. Upon information and belief, but for the Defendants' arbitrary categorization of Jordan's race and the race-correction applied to this eGFR score, Jordan would have been on – and remained on – the transplant list. The loss of time and opportunity to pursue kidney transplantation has caused irreversible, permanent harm to Jordan's physical and mental health.

35. Defendants provide patients with the Patients' Bill of Rights where Defendants promise to provide treatment without discrimination as to race. The Patients' Bill of Rights also promise to provide all the information that is needed for patients to give their informed consent for any procedure or treatment.

36. Plaintiff alleges that Defendants' conduct and policies constitutes discrimination and breach of contract which caused Plaintiff severe physical and emotional pain and suffering, including but not limited to the following: (1) Defendants deprived Jordan an opportunity to be "active" on the transplant list and thereby hindered Jordan from benefitting treatment in an equal manner to other patients; (2) Jordan has suffered frustration and confusion from being repeatedly

placed on and taken off of the active transplant list, during which time he could have been searching for and matched with a kidney donor; (3) Jordan believes that he was treated differently than other patients because Defendants perceived him to be Black; (4) while being made to wait and deprioritized as “inactive” on the transplant list, Jordan has endured medical and physical suffering with permanent consequences such as frequent UTIs and seizures; (5) Jordan missed an entire semester of school in January 2019 due to his deteriorating kidney health and UTI; (6) Jordan and his family’s well-being is adversely impacted due being de-listed from the transplantation list causing emotional suffering as a result of the Defendants’ discriminatory policies.

37. Based on Plaintiff’s allegations herein, it is evident that Defendants’ policies, procedures, and practices are discriminatory. Despite knowing that the eGFR race-based multiplier is discriminatory and that the inaccurate assumptions about racial differences in physiology harkens back to slavery days, Defendants still use the multiplier in treating patients who are Black or perceived as Black. Plaintiff brings this lawsuit to compel Defendants to cease unlawful discriminatory practices and implement policies and procedures that will ensure equal opportunity for individuals to obtain health care services from Defendants’ facilities.

38. Plaintiff brings this action seeking declaratory, injunctive, and equitable relief; compensatory damages; and attorneys’ fees and costs to redress Defendants’ unlawful discrimination against Plaintiff on the basis of his perceived race in violation of Title VI of the Civil Rights Act; 42 U.S.C. § 2000d; Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 18116; the New York Human Rights Law, and Breach of Contract.

THE PARTIES

39. Plaintiff Jordan Crowley brings this action as an individual residing in Elma, New York.

40. Defendant University of Rochester Medical Center Strong Hospital is a university hospital with an address at 601 Elmwood Ave, Box 664 Rochester, New York 14642. Upon information and belief, Defendant is a recipient of federal financial assistance, including Medicare and/or Medicaid reimbursements.

41. Defendant Kaleida Health is a healthcare provider with a corporate address at 726 EXCHANGE STREET, SUITE 510, BUFFALO, NY, United States, 14210. Upon information and belief, Defendant is a recipient of federal financial assistance, including Medicare and/or Medicaid reimbursements.

42. Defendant UBMD Physicians Group is a healthcare provider with a corporate address at 1001 MAIN STREET 5TH FL, BUFFALO, NY 14203. Upon information and belief, Defendant is a recipient of federal financial assistance, including Medicare and/or Medicaid reimbursements.

JURISDICTION & VENUE

43. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 for Plaintiff's claims arising under the laws of the United States, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for Plaintiff's claims arising under state and local laws.

44. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants are a resident of this district, because Defendants have sufficient contacts with this District to

subject them to personal jurisdiction and had those contacts at the time this action is commenced, and the acts and omissions giving rise to this Complaint occurred within this District.

**CLAIM I: VIOLATIONS OF TITLE VI OF THE
CIVIL RIGHTS ACT (ALLEGED AGAINST ALL DEFENDANTS)**

45. Plaintiff repeats and re-alleges all preceding paragraphs in support of this claim.

46. At all times relevant to this action, Title VI of the Civil Rights Act of 1964 has been in full force and effect and has applied to the Defendants' conduct. 42 U.S.C. § 2000d.

47. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race by programs and activities receiving federal funds. 42 U.S.C. § 2000d.

48. At all times relevant to this action, Defendants received federal financial assistance, including Medicare and/or Medicaid reimbursements.

49. As alleged in foregoing sections, one or more of the Defendants perceived Jordan as Black and applied the race-correction eGFR equation during the decisional process of Jordan's treatment, including his transplantation eligibility. Using race as a false proxy adversely affected Jordan's treatment.

50. As alleged in foregoing sections, Defendants intentionally discriminated against Plaintiff, on the basis of his race and/or perceived race, in violation of Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d.

51. As alleged above, Defendants failed to update and implement policies, procedures, and training of staff necessary to ensure compliance with the Title VI of the Civil Rights Act of 1964.

52. Plaintiff is therefore entitled to injunctive relief; attorneys' fees, costs, and

disbursements; and compensatory damages for the injuries and loss they sustained as a result of Defendants' intentional and discriminatory conduct and as hereinbefore alleged.

CLAIM II: VIOLATIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT (ALLEGED AGAINST ALL DEFENDANTS)

53. Plaintiff repeats and re-alleges all preceding paragraphs in support of this claim.

54. At all times relevant to this action, Section 1557 of the Patient Protection and Affordable Care Act has been in full force and effect and has applied to the Defendants' conduct.

55. Section 1557 of the Patient Protection and Affordable Care Act (42 U.S.C. §18116) and its implementing regulation provide that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (race, color, national origin), under any health program or activity, any part of which is receiving federal financial assistance.

56. As alleged in foregoing sections, one or more of the Defendants perceived Jordan as Black and applied the race-correction eGFR equation during the decisional process of Jordan's treatment, including his transplantation eligibility. Using race as a false proxy adversely affected Jordan's treatment.

57. As alleged in foregoing sections, Defendants intentionally discriminated against Plaintiff, on the basis of his race and/or perceived race, in violation of Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d and Section 1557 of the Patient Protection and Affordable Care Act.

58. As alleged above, Defendants failed to implement policies, procedures, and training of staff necessary to ensure compliance with the Patient Protection and Affordable Care Act.

59. Plaintiff is therefore entitled to injunctive relief; attorneys' fees, costs, and disbursements; and compensatory damages for the injuries and loss they sustained as a result of Defendants' intentional and discriminatory conduct and as hereinbefore alleged.

**CLAIM III: VIOLATIONS OF THE
NEW YORK HUMAN RIGHTS LAW (ALLEGED AGAINST ALL DEFENDANTS)**

60. Plaintiff repeats and re-alleges all preceding paragraphs in support of this claim.

61. At all times relevant to this action, the New York Human Rights Law, Article 15 of the New York Executive Law § 290, *et seq.* has been in full force and effect and has applied to Defendants' conduct.

62. At all times relevant to this action, Defendants' facilities have been places of public accommodation within the meaning of N.Y. Exec. L. § 292(9).

63. Pursuant to N.Y. Exec. L. § 296(2)(a), “[i]t shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the . . . race . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . . to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of . . . race . . .”

64. As alleged in foregoing sections, one or more of the Defendants perceived Jordan as Black and applied the race-correction eGFR equation during the decisional process of Jordan's treatment, including his transplantation eligibility. Using race as a false proxy adversely affected Jordan's treatment.

65. As alleged in foregoing sections, Defendants intentionally discriminated against Plaintiff, on the basis of his race and/or perceived race, in violation of the NYHRL.

66. Plaintiff is therefore entitled to injunctive relief, as well as compensatory damages for the injuries and loss sustained as a result of Defendants' discriminatory conduct as hereinbefore alleged pursuant to N.Y. Exec. L. § 297(9).

CLAIM IV: BREACH OF CONTRACT (ALLEGED AGAINST ALL DEFENDANTS)

67. Plaintiff repeats and realleges all preceding paragraphs in support of this claim.

68. Plaintiff and Defendants were parties to a contract and agreement whereby Defendants promised to provide patients with healthcare that is free from discrimination.

69. Defendants are required to provide patients with the Patients' Bill of Rights where Defendants promise to provide treatment without discrimination as to race. The Patients' Bill of Rights also promise to provide all the information that is needed for patients to give their informed consent for any procedure or treatment.

70. As alleged in the foregoing sections, Defendants breached the contract by failing to provide Plaintiff with the opportunity to be treated in a fair, discrimination-free manner.

71. Therefore, Plaintiff is entitled to compensatory damages resulting from the breach of contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray that this Court grant the following relief:

72. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendants' policies, procedures, and practices have subjected Plaintiff to

unlawful discrimination in violation of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq*; Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; the New York Human Rights Law, and Breach of Contract.

- a. Issue an injunction:
 - i. Treating and assessing Plaintiff's renal health in a race-free manner and moving forward with the transplantation process.
 - ii. Removing race from the eGFR formula currently used by the Defendants' facilities and all labs. Replacing the formula with a race-free measurement such as the Cystatin-C.
 - iii. Implementing policies enabling patients of various ethnic, racial, and social backgrounds to voluntarily state their own racial identity only where it is pertinent to monitoring and eliminating racial disparity in healthcare access.
 - iv. Setting up a task force and/or committee dedicated to studying healthcare assessment algorithms that adversely affect members of a protected class, educating medical staff about the potential biases and discrimination that may arise from the use of healthcare assessment algorithms, and training staff to clearly communicate to patients regarding the use of said algorithms to gain informed consent.

- b. Award to Plaintiff:
 - i. Compensatory damages pursuant to Title VI Civil Rights Act, Section 1557 of the Patient Protection and Affordable Care Act, the New York Human Rights Law, and Breach of Contract;

- ii. Reasonable costs and attorneys' fees pursuant to the Title VI Civil Rights Act, Section 1557 of the Patient Protection and Affordable Care Act, and the New York Human Rights Law;
- iii. Interest on all amounts at the highest rates and from the earliest dates allowed by law;
- iv. Any and all other relief that this Court finds necessary and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all of the issues a jury properly may decide, and for all of the requested relief that a jury may award.

Dated: October 1, 2021

Respectfully submitted,

By: /s/
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