

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTHUR MADDOX,

Plaintiff,

v.

UNITED NETWORK FOR ORGAN
SHARING and SWEDISH HEALTH
SERVICES D/B/A SWEDISH MEDICAL
CENTER,

Defendants.

Case No. 2:24-cv-00811

ORDER

I. INTRODUCTION

THIS MATTER is before the Court on Defendant Swedish Health Services' ("Swedish") Motion to Dismiss, Dkt. # 19, and United Network for Organ Sharing's ("UNOS") Motion to Dismiss, Dkt. # 25. Plaintiff opposes both motions. Dkts. # 35–36. Plaintiff and Swedish request oral argument, but the Court does not find it necessary. For the reasons set forth below, the Court GRANTS in part and DENIES in part Defendant UNOS's Motion to Dismiss. Dkt. # 25. The Court DENIES Defendant Swedish's Motion to Dismiss. Dkt. # 19.¹

¹ On December 9, 2024, the Court denied Defendant Swedish's motion to seal the motion to dismiss. Dkt. # 37. Accordingly, the Court directed Swedish to file an unredacted motion to dismiss on the docket which it did, Dkt. # 39. For Sections II–IV of this Order, the Court cites to the unredacted motion, Dkt. # 39.

II. BACKGROUND

Plaintiff Arthur Maddox is a Black American who resides in Olympia, Washington. Dkt. # 1 ¶¶ 4, 22. Plaintiff asserts four causes of action: 1) Violation of Title VI of the Civil Rights Act of 1964; 2) Violation of the Washington Law Against Discrimination (“WLAD”); 3) Breach of Fiduciary Duty; and 4) Outrage. *See id.* ¶¶ 70–95. Plaintiff brings claims 1, 2, and 4 against both Defendants, and brings claim 3 only against Defendant Swedish. *See id.* The Complaint alleges that UNOS and Swedish engaged in racially discriminatory practices that prevented Maddox from accruing time on the kidney transplant waitlist for several years. *See generally id.* Further, the Complaint alleges Defendants’ practices prejudiced Maddox’s ability to expeditiously receive a donor kidney and caused him substantial harm while he waited. *See generally id.* The Court first summarizes the relevant transplant organ allocation practices and policies as alleged in the Complaint before addressing the specific facts of Maddox’s experience with these practices.

Defendant UNOS is a private, non-profit organization that operates under a federal contract to oversee the national organ transplant waiting list. Dkt. # 1 ¶¶ 29, 30. UNOS manages the Organ Procurement and Transplantation Network (“OPTN”) and is responsible for establishing and implementing policies that determine how donor kidneys are allocated to patients with kidney disease. *Id.* To be placed on the waiting list, patients must first visit a transplant hospital and obtain a physician’s referral. *Id.* ¶ 54. UNOS maintains the waiting list using a software system called UNet, where referring hospitals input patient information. *Id.* ¶ 36. When a kidney becomes available, UNet’s algorithm evaluates the stored data, generates a list of potential matches, and ranks them accordingly. *Id.* ¶ 37. The kidney is then offered to patients based on this ranking. *Id.*

1 Kidney function is assessed through an estimated glomerular filtration rate
2 (“eGFR”) test. *See id.* ¶ 40. Lower eGFR values indicate diminished kidney function and
3 a greater need for a transplant. *Id.* Patients begin accruing wait time for a transplant once
4 their eGFR drops below 20 ml/min or when they exhibit other severe symptoms. *Id.*
5 However, being on the waiting list does not automatically mean a patient accrues wait
6 time—this depends on whether their condition meets the necessary severity threshold. *Id.*
7 The amount of wait time accrued is a key factor UNet’s algorithm considers when
8 determining transplant eligibility and ranking potential transplant recipients. *See id.*

9 For years, policies in place allowed and encouraged hospitals to calculate eGFR
10 differently for Black patients. Dkt. # 1 ¶ 45. This practice was based on outdated and
11 scientifically unsupported beliefs that Black individuals have greater muscle mass and
12 creatinine levels than other racial groups. *Id.* ¶¶ 45–48. As a result, Black patients’ eGFR
13 scores were artificially adjusted by 16–18% using a race-based coefficient, an adjustment
14 that was not applied to any other racial group. *Id.* ¶ 42. This practice directly impacted
15 Black patients’ access to kidney transplants by delaying when they could begin accruing
16 wait time, because while other patients could start accruing wait time once their eGFR
17 dropped below 20 ml/min, Black patients often had to wait until their unadjusted score was
18 significantly lower or until they developed more severe symptoms. *Id.* ¶ 43. Some Black
19 patients never accrued wait time at all due to this practice, while others accrued less than
20 they would have otherwise. *Id.* ¶ 44. This disparity persisted for decades, resulting in
21 non-Black patients receiving kidneys that, absent the racial adjustment, would have gone
22 to Black patients. *Id.* ¶¶ 42, 50. Consequently, affected individuals suffered not only from
23 the failure to receive transplants but also from worsened kidney disease, prolonged dialysis
24 treatment, and increased financial burdens. *Id.* ¶¶ 20, 51–52.

1 Concerns about the validity and inequity of this race-based adjustment began to
2 surface in 2011. Dkt. # 1 ¶ 48. In November of that year, Dr. Toni Martin published an
3 article in the *American Journal of Kidney Diseases* challenging the scientific basis for the
4 practice and highlighting the broader historical misuse of purported genetic differences to
5 justify racial disparities in healthcare. *Id.* Despite this growing evidence, the use of the
6 race-based coefficient continued until 2023. *See id.* ¶¶ 56–58.

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8 In June 2022, UNOS publicly acknowledged that the race-based eGFR calculations
9 had systematically underestimated the severity of kidney disease in many Black patients,
10 which in turn negatively impacted their transplant eligibility and wait time accrual. *Id.* ¶¶
11 54–55. On June 27, 2022, UNOS officially changed its policy, and the race-based
12 coefficient was eliminated from eGFR calculations. *Id.* ¶ 56. However, despite
13 recognizing the historical impact on wait time accrual, UNOS did not immediately take
14 corrective action. *Id.* ¶ 57. On January 5, 2023, UNOS announced a new policy designed
15 to address this issue. *Id.* ¶ 58. The policy required transplant hospitals to notify all patients
16 on the national kidney lists that: 1) Black Americans will be considered for wait time
17 adjustments where the race-based coefficient delayed their accrual of wait time, and 2) the
18 recalculation process was completed and informing each patient’s status on the list at that
19 time. *Id.* The organization also directed transplant hospitals to review records and submit
20 adjustment requests for eligible Black patients by January 2024. *Id.* While the policy was
21 being implemented, Black patients, like Maddox, in need of kidney transplants continued
22 to experience the lingering effects of the previous race-based eGFR adjustments. *Id.* ¶ 59.

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1 Defendant Swedish is a Washington non-profit healthcare provider and transplant
2 hospital in the Seattle metropolitan area. *See* Dkt. # 1 ¶¶ 24, 34. To be placed on the
3 national kidney transplant waitlist, a patient must first visit one of more than 200 UNOS-
4 approved transplant hospitals and obtain a referral from a physician. *See id.* ¶¶ 34–35. In
5 this role, transplant hospitals, like Swedish, act as gatekeepers for patients seeking
6 placement on national kidney waitlist. *See id.*

7 Maddox was first diagnosed with kidney disease in 2016. *Id.* ¶ 6. He began home
8 dialysis in 2019, which significantly disrupted his life including gaining weight and having
9 to retire early. *See id.* ¶¶ 7, 77. In December 2022, Maddox experienced a severe adverse
10 reaction to the home dialysis requiring him to have life-saving surgery. *See id.* ¶ 8. After
11 this incident, Maddox had to travel to Seattle three hours a day to undergo dialysis at a
12 clinic. *See id.* ¶ 9. The dialysis process caused physical, mental, and emotional exhaustion
13 that made Maddox consider that he might not survive while waiting for a donor kidney.
14 *See id.* ¶¶ 9–10.

15 Swedish first placed Maddox on UNOS’s national kidney waitlist on November 21,
16 2019. Dkt. # 1 ¶ 15. Without “Defendants’ use of the race-based coefficient, Maddox
17 would have qualified to join the waitlist on December 21, 2017.” *Id.* Plaintiff asserts that
18 “August of 2023 was the first time [he] was told or otherwise learned that the race-based
19 coefficient existed, or that his race impacted his qualification to join the kidney waitlist.”
20 *Id.* Essentially, because of the use of a race-based coefficient, Plaintiff lost two years of
21 time accruing on the waitlist, which “were crucial for [him]” given the suffering he
22 experience during his last two years of “dialysis treatments, including the incident where
23 his in-home dialysis failed, and he nearly died.” *See id.* Ultimately, due to the prolonged
24 wait time for a donor kidney and because he felt he had no choice, Maddox accepted a
25 Hepatitis C-infected kidney in January of 2024. *See id.* ¶¶ 18–19.
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III. LEGAL STANDARD

The question for the Court on a motion to dismiss is whether the facts alleged in the complaint sufficiently state a “plausible” ground for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of a motion under Rule 12(b)(6), the Court must “accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation omitted). The Court’s review is generally limited to the contents of the complaint. *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996). Courts are not required “to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

IV. DISCUSSION

Defendants move to dismiss all claims. The Court analyzes each argument below. Although Defendants filed the motions separately, where it is appropriate, the Court evaluates Defendants’ arguments together.

A. Statute of Limitations

The Court must first address Defendants’ argument that all of the claims are time barred by the applicable statute of limitation. *See* Dkt. # 35 at 2–11; Dkt. # 25 at 18.² For the reasons described below, the Court finds that none of Plaintiff’s claims are time barred.

² Although UNOS does not make an independent argument about the statute of limitations in its motion to dismiss, it joins Defendant Swedish’s statute of limitations argument. *See* Dkt. # 25 at 18.

1. Statute of Limitations for Title VI Claim

Defendants argue that the statute of limitations on Maddox’s claims started to run on December 17, 2017, when Plaintiff received his eGFR score which included a notation about the use of a race-based coefficient. *See* Dkt. # 19 at 15–17. Plaintiff argues that this short notation in the lab report was insufficient to trigger the limitations period. *See* Dkt. # 33 at 12. Plaintiff asserts that the limitations period began in August 2023 when Swedish ceased using the race-based coefficient in calculating eGFR scores and notified Plaintiff of the discriminatory practice. *See id.*

The statute of limitations for a Title VI action is the same as the statute of limitations for an action under 42 U.S.C. § 1983. *See Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993). The statute of limitations for a Section 1983 claim is “is the personal injury statute of limitations of the state in which the cause of action arose.” *Alameda Books, Inc. v. City of Los Angeles*, 631 F.3d 1031, 1041 (9th Cir. 2011). Personal injury lawsuits in Washington, with a few exceptions not applicable here, are governed by a three-year statute of limitations. RCW 4.16.080(2); *see also A.T. v. Everett Sch. Dist.*, 300 F. Supp. 3d 1243, 1252 (W.D. Wash. 2018), *aff’d*, 794 F. App’x 601 (9th Cir. 2019). Although state law “determines the length of the limitations period, federal law determines when a civil rights claim accrues.” *Lukovsky v. City & Cnty. of S.F.*, 535 F.3d 1044, 1048 (9th Cir. 2008). Under the federal common law discovery rule, the limitations period for Section 1983 claims begin to accrue “when the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Id.*

The statute of limitations for the Title VI claim in this case is three years, and the time for Plaintiff’s Title VI claim did not accrue until Swedish notified him in 2023. Nothing in the Complaint suggests Maddox had any awareness of the race-based adjustment to his eGFR scores and their impacts on wait time calculations prior to that

1 notice. Drawing all inferences in Plaintiff’s favor, the Court finds that he plausibly learned
 2 of the discrimination when Swedish sent the notice in August 2023, acting per UNOS’s
 3 new policy enacted in January 2023, informing patients that it would determine in the next
 4 few months whether wait time adjustments were required. *See* Dkt. # 1 ¶¶ 15, 58. Thus,
 5 the statute of limitations began accruing in August 2023, and Maddox’s suit was clearly
 6 timely when timed in June 2024.³ Accordingly, the Court will not dismiss Plaintiff’s Title
 7 VI on this basis.

8 **2. Statute of Limitations for State Law Claims**

9 The arguments in support and opposition for dismissing the state law claims based
 10 on the statute of limitations is similar to the arguments for the Title VI claims and the Court
 11 need not summarize the arguments here.

12 WLAD, breach of fiduciary duty, and outrage claims must be asserted withing three
 13 years to satisfy the statute of limitations. *See, e.g., Antonius v. King Cnty.*, 153 Wash. 2d
 14 256 (2004) (noting the “WLAD does not contain its own limitations period” and stating
 15 discrimination claims follow the three year personal injury action statute of limitations);
 16 *First Am. Title Ins. Co. v. Nw. Title Co. LLC*, No. 21-cv-01057, 2023 WL 4157656, at *4
 17 (W.D. Wash. June 23, 2023) (stating there is a three-year limitations period for breach of
 18 fiduciary claims in Washington State); *Smith v. Snohomish Cnty.*, No. 24-cv-00288, 2025
 19 WL 641243, at *7 (W.D. Wash. Feb. 27, 2025) (stating three years is the limitations period
 20 for outrage claims). Washington courts apply a discovery rule under which “a cause of
 21 action does not accrue until a party knew or should have known the essential elements of
 22 the cause of action—duty, breach, causation, and damages.” *Green v. Am. Pharm. Co.*,
 23 136 Wash. 2d 87, 95 (1998) (citations omitted). Under this rule, a cause of action does not
 24 accrue until the plaintiff knows, or in the exercise of due diligence should have known, the
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³ The Court need not reach other arguments as to whether there was a continuing violation.

1 factual bases of the cause of action. *Allen v. State*, 118 Wash. 2d 753, 757 (1992).
 2 Washington’s focus on the elements of a cause of action means accrual starts “when the
 3 plaintiff discovers the salient facts underlying the elements of the cause of action.” *1000*
 4 *Virginia Ltd. P’ship v. Vertecs Corp.*, 158 Wash. 2d 566, 576 (2006).

5 Here, drawing all inferences in favor of Plaintiff at this stage, there is nothing in the
 6 Complaint that suggests Maddox knew or should have known of the injuries underlying
 7 his state law claims before August 2023. Maddox did not know of the discriminatory
 8 conduct and exercised reasonable diligence as a patient throughout his treatment.
 9 Accordingly, the Court will not dismiss the state law claims as Maddox asserted his state
 10 law claims within the applicable limitations period.

11 **B. Agency Relationship Between UNOS and Swedish**

12 Before addressing the factual allegations of each of Plaintiff’s claims, the Court
 13 analyzes the relevance of an agency relationship existing between UNOS and Swedish, an
 14 issue in several of Swedish’s arguments. Defendant Swedish asserts that Plaintiff has
 15 failed to establish an agency relationship between Swedish and UNOS and therefore he
 16 cannot “hold Swedish vicariously liable for UNOS’s alleged discrimination.” Dkt. # 39 at
 17 20. Therefore, Swedish argues that Plaintiff cannot hold Swedish liable for Title VI,
 18 WLAD, and breach of fiduciary claims. *See generally id.* 13–19. Plaintiff asserts that
 19 Swedish directly discriminated against him and essentially his claims do not rest on an
 20 agency relationship. Dkt. # 33 at 23.

21 The Court agrees with Plaintiff. Maddox’s claims against Swedish do not rise or
 22 fall on an alleged agency relationship. In the Complaint, Plaintiff makes a singular
 23 reference to an agency relationship between UNOS and Swedish: “[Swedish] act[s] as
 24 UNOS’s agent in managing the national transplant waitlist.” Dkt. # 1 ¶ 35. The Court
 25 observes that many of the allegations in the Complaint regarding discrimination are
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specific to UNOS, while others relate to the conduct of “Defendants.” *See generally* Dkt. # 1.⁴ However, despite Swedish’s assertion, the Complaint is not devoid of Swedish-specific discriminatory conduct allegations, for example, the Complaint states that “Swedish applying the race-based coefficient directly, thus delaying Mr. Maddox’s accrual of wait time, and prejudicing his chances of receiving a donor kidney.” *See id.* ¶ 75. The Court finds that it need not find an agency relationship to find that Swedish engaged in race-based discrimination against Maddox to support any of his claims.

C. Title VI

Defendants both move to dismiss Plaintiff’s Title VI claims. *See* Dkts. # 25, 39. UNOS argues Plaintiff’s Title VI claim must be dismissed because Plaintiff fails to allege that UNOS receives federal financial assistance required to bring the claim and that UNOS engaged in a discriminatory action. *See* Dkt. # 25 at 13–15. Swedish argues that Plaintiff fails to allege that it discriminated against him. *See* Dkt. # 39 at 20–23. The Court first evaluates UNOS’s federal funding argument and then turns to the discriminatory action.

1. Federal Funding

Defendant UNOS argues that to bring a Title VI claims Plaintiff must show that the federal government provides financial assistance through subsidies to that defendant. *See* Dkt. # 25 at 13–15. UNOS asserts it receives compensation, not subsidies, from the federal government for administering the national transplant waitlist. *See id.* at 13. Plaintiff argues there is sufficient information in the Complaint to support that UNOS receives a government subsidy. *See* Dkt. # 34 at 17–21.

Title VI of the Civil Rights Act provides that “[n]o person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied

⁴ The Court observes that Plaintiff’s opposition supplies facts outside of the Complaint about the University of Washington dropping the race-based to support its position that Swedish knew or should have known that use of the race-based eGFR score discriminated against Black patients. *See* Dkt. # 35 at 11. The Court need not reach this issue because the Court can conclude without reference to those facts that Swedish engaged in discriminatory behavior.

benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. To make out a claim, a plaintiff must show that the entity involved is engaging in racial discrimination and that the entity is the recipient of federal funding. *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled on other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir. 2001). The statute does not define what constitutes “federal financial assistance.” 42 U.S.C. § 2000d.

The Court finds that Plaintiff has alleged sufficient facts that UNOS receives federal financial assistance. Plaintiff alleges that “approximately 10% of UNOS’s budget is provided by the federal government, in accordance with the National Organ Transplant Act’s authorization of \$7,000,000/year to fund a private, non-profit entity such as UNOS.” Dkt. # 1 ¶ 73. Further Maddox states that, “[t]hese contracts were intended by the [f]ederal government to act as a subsidy to UNOS, not as compensation for any goods or services provided by UNOS to the Federal government[.]” *Id.* Further Plaintiff alleges that “UNOS acknowledges in its financial documents that this “[f]ederal government assistance is a ‘grant.’” *Id.* To the extent UNOS asserts otherwise, it plainly disputes the facts of the Complaint and raises documents and information in a manner the Court will consider at this stage.⁵ Other district courts have denied motions to dismiss Title VI claims where similar facts were alleged that UNOS was a recipient of federal funding, and the Court finds no reason to depart from those determinations. *See, e.g., Rowe v. United Network for Organ Sharing*, No. 24-cv-05022, Dkt. # 68, at 7 (C.D. Cal. Dec. 4, 2024) (denying UNOS’s motion to dismiss Title VI claims because there was “a legitimate factual dispute

⁵ In a footnote, UNOS states: “If the Court would like to review a copy of the OPTN Contract in connection with this Motion, UNOS will provide this confidential contract pursuant to the Court’s applicable rules for submitting confidential documents.” Dkt. # 25 at 14 n.3. The Court will not consider documents that are not already before it. *See Welch v. United Network for Organ Sharing*, 2025 WL 546369, at *7 (stating “UNOS’s failure to attach the operative document is at its own peril” when denying the motion to dismiss Title VI claims).

as to whether the federal payments are a subsidy”); *Welch v. United Network for Organ Sharing*, No. 24-cv-00422, 2025 WL 546369, at *7 (M.D. Tenn. Feb. 19, 2025) (denying UNOS’s motion to dismiss Title VI claims); *Hallmon v. United Network for Organ Sharing*, No. 24-cv-4100, Dkt. # 29, at 10 (D.S.C. Mar. 24, 2025) (finding plaintiff’s Title VI allegations were “more than sufficient to adequately allege that UNOS accepts federal financial assistance” where the complaint alleged that 10% of UNOS’s budget was provided by the federal government and that the government intended certain contracts with UNOS to act as subsidies). Accordingly, the Court will not dismiss Plaintiff’s Title VI claim against UNOS on this basis.

2. Title VI Discrimination

Defendant UNOS moves to dismiss Plaintiff’s Title VI claim because Plaintiff fails to allege actionable discrimination by UNOS, arguing the Complaint demonstrates that Swedish determined how to calculate Maddox’s eGFR score. *See* Dkt. # 25 at 10–13. Defendant Swedish moves to dismiss the Title VI claim because Maddox fails to plead that Swedish discriminated against him or that Swedish is UNOS’s agent.⁶

Title VI provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. “Title VI prohibits only intentional discrimination.” *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). An entity can be liable under Title VI if it is “deliberately indifferent to known acts” of discrimination, *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 641 (1999), as well as for acts of discrimination resulting from its own “official policy.” *Gebser v. Lago Vista Independent Sch. Dist.*, 524 U.S. 274, 290 (1998).

⁶ The Court previously addressed Swedish’s agency argument *supra* Section IV.B., therefore it need not address this argument again.

1 The Complaint easily satisfies the Title VI pleading requirements to state a claim
 2 against UNOS and Swedish. Plaintiff alleges that “UNOS’s policy encouraged and
 3 allowed for use of the race-based coefficient, and UNOS knowingly used modified eGFR
 4 scores and manipulated wait times when ranking patients for kidney transplants.” Dkt. #
 5 1 ¶ 45. In addition, the Complaint alleges that “Swedish appl[ied] the race-based
 6 coefficient directly, thus delaying Mr. Maddox’s accrual of wait time, and prejudicing his
 7 chances of receiving a donor kidney.” *Id.* ¶ 75. Further the Complaint asserts that
 8 Defendants “knowingly input and used these modified wait times for Black patients,
 9 including Mr. Maddox, in UNOS’s UNet software, causing them to be ranked lower for
 10 specific donor kidneys than non-Black patients.” *Id.* ¶ 76. This knowing allegation is not
 11 conclusory and is supported by Plaintiff’s factual allegations of the scientific studies
 12 criticizing and debunking the use of the race-based coefficient. *See id.* ¶¶ 46–48.⁷
 13 Accordingly, the Court finds Plaintiff alleged sufficient discriminatory conduct and intent
 14 and will not dismiss Plaintiff’s Title VI claim on this basis.

15 **D. WLAD**

16 Defendants both move to dismiss Plaintiff’s WLAD claims. *See* Dkts. # 25, 39.
 17 UNOS argues the WLAD allegations in the Complaint fail to state claim because it fails to
 18 allege that UNOS does not have a physical “public accommodation” presence in
 19 Washington State and because Plaintiff does not allege UNOS discriminated against
 20 Plaintiff. *See* Dkt. # 25 at 5–8, 10–12. Swedish argues that Plaintiff fails to state a WLAD
 21 claim alleging that it discriminated against him. *See* Dkt. # 39 at 20–23. The Court first
 22 evaluates UNOS’s public accommodation argument and then discusses Defendants’
 23 discriminatory conduct.

25 ⁷ The Court declines to consider the “Prior OPTN Kidney Policy” in connection with its motion to dismiss as it is not
 26 integral to the Complaint. *See Hallmon*, No. 24-cv-4100, at 9 n.2 (declining to consider the OPTN policy and stating
 “it would be inappropriate at [the pleading] stage for the Court to rely on this single policy document to determine, as
 a factual matter, that Plaintiff’s claim fails as a matter of law”).

1 **1. Public Accommodation Under the WLAD**

2 UNOS argues that the Plaintiff cannot bring a claim against it under the WLAD
3 because Plaintiff does not allege, nor does UNOS have, a physical presence in Washington
4 State. *See* Dkt. # 36 at 12–14. In opposition to this, Plaintiff asserts that the WLAD’s
5 definition of public accommodation “is a broad one” and the statute “need not list every
6 possible example to which it applies.” Dkt. # 34 at 21.

7 To establish a *prima facie* case of race discrimination in a place of public
8 accommodation under the WLAD, a plaintiff must establish that:

9 (1) he is a member of a protected class, (2) the defendant’s establishment is a place of
10 public accommodation, (3) the defendant discriminated against him by not treating him in
11 a manner comparable to those outside the protected class, and (4) the protected status was
a substantial factor causing the discrimination.

12 RCW 49.60.215; *Demelesh v. Ross Stores*, 105 Wash. App. 508, 526 (2001). Public
13 accommodations encompass “places and facilities, not services.” *Fell v. Spokane Transit*
14 *Auth.*, 128 Wash. 2d 618, 638 (1996) (emphasis omitted).

15 The Court agrees with UNOS. The cases Plaintiff cites to are cases that had some
16 physical operations in Washington and where the courts connected defendant-
17 organization’s conduct to the factors set forth in the statute. *See, e.g., id.* at 638 n.24 (noting
18 that places of public accommodation include “restaurants, parks and public resorts, movie
19 theaters, a weight control clinic, and barbershops”); *Apilado v. N. Am. Gay Amateur*
20 *Athletic All.*, 792 F. Supp. 2d 1151, 1158 (W.D. Wash. 2011) (finding an organization
21 qualified as a “public accommodation” under the WLAD and citing statutory
22 considerations including that the organization charged for admission, accommodated those
23 seeking recreation, sold goods and merchandise, and operated where the public gathers for
24 amusement or recreation). Here, Plaintiff has not shown that the WLAD should apply with
25 respect to UNOS. Accordingly, the Court dismisses Plaintiff’s WLAD claim against
26 UNOS without prejudice.

2. WLAD Discrimination

The arguments and analysis for discrimination under the WLAD and Title VI are nearly identical. The Court refers to Defendants' arguments summarized *supra* Section IV.C.2.

The WLAD prohibits discrimination in public accommodation, on the basis of race or national origin. To make out a *prima facie* case under the WLAD for discrimination a plaintiff must establish that the discrimination occurred "because of" the plaintiff's status or, in other words, that the protected status was a substantial factor causing the discrimination. *State v. Arlene's Flowers, Inc.*, 193 Wash. 2d 469, 501 (2019). The WLAD is similar to the Federal Civil Rights Act of 1964, and courts in Washington State look to federal cases when construing the WLAD. *See Blackburn v. State*, 186 Wash. 2d 250, 258 (2016) ("Washington courts often look to federal case law on [the Civil Rights Act] when interpreting the WLAD.").

The Court finds that Maddox sufficiently stated that UNOS and Swedish engaged in discriminatory conduct that occurred because of Plaintiff's status as a Black patient. As the discussed *supra* Section IV.C.2, the complained of conduct was sufficient state a claim for disparate treatment under the Title VI of the Civil Rights Act, and the Court finds it is sufficient to state a claim for disparate treatment under the WLAD. Accordingly, the Court denies Swedish's motion to dismiss on this basis.⁸

E. Breach of Fiduciary Duty

Swedish argues that it owed no fiduciary duty to Maddox beyond standard medical care obligations. Dkt. # 39 at 23. Swedish asserts that transplant centers operate within UNOS's framework and do not establish individual fiduciary relationships with patients.

⁸ As discussed *supra* Section IV.D.1, Plaintiff's WLAD claim against UNOS fails because the "public accommodation" was not met. However, the Court finds that Plaintiff alleged sufficient facts to demonstrate that there was disparate treatment that would otherwise be actionable under the WLAD.

1 *See id.* at 24.⁹ Maddox opposes this, stating that he is a patient at Swedish’s hospital, and
 2 “it has a duty to act in his best interests, disclose all material facts, and provide him with
 3 medical care[,] free from discrimination.” Dkt. # 33 at 24.

4 To plead a claim for breach of fiduciary duty, the plaintiff must show that a fiduciary
 5 relationship exists. *See Micro Enhancement Int’l, Inc. v. Coopers & Lybrand, LLP*, 110
 6 Wash. App. 412, 433 (2002). “The relationship of patient and physician is a fiduciary one
 7 of the highest degree.” *Lockett v. Goodill*, 71 Wash 2d 654, 656 (1967); *see also* Thomas
 8 L. Hafemeister & Selina Spinos, Lean on Me: A Physician’s Fiduciary Duty To Disclose
 9 an Emergent Medical Risk To the Patient, 86 WASH U. L. REV. 1167, 1187 (2009)
 10 (“Because patients are so vulnerable and dependent on their physicians, the law imposes a
 11 ‘trust’ on doctors—a fiduciary responsibility stemming from the dependence and
 12 vulnerability of the patient, and from the disparity between a patient’s and a physician’s
 13 knowledge and ability to act.”). A healthcare provider may be “liable through a theory of
 14 respondeat superior for, the fiduciary breaches of its employees.” *Welch*, 2025 WL 546369,
 15 at *1; *see also Randall v. United Network for Organ Sharing*, 720 F. Supp. 3d 864, 885
 16 (C.D. Cal. 2024) (finding a Black kidney transplant candidate plausibly alleged that a
 17 hospital could be held vicariously liable for its doctors’ breaches of fiduciary duty in their
 18 failure to disclose the use of the race-based coefficient); *Rowe v. United Network for Organ*
 19 *Sharing*, No. 24-cv-05022, Dkt. # 72, at 12 (C.D. Cal. Dec. 23, 2024) (finding the
 20 defendant-hospital owed plaintiff-patient a fiduciary duty and the hospital may be held
 21 liable under a theory of respondeat superior).

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 25 ⁹ Swedish also contends that even if Maddox properly pled a breach of fiduciary duty claim against Swedish, Maddox
 26 failed to plead an agency relationship between UNOS and Swedish, and in absence of such relationship any fiduciary
 duty that UNOS may have had to Maddox cannot be imputed to Swedish. *See* Dkt. # 39 at 24. The Court need not
 address the agency relationship issue already discussed *supra* Section IV.B.

1 Plaintiff adequately alleged that Swedish and its doctors did not act in his best
 2 interests. Here, the Complaint specifically states that Plaintiff “trusted and relied on
 3 Swedish to act in his best interests in obtaining for him a life-saving kidney.” Dkt. # 1 ¶
 4 87. Plaintiff asserts that Swedish breached its fiduciary duty to him “by engaging in racial
 5 discrimination” when it “knowingly submitted eGFR scores tainted by use of the race-
 6 based coefficient to UNOS” which, “prejudice[ed] [his] chances to receiv[e] a donor
 7 kidney.” *Id.* ¶ 88. Plaintiff asserts Swedish further breached this duty because “Swedish
 8 failed for more than a year [after UNOS’s policy change] to recalculate [his] wait time.”
 9 *Id.* Accordingly, Maddox has properly alleged that Swedish and its doctors and employees
 10 owed him a fiduciary duty, Swedish did not act in his best interests, and Swedish may be
 11 held liable for breach of a fiduciary duty. Therefore, the Court will not dismiss Plaintiff’s
 12 breach of fiduciary claim against Swedish.

13 **F. Outrage**

14 Defendant UNOS argues that Plaintiff fails to state an outrage claim because it did
 15 not act in an extreme and outrageous manner and did not act intentionally or recklessly.
 16 Dkt. # 36 at 9–10. Defendant Swedish makes the same arguments. Dkt. # 39 at 25–28.

17 In Washington State, intentional infliction of emotional distress constitutes the same
 18 tort as outrage. *Kloepfel v. Bokor*, 149 Wash. 2d 192, 193 n.1 (2003). Outrage has the
 19 following elements: (i) extreme and outrageous conduct; (ii) intentional or reckless
 20 infliction of emotional distress; and (iii) actual result to the plaintiff of severe emotional
 21 distress. *Id.* at 195; *Dombrosky v. Farmers Ins. Co. of Wash.*, 84 Wash. App. 245, 261
 22 (1997). The first element requires proof that the conduct was so outrageous in character,
 23 and so extreme in degree, as to go beyond all possible bounds of decency, and to be
 24 regarded as atrocious, and utterly intolerable in a civilized community. *Lyons v. U.S. Bank*
 25 *Nat’l Ass’n*, 181 Wash. 2d 775, 779 (2014). The question of whether certain conduct is
 26

1 sufficiently outrageous is ordinarily for the jury, but it is initially for the court to determine
2 if reasonable minds could differ on whether the conduct was sufficiently extreme to result
3 in liability. *See id.*

4 The Court finds that the Complaint sufficiently alleges that UNOS and Swedish
5 acted in an extreme and outrageous manner to support an outrage claim. Plaintiff asserts
6 that Swedish “discriminated against him because of the color of his skin and decided to
7 provide better [healthcare] to its non-Black patients.” Dkt. # 33 at 21; *see* Dkt. # 1 ¶¶ 39,
8 50. Plaintiff asserts that “[b]ecause of his race, [he] was not added to the kidney transplant
9 waitlist until two years after he was actually eligible” and when UNOS changed its race-
10 based coefficient policy it failed to “immediately direct transplant hospitals to update their
11 [waitlists] for another six months.” Dkt. # 34 at 23; *see* Dkt. # 1 ¶¶ 12, 16, 58. These
12 allegations are more than sufficient to demonstrate Defendants’ race-based policies and
13 decisions were extreme and outrageous because racial discrimination of this nature in a
14 healthcare setting is “utterly intolerable in a civilized community.” *Jones v. Baystate*
15 *Health, Inc.*, 2022 WL 21778544, at *9 (D. Mass. Nov. 4, 2022) (finding plaintiff
16 sufficiently alleged extreme and outrageous conduct where the complaint stated defendants
17 failed to “provide her emergency medical treatment due to racial stereotyping”); *see also*
18 *Hallmon v. United Network for Organ Sharing*, No. 24-cv-4100, Dkt. # 29, at 10 (D.S.C.
19 Mar. 24, 2025) (finding plaintiff, a Black kidney transplant candidate, plausibly alleged
20 that defendants’ creation and use of a race-based organ transplant policy was extreme and
21 outrageous).

22 The Court finds that the Complaint sufficiently alleges that UNOS and Swedish
23 acted intentionally or recklessly to support an outrage claim. Plaintiff asserts that the
24 scientific literature that raised alarms about the validity and inequity of using a race-based
25 coefficient for adjusting eGFR scores existed for nearly a decade before the policy was
26

1 changed. Dkt. # 1 ¶¶ 47–48. Further, when the policy was changed, patients like Maddox
 2 were not notified, and continued experiencing the harms of the former policy for over 18
 3 months. *See id.* ¶¶ 53–60. Given the available scientific literature and the unhurried
 4 remedial process (which was certainly not implemented with all deliberate speed) it is
 5 plausible to conclude that Defendants’ discriminatory conduct was intentional or reckless.

6 Based upon the record before this Court, the apparent sole criteria to accept,
 7 implement, and maintain this policy was predicated on the highly suspect race-based
 8 classification—the Black race—to the tune of 27,500 Black Americans then on the national
 9 kidney waitlist. The fact that it took years to determine the classification was unscientific
 10 and unreliable demonstrates the conduct of UNOS and Swedish was intentional and
 11 reckless. Discriminatory conduct of this nature may have been tolerated post-slavery, as
 12 exemplified by the Tuskegee Syphilis Study, but it has no place in modern society.

13 Therefore, the Court finds that Maddox has alleged sufficient facts to support a
 14 claim for outrage. Accordingly, the Court will not dismiss Plaintiff’s outrage claims
 15 against UNOS or Swedish.

16 V. CONCLUSION

17 Accordingly, the Court GRANTS in part and DENIES in part Defendant UNOS’s
 18 Motion to Dismiss. Dkt. # 25. The Court DENIES Defendant Swedish’s Motion to
 19 Dismiss in its entirety. Dkt. # 19. Plaintiff may file a proposed amended complaint
 20 addressing the dismissed WLAD claim against UNOS within **ten (10)** days of this Order.
 21 Thereafter, the Court will determine whether amendment is appropriate.

22 Dated this 28th day of March 2025.

23
 24 

25 The Honorable Richard A. Jones
 26 United States District Judge