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Court of Common Pleas

ANSWER OF...
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By: MARK I. WALLACH 0010948

Confirmation Nbr. 2779259

AKRAM BOUTROS, M.D.

CV 22 972601

vs.

THE METROHEALTH SYSTEM, ET AL.

Judge: SHANNON M. GALLAGHER

Pages Filed: 38

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

AKRAM BOUTROS, M.D.,

Plaintiff,

vs.

THE METROHEALTH SYSTEM, *et al.*,

Defendants.

CASE NO. CV-22-972601

JUDGE SHANNON M. GALLAGHER

**DEFENDANTS' ANSWER TO
COMPLAINT**

Now come Defendants The MetroHealth System (“MetroHealth”), The MetroHealth System Board of Trustees (the “MHS Board” or the “Board”), and Vanessa L. Whiting, J.B. Silvers, Inajo Davis Chappell, John Moss, Ezelle H. Walker, Maureen Dee, John Hairston, Jr., Robert Hurwitz, and John Corlett (collectively referred to as the “Defendants”), by and through undersigned counsel, and hereby submit their Answer to the Complaint filed by Plaintiff Akram Boutros, M.D. (“Plaintiff” or “Dr. Boutros”). In support of their Answer, Defendants state the following:

INTRODUCTION

1. Defendants expressly deny all allegations contained in Paragraph 1 of the Complaint, including any suggestion that Defendants were aware of Plaintiff’s unauthorized compensation.

2. Paragraph 2 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations are directed at Defendants, these allegations are denied, including the suggestion that the thorough investigation supported by documents and facts was “dubious” or that Defendants should have any responsibility for Plaintiff’s inability to take his “victory lap” due to the discovery of such facts.

3. Defendants deny all allegations contained in Paragraph 3 of the Complaint, including any suggestion that Defendants Whiting, Silvers, Chappell, Corlett, Dee, Hairston, Jr. Hurwitz, Moss and Walker engaged in negligent conduct, or that Defendants retaliated against Plaintiff. Contrary to the allegations set forth in Paragraph 3 of the Complaint, Plaintiff was engaged in and supported MetroHealth's process for selecting a new Chief Executive Officer, without identifying any issues, until his dishonest conduct was uncovered.

4. Defendants deny all allegations contained in Paragraph 4 of the Complaint, including any suggestion that Defendants engaged in illegal conduct when selecting a new Chief Executive Officer for MetroHealth. Defendants received annual reports regarding compensation from outside compensation consultants, coordinated by Plaintiff, in which the possible range and maximum of all executives' incentives were identified. What Defendants now understand is that, despite the consultant's request for total cash compensation data, Plaintiff did not include the additional incentive program in his work with the compensation consultant and concealed the full extent of the incentives provided to other executives and to Plaintiff. Moreover, Defendants deny any suggestion that Plaintiff's conduct was authorized. Through this undisclosed program, Plaintiff unilaterally determined certain year-end, rearward-looking goals, evaluated himself against those goals, and awarded himself over \$1.9 million in bonuses based on his self-evaluation. Additionally, when negotiating his own employment agreement, which sets the terms for his compensation, Plaintiff never gave information regarding additional incentive payments.

5. Defendants admit that the law firm of Mansour Gavin was retained to conduct an initial assessment of the discrepancies in Plaintiff's 2017-2022 compensation, but deny that such retention was "secret." Defendants further admit that they hired attorney John McCaffrey to more fully investigate and prepare a report concerning Plaintiff's 2017-2022 compensation given the

seriousness of Plaintiff's conduct. Defendants also admit that Chair Whiting and Vice-Chair Silvers suggested that Plaintiff self-report his unauthorized conduct to the Ohio Ethics Commission. Defendants collectively admit that Plaintiff repaid certain incentive compensation payments, plus interest, to MetroHealth. Defendants also admit that Mr. McCaffrey read a Garrity Warning to Plaintiff at the start of his interview, after discussing the warning with Plaintiff's counsel, who agreed it was appropriate. Defendants further note that a Garrity Warning is common practice when public entities conduct investigatory interviews with public employees and particularly relevant in this situation given the potential criminal ramifications of Plaintiff's conduct. Any and all remaining allegations in Paragraph 5 of the Complaint are expressly denied, including any suggestion that Plaintiff was coerced into self-reporting his conduct to the Ohio Ethics Commission. Moreover, Defendants explicitly deny any suggestion that Defendants assured Plaintiff that he would be repaid the unlawful compensation.

6. Defendants admit that Plaintiff was terminated for "Cause" as that term is defined under Plaintiff's employment agreement. Defendants deny that they did not have the opportunity to "consider [Plaintiff's] side of the story" when Plaintiff (voluntarily) addressed the MHS Board, and repeatedly stated "I gave myself" a certain score in each of the categories of the self-created goals under the Supplemental PBVC program that Plaintiff developed. Moreover, Mr. McCaffrey also interviewed Plaintiff and gave Plaintiff an opportunity to explain his position in the presence of his legal counsel before the report dated November 19, 2022 was issued to the MHS Board. In further responding, Defendants explicitly deny any suggestion that the report from John McCaffrey was biased, incomplete or improperly relied upon. All remaining allegations contained in Paragraph 6 of the Complaint are expressly denied.

7. Defendants deny that the MHS Board would have “chose[n] to mire the System in controversy and scandal,” or endure the personal attacks that Plaintiff has subsequently engaged in. Rather, Defendants had no choice but to act based on their fiduciary duty (which Plaintiff ironically (and inaccurately) alleges Defendants failed to carry out) once the facts of Plaintiff’s conduct and concealment were fully identified and disclosed to the MHS Board. Defendants deny any suggestion that the MHS Board, Vanessa Whiting, J.B. Silvers, Inajo Chappell, John Moss, Ezelle Walker, Maureen Dee, John Hairston, Jr., Robert Hurwitz, or John Corlett failed to perform their duties and obligations when terminating Plaintiff. Moreover, Defendants deny any suggestion that the MHS Board agreed to repay Plaintiff the unauthorized compensation. Defendants admit that Plaintiff repaid the incentive compensation. All remaining allegations contained in Paragraph 7 of the Complaint are expressly denied.

8. Defendants deny that they – as opposed to Plaintiff - are responsible for Plaintiff’s legacy. Defendants deny all of the remaining allegations contained in Paragraph 8 of the Complaint.

PARTIES

9. Defendants admit that Plaintiff was the President and Chief Executive Officer of MetroHealth from June 1, 2013, until his termination, for cause, on November 21, 2022. Defendants further admit that during Plaintiff’s tenure, and with the dedication and determination of its employees and support from the communities it serves, MetroHealth accomplished transformational change. Defendants further state that Plaintiff’s accomplishments do not excuse his misconduct in awarding himself over \$1.9 million in unauthorized additional compensation. The remaining language in Paragraph 9 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations are directed at Defendants, these allegations are denied.

10. Defendants deny that MetroHealth is an “independent subdivision of Cuyahoga County Government” but admit the remaining allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit that the MHS Board has, among other things, authority and responsibility for the management and control of MetroHealth. Furthermore, Defendants state that Ohio law and the MHS Board’s policies speak for themselves. Defendants deny the remaining allegations in Paragraph 11 of the Complaint are expressly denied.

12. In response to the allegations contained in Paragraph 12 of the Complaint, Defendants state that the law speaks for itself. The language in Paragraph 12 fails to assert any allegations against Defendants, and therefore no response is required.

13. Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Defendants admit the allegations contained in Paragraph 14 of the Complaint.

15. Defendants admit the allegations contained in Paragraph 15 of the Complaint.

16. Defendants admit that Inajo Davis Chappell was first appointed to the MHS Board in 2021 and that she is a resident of Cuyahoga County. Defendants deny all remaining allegations contained in Paragraph 16 of the Complaint, including any suggestion that the MHS Board created an unauthorized committee.

17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

18. Defendants admit the allegations contained in Paragraph 18 of the Complaint.

19. Defendants admit the allegations contained in Paragraph 19 of the Complaint.

20. Defendants admit the allegations contained in Paragraph 20 of the Complaint.

21. Defendants admit the allegations contained in Paragraph 21 of the Complaint.

22. Defendants admit the allegations contained in Paragraph 22 of the Complaint.

STATEMENT OF FACTS

23. Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations are directed at Defendants, these allegations are denied.

25. Defendants deny that the MHS Board “tasked” Plaintiff with creating an incentive program. Defendants admit the remaining allegations contained in Paragraph 25 of the Complaint.

26. Defendants admit that on July 24, 2013, the MHS Board approved of Resolution 18608 which set forth certain executive compensation parameters. One component of the MHS Board’s approved executive compensation methodology was Performance Based Variable Compensation, an incentive program with defined metrics that would be “applied objectively.” Resolution 18608 (and every subsequent resolution updating the MHS Board’s executive compensation methodology) made clear that Plaintiff could not set his own goals/metrics, as it expressly stated that “[t]he Board will set goals for the President and Chief Executive Officer and the President and Chief Executive Officer will set goals for senior leadership.” Thus, to the extent that Paragraph 26 of the Complaint alleges that the MHS Board expressly approved of a program whereby Plaintiff could establish his own goals, assess himself under those rearward-looking goals, and award himself over \$1.9M in “supplemental” compensation, those allegations are denied. Defendants deny the remaining allegations in Paragraph 26 of the Complaint.

27. Defendants admit that in 2017, Dr. Boutros proposed certain changes to Performance Based Variable Compensation. Defendants deny the remaining allegations contained in Paragraph 27 of the Complaint.

28. Defendants admit that the MHS Board received presentations regarding certain proposed changes to Performance Based Variable Compensation. Defendants expressly deny that any of those presentations made any reference to a “supplemental” program whereby Plaintiff could establish his own goals, assess himself under those rearward-looking goals, and award himself over \$1.9M in “supplemental” compensation. Defendants deny the remaining allegations contained in Paragraph 28 of the Complaint.

29. Defendants admit that in 2017, the MHS Board engaged USI (formerly known as Findley Davies) to advise the MHS Board of the reasonableness of the total compensation proposed to be paid to Plaintiff and other executives. Defendants deny the remaining allegations contained in Paragraph 29 of the Complaint.

30. Defendants admit that Findley Davies reported directly to the MHS Board but deny the remaining allegations contained in Paragraph 30 of the Complaint.

31. Defendants admit that discussions on the PBVC program and CEO compensation were properly held in executive session. Defendants deny any remaining allegations contained in Paragraph 31 of the Complaint.

32. Defendants lack knowledge as to whether Findley Davies ever requested salary or compensation information directly from Plaintiff or whether Plaintiff ever received any reports from Findley Davies, and therefore deny such allegations. Defendants also deny that Plaintiff was “simply informed” of his new base salary when in fact Plaintiff actively negotiated his compensation with the MHS Board. Defendants deny any remaining allegations contained in Paragraph 32 of the Complaint.

33. Defendants deny that Plaintiff’s employment agreements or MHS Board resolutions permitted Plaintiff to determine his own compensation. To the contrary, the MHS

Board controlled the level of Plaintiff's compensation in its sole discretion and subject to the Employment Agreement terms. Defendants admit that MetroHealth engaged the services of Sullivan Cotter but also note that Plaintiff coordinated all communications with Sullivan Cotter and therefore deny Plaintiff's suggestion that Sullivan Cotter was "independent" from Plaintiff. Defendants deny the remaining allegations contained in Paragraph 33 of the Complaint.

34. Defendants admit that on June 28, 2017, the MHS Board passed Resolution 19108 which included certain modifications to executive compensation methodology that speak for themselves. With respect to Performance Based Variable Compensation, however, the fundamentals remained unchanged. The resolution again made clear that it is the MHS Board that would annually set institutional metric-driven goals and that Dr. Boutros' incentive compensation would be 100% based on MetroHealth's performance against those institutional goals. It reaffirmed that Dr. Boutros' target incentive compensation was 35% of his base salary, and that depending on System performance against the MHS Board's goals, he could receive up to 150% of his incentive target. Defendants deny that the MHS Board approved of "supplemental incentives" for Dr. Boutros, and otherwise deny the remaining allegations contained in Paragraph 34 of the Complaint.

35. Defendants deny the allegations set forth in Paragraph 35. Defendants in no way "directed" or otherwise authorized Dr. Boutros to set goals for himself. Defendants further deny that Dr. Boutros asked any other members of senior leadership (his subordinates) for "input" on his contribution – or that Dr. Boutros' self-evaluation against self-identified goals could ever be considered objective. Further responding, the MHS Board's resolutions and policies regarding executive compensation speak for themselves.

36. Defendants deny that the MHS Board did not ask for person-specific data regarding PBVC when in fact the MHS Board's requested annual executive compensation consultant reports provided such data, reflecting the maximum incentive available to each executive and Dr. Boutros under the MHS Board-approved PBVC plan. Defendants admit that the MHS Board did not request data on a program the MHS Board did not know existed. Defendants deny the remaining allegations contained in Paragraph 36 of the Complaint.

37. Defendants deny that the two words contained in a parenthetical in the 2022 resolution (and the other 2019-2021 PBVC resolutions) provided any notice of a materially distinct and separate "Supplemental PBVC Program" through which Dr. Boutros essentially doubled his variable compensation. Further responding, Defendants state that the 2022 Resolution speaks for itself.

38. Defendants deny, based on the information available to them, that any such "meetings to discuss SPBVC awards" were ever held. Defendants admit that the MHS Board learned through the McCaffrey Report that Dr. Boutros included all members of senior leadership (and all other PBVC-eligible employees) in his Supplemental PBVC program. Defendants deny, based on the information now available to them, that any employee other than Dr. Boutros and the Chief Financial Officer was aware that Dr. Boutros himself was receiving compensation through the Supplemental PBVC program. Defendants further deny that Dr. Boutros' annual presentations or "Year in Review" presentations at any time identified or referenced the Supplemental PBVC program. Defendants deny any remaining allegations set forth in Paragraph 38.

39. Defendants deny that the over \$1.9 million in supplemental payments awarded by Dr. Boutros to himself were “approved incentive payments,” and as such the allegations in Paragraph 39 of the Complaint are denied.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint. The MHS Board’s understanding of the approved funds was that the funds would be used for the PBVC program (in accordance with the thresholds approved by the MHS Board) and that lesser, one-time bonuses may be made. Dr. Boutros never disclosed that the approved funds were, as of 2018, now also going to be used for a multi-million-dollar Supplemental PBVC program, much less that this program would involve Dr. Boutros approving of supplemental payments to himself. Defendants deny any remaining allegations contained in Paragraph 40 of the Complaint.

41. Defendants deny that any authority had ever been granted to Dr. Boutros to set his own supplemental goals or award himself over \$1.9 million of incentive compensation based on his self-evaluation against those goals. Moreover, Defendants deny any and all suggestions that Dr. Boutros revealed that he was overcompensating himself or that Defendants knew of the same. Defendants deny the remaining allegations contained in Paragraph 41 of the Complaint.

42. Defendants admit the allegations contained in Paragraph 42 of the Complaint.

43. Defendants admit that the MHS Board began the process of searching for potential candidates to be Dr. Boutros’ successor once he announced his plans to leave MetroHealth at the end of 2022, but deny that that date was February 14, 2022. Defendants admit that this process involved a Board of Trustees Search Committee, along with a national search firm and an Advisory Panel including internal and external stakeholders. All remaining allegations contained in Paragraph 43 of the Complaint are denied.

44. Defendants deny any suggestion that the MHS Board violated R.C. 121.00 or Article XI, Section 1 of The MetroHealth Board of Trustees Bylaws. The national, highly experienced search firm was retained in accordance with MHS Board and MetroHealth policies and state procurement laws. Defendants deny the remaining allegations contained in Paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Defendants deny that Dr. Boutros raised any such allegations or that some other “authorization” was required from Dr. Boutros to process the hiring of the next CEO, with whom he himself requested an overlapping transition period that he knew was scheduled to begin on December 5, 2022. Further responding, Defendants state that the Open Meetings Act, R.C. 121.22, speaks for itself. Defendants deny the remaining allegations contained in Paragraph 48 of the Complaint.

49. Defendants admit that Chair Whiting contacted Dr. Boutros about the over \$1.9 million discrepancy in his compensation that had been identified. During that conversation, Dr. Boutros revealed the Supplemental PBVC program for the first time. Defendants deny all remaining allegations contained in Paragraph 49 of the Complaint.

50. Defendants admit that Chair Whiting asked Dr. Boutros for more information when Dr. Boutros first identified the Supplemental PBVC program. Defendants deny that Chair Whiting had any prior knowledge of these payments and deny the remaining allegations contained in Paragraph 50 of the Complaint.

51. Defendants admit that, after his discussion with Chair Whiting in August 2022, Dr. Boutros provided information and copies of documents concerning the incentive program – none of which identified or referred to a Supplemental PBVC program. Defendants deny the remaining allegations contained in Paragraph 51 of the Complaint.

52. Defendants admit that Ms. Whiting requested a meeting with Dr. Boutros on or around October 10, 2022. Defendants deny the remaining allegations contained in Paragraph 52 of the Complaint.

53. Defendants note the irony of Dr. Boutros' concerns regarding transparency but deny the allegations contained in paragraph 53 of the Complaint.

54. Defendants admit that Chair Whiting and Vice-Chair Silvers told Dr. Boutros at a meeting on October 11, 2022 that they had no knowledge that he had awarded himself over \$1.9 million in supplemental compensation because the MHS Board had approved of no such payments. Defendants deny the remaining allegations contained in Paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Complaint.

57. Defendants admit that Chair Whiting and Vice-Chair Silvers told Dr. Boutros that it was completely inappropriate for Dr. Boutros to award himself over \$1.9 million in supplemental incentive compensation based on goals created by Dr. Boutros and on Dr. Boutros' evaluation – without any MHS Board knowledge or input – against those goals. In further responding, Defendants note that it would be difficult to be aware of how the SPBVC program operated when Dr. Boutros acknowledged that he had not shared any information regarding the

program prior to his sharing of certain of the SPBVC goals with Chair Whiting in August 2022. Defendants deny the remaining allegations contained in paragraph 57 of the Complaint.

58. Defendants admit that Chair Whiting and Vice-Chair Silvers questioned Dr. Boutros about the additional compensation that he himself had authorized. Defendants deny the remaining allegations contained in Paragraph 58 of the Complaint.

59. Defendants admit that Chair Whiting suggested that, given the facts and potential criminal implications, Dr. Boutros should self-report to the Ohio Ethics Commission. Defendants deny the remaining allegations contained in Paragraph 59 of the Complaint.

60. Defendants admit that Chair Whiting and Vice-Chair Silvers informed Dr. Boutros that they would be presenting this issue to the MHS Board at an Executive Committee meeting on October 12, 2022. Defendants deny the remaining allegations contained in Paragraph 60 of the Complaint.

61. Defendants admit that Vice Chair Silvers contacted Dr. Boutros on the morning of October 12, 2022. Defendants deny any suggestion that Dr. Boutros was made to believe that providing an explanation for his conduct would protect him from termination or other action. Defendants deny the remaining allegations contained in Paragraph 61 of the Complaint.

62. Defendants admit that Dr. Boutros told Vice Chair Silvers that Dr. Boutros would be self-reporting to the Ohio Ethics Commission but deny that any agreement was made with respect to the repayment of Dr. Boutros' self-awarded incentive compensation. Defendants deny the remaining allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants admit that Dr. Boutros informed Ms. McBride and Chair Whiting that he was seeking a meeting with the Ohio Ethics Commission to self-report and that the meeting

could be held on October 17, 2022. Defendants deny any remaining allegations contained in Paragraph 64 of the Complaint.

65. Defendants admit that the MHS Board held an Executive Committee meeting on October 12, 2022, and that the Executive Committee did not present any proposed resolutions. Defendants deny any remaining allegations contained in Paragraph 65 of the Complaint.

66. Defendants admit that Dr. Boutros retained counsel regarding these matters in October 2022. Defendants lack knowledge sufficient to form a basis as to the truth or falsity of the remaining allegations contained in Paragraph 66 of the Complaint and therefore deny the same.

67. Defendants admit the allegations contained in Paragraph 67 of the Complaint.

68. Defendants admit the allegations contained in Paragraph 68 of the Complaint.

69. Defendants admit the allegations contained in Paragraph 69 of the Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Complaint. As stated in Mr. McCaffrey's e-mail, the MHS Board has inherent authority to engage legal counsel as expressly provided for in ORC 336.06. And, in any event, the MHS Board had previously authorized the engagement of Mr. McCaffrey's law firm, Tucker Ellis LLP, "for services as may be required" via an MHS Board resolution. Further, as Dr. Boutros and his counsel were informed at the time, there was no Special Investigation Committee. The MHS Board as a whole engaged in fact-finding over the course of multiple meetings in October and November 2022, all of which were publicly noticed and included appropriate executive sessions.

71. Defendants admit that there are no minutes of any meeting reflecting the establishment of a "Special Investigation Committee" because no such "Special Investigation Committee" was created. Defendants deny the remaining allegations contained in Paragraph 71,

including any suggestion that the MHS Board's investigation of Dr. Boutros' unauthorized payments violated the Open Meetings Act in any respect.

72. Defendants admit that Dr. Boutros requested the names of the members of the "Special Investigation Committee" at the November 9, 2022 MHS Board meeting, despite the fact that Dr. Boutros and his counsel had been repeatedly informed that there was no Special Investigation Committee. Defendants deny the remaining allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants admit that Mr. McCaffrey read a Garrity Warning to Dr. Boutros at the start of his interview, as is common practice when public entities conduct investigatory interviews with public employees. Neither Dr. Boutros, nor his counsel, objected to the use of the Garrity Warning prior to the filing of the Complaint – and in fact Dr. Boutros' counsel agreed (in a private meeting with Mr. McCaffrey) that the Garrity Warning was appropriate before it was read to Dr. Boutros in the presence of his legal counsel. In further responding, Defendants state that the plain language of a Garrity Warning suggests that a lack of cooperation may result in disciplinary action and that Mr. McCaffrey did not threaten Dr. Boutros. At all times that Mr. McCaffrey was present with Dr. Boutros, Dr. Boutros' legal counsel was also present and the interview occurred in the office of Dr. Boutros' legal counsel. Defendants deny the remaining allegations contained in Paragraph 74 of the Complaint.

75. Defendants admit that Dr. Boutros' counsel alleged, without basis, that the MHS Board was not lawfully authorized to conduct any investigation into Dr. Boutros' conduct or to retain Mr. McCaffrey and that the interview lasted approximately 90 minutes. Defendants deny

that the voluntary interview was an “interrogation” and deny any remaining allegations contained in Paragraph 75 of the Complaint.

76. Defendants admit that Mr. McCaffrey asked Dr. Boutros about why he thought he had the authority to direct payments to himself without the knowledge or approval of the MHS Board. Defendants deny the remaining allegations contained Paragraph 76 of the Complaint.

77. Defendants deny that Mr. McCaffrey ever made such a statement but acknowledge that term “shit show” was said in the conversation by Dr. Boutros’ counsel. Defendants deny that Dr. Boutros ever sought advice from MetroHealth counsel regarding whether he had the authority to pay himself additional compensation. Defendants deny the remaining allegations in Paragraph 77 of the Complaint.

78. Defendants admit that Dr. Boutros stated an intention to repay the self-awarded over \$1.9 million in unauthorized incentive compensation and that Defendants agreed to conduct an assessment of his performance. Defendants deny that Dr. Boutros was “entitled” to any additional incentive compensation and otherwise deny the remaining allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint. There was no discussion as to the origin of Dr. Boutros’ repayment at the October 17, 2022 in-person meeting with Mr. McCaffrey, Dr. Boutros and Dr. Boutros’ counsel. In a subsequent telephone conversation where Mr. McCaffrey, Dr. Boutros, and Dr. Boutros’ counsel were discussing the timing of Dr. Boutros’ repayment via wire transfer to MetroHealth, Mr. McCaffrey asked Dr. Boutros why he needed more time than initially requested to accomplish the repayment. This prompted Mr. McCaffrey to inquire if any of the funds for repayment would come from accounts based outside of the United States. Dr. Boutros indicated that all funds were located in

the United States, to which there was no reason for delay beyond the initial timing offered by Dr. Boutros. Mr. McCaffrey made such statement to confirm that repayment of Plaintiff's unauthorized compensation would not be delayed by international money-wiring procedures.

80. Defendants deny that Dr. Boutros issued any response to Mr. McCaffrey's reasoned inquiry to address the MHS Board's concerns about receiving the repayment of the unauthorized funds as quickly as possible. Defendants further deny that a question about overseas accounts was shocking, offensive, discriminatory, or a "trope." Defendants deny any remaining allegations contained in Paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Complaint because Dr. Boutros never made such a statement and no further discussion of the issue ever occurred.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

83. Defendants admit that after the in-person meeting with Dr. Boutros and Dr. Boutros' counsel, Mr. McCaffrey sent Dr. Boutros' counsel an e-mail including the language quoted in Paragraph 83 of the Complaint. Defendants further admit that Mr. McCaffrey stated in his e-mail that he would confirm the amount of the repayment when it was available, and that repayment should be made to a MetroHealth account at PNC Bank. Defendants deny the remaining allegations contained in Paragraph 83 of the Complaint.

84. Defendants admit that the announcements described in Paragraph 84 were published on MetroHealth's website but deny that notice is provided to Trustees via MetroHealth's website. In further answering, Defendants state that The MetroHealth Board of Trustees Bylaws speak for itself. All remaining allegations contained in Paragraph 84 of the Complaint are denied.

85. Defendants admit that Dr. Boutros expressed an intent to attend the public portions of the meeting and that Dr. Boutros was informed that the entirety of the meeting would occur in executive session. Defendants admit that Dr. Boutros agreed not to attend given that no action would be taken in public session. Defendants deny any remaining allegations contained in Paragraph 85 of the Complaint.

86. Defendants state that Dr. Boutros' counsel's e-mail speaks for itself, but otherwise denies the allegations directed at Defendants contained in Paragraph 86 of the Complaint.

87. Defendants admit that they agreed to conduct an assessment but deny that there was any agreement that Dr. Boutros would be "repa[id] accordingly." Defendants deny any remaining allegations contained in Paragraph 87 of the Complaint.

88. Defendants admit that on October 21, 2022, Mr. McCaffrey sent Dr. Boutros' counsel an e-mail confirming the amount of the supplemental payments received by Dr. Boutros during the years 2017-2021 and stating that a calculation of the 457(f) payments derived from the unauthorized supplemental payments would be forthcoming. Defendants further admit that Mr. McCaffrey requested repayment by November 4, 2022. This date was within the time frame for repayment first identified by Dr. Boutros at the initial meeting with Mr. McCaffrey on October 17, 2022. Defendants deny the remaining allegations contained in Paragraph 88 of the Complaint.

89. Defendants admit that counsel for Dr. Boutros and Mr. McCaffrey exchanged e-mails on October 24, 2022 regarding Dr. Boutros' repayment of his unauthorized bonuses and further state that those e-mails speak for themselves. Defendants deny the remaining allegations contained in Paragraph 89 of the Complaint.

90. Defendants admit that counsel for Dr. Boutros and Mr. McCaffrey had telephone conversations regarding Dr. Boutros' repayment of his unauthorized bonuses. Defendants deny

the characterization of those conversations alleged in Paragraph 90 of the Complaint and otherwise deny the remaining allegations contained in Paragraph 90 of the Complaint.

91. Defendants admit that counsel for Dr. Boutros and Mr. McCaffrey exchanged e-mails regarding Dr. Boutros' repayment of his unauthorized bonuses and further state that those e-mails speak for themselves. Defendants deny the remaining allegations contained in Paragraph 91 of the Complaint.

92. Defendants lack knowledge sufficient to form a basis as to the truth or falsity of the remaining allegations contained in Paragraph 92 of the Complaint and therefore deny the same.

93. Defendants admit that the final calculation was presented on October 27, 2022 for wire transfer to MetroHealth's bank account, and that Mr. McCaffrey affirmed the need to repay the unauthorized funds by November 4, 2022. Defendants further admit that Dr. Boutros' counsel proposed paying the funds into escrow and that Mr. McCaffrey denied this suggestion. Defendants deny the remaining allegations contained in Paragraph 93 of the Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of the Complaint, including any suggestion that Defendants or Mr. McCaffrey harassed Dr. Boutros.

95. Defendants admit that there was e-mail correspondence regarding Dr. Boutros' repayment of his unauthorized compensation and further state that those e-mails speak for themselves. Defendants otherwise deny the allegations contained in Paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. Defendants admit the allegations contained in Paragraph 97 of the Complaint.

98. Defendants admit that on November 7, 2022, Trustees Whiting, Walker and Dee requested a meeting with Dr. Boutros and that the meeting was indeed for the purpose of discussing a transition plan for Dr. Boutros and the incoming CEO. Defendants deny any remaining allegations contained in Paragraph 98 of the Complaint.

99. Defendants admit that on November 7, 2022, Trustees Whiting, Walker, and Dee met with Dr. Boutros to seek his agreement on a plan for the transition to the new incoming CEO, which is considered standard. Defendants further state that the proposed (and subsequently implemented) Transition Plan speaks for itself. Defendants otherwise deny Dr. Boutros' characterization of this meeting, and as such deny the remaining allegations contained in Paragraph 99 of the Complaint.

100. Defendants admit that Dr. Boutros was presented with a transition plan document that he refused to acknowledge by his signature.

101. Defendants admit that on November 9, 2022, the MHS Board passed Resolution 19537, which speaks for itself. Defendants further admit that, under the Transition Plan, key decisions would require input from certain Trustees and the incoming CEO and that the terms of the plan (which generally is not required to be memorialized in writing due to an outgoing CEO's cooperation) are normal industry practice. To the extent a further response to the allegations in Paragraph 101 of the Complaint is required, those allegations are denied.

102. Defendants state that Dr. Boutros' Employment Agreement speaks for itself. Defendants deny that the implementation of the Transition Plan during the last eight (8) weeks of a CEO's tenure, and while the MHS Board is aware that the CEO issued over \$1.9 million in unauthorized payments to himself, represents a breach of the CEO's Employment Agreement in

any respect. Defendants deny any remaining allegations contained in Paragraph 102 of the Complaint.

103. Defendants admit that on November 11, 2022, Dr. Boutros purported to give notice of termination of his Employment Agreement. Defendants deny that Dr. Boutros had any legal basis for terminating his employment for “Good Reason” under his Employment Agreement, and otherwise deny the remaining allegations contained in Paragraph 103 of the Complaint.

104. Defendants admit that they did not respond to Dr. Boutros’ purported notice of termination prior to his termination for Cause on November 21, 2022.

105. Defendants admit that Dr. Boutros was terminated “for Cause” under Section 12.A(i) of his Employment Agreement. All remaining allegations contained in Paragraph 105 of the Complaint are denied.

106. Defendants admit that the MHS Board received the report prepared by Mr. McCaffrey on November 19, 2022. Defendants deny any and all remaining allegations contained in Paragraph 106 of the Complaint, including any suggestion that they violated Ohio law.

107. In response to Paragraph 107 of the Complaint, Defendants state that the McCaffrey Report speaks for itself. Defendants deny all remaining allegations contained in Paragraph 107 of the Complaint.

108. In response to Paragraph 108 of the Complaint, Defendants state that the McCaffrey Report speaks for itself. Defendants deny all remaining allegations contained in Paragraph 108 of the Complaint.

109. In response to Paragraph 109 of the Complaint, Defendants state that the McCaffrey Report speaks for itself. Defendants deny the remaining allegations contained in

Paragraph 109 of the Complaint, including any suggestion that the McCaffery Report is incomplete.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Complaint.

112. Defendants admit the allegations contained in Paragraph 112 of the Complaint.

113. Defendants admit the allegations contained in Paragraph 113 of the Complaint.

114. Defendants deny the allegations contained in Paragraph 114 of the Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of the Complaint.

116. Defendants admit that at its November 21, 2022 meeting, the MHS Board voted to terminate Plaintiff's employment, effective immediately, for Cause. Defendants deny all remaining allegations contained in Paragraph 116 of the Complaint.

117. Defendants admit the allegations contained in Paragraph 117 of the Complaint.

118. Defendants admit that Chair Whiting issued a statement concerning Dr. Boutros' termination, which speaks for itself. Defendants deny all remaining allegations contained in Paragraph 118 of the Complaint, including any suggestion that the statement was false.

119. Defendants deny the allegations contained in Paragraph 119 of the Complaint, including any suggestion that the statements made regarding Dr. Boutros' termination and the facts underlying it are false.

120. Defendants deny the allegations contained in Paragraph 120 of the Complaint.

121. Defendants admit that Vice Chair Silvers issued responses on or about December 8, 2022, to common questions received by the MHS Board following Dr. Boutros' termination, including that the \$1.9 million in additional payments Dr. Boutros received were unauthorized. Defendants deny the remaining allegations contained in Paragraph 121 of the Complaint.

122. Defendants admit that they did not make the representations suggested by Dr. Boutros in Paragraph 122 because such representations would have been false. Defendants deny the remaining allegations contained in Paragraph 122 of the Complaint.

123. Defendants deny the allegations contained in Paragraph 123 of the Complaint.

124. In response to the allegations contained in Paragraph 124 of the Complaint, Defendants admit that Dr. Boutros was employed pursuant to written Employment Agreements and the Employment Agreements speak for themselves.

125. Defendants admit that Dr. Boutros' most recent Employment Agreement became effective January 1, 2020.

126. In response to Paragraph 126 of the Complaint, Defendants state that the Employment Agreement speaks for itself.

127. In response to Paragraph 127 of the Complaint, Defendants state that the Employment Agreement speaks for itself.

128. Defendants deny that Dr. Boutros' Employment Agreement provided for generalized "incentive compensation awards' including annual performance-based compensation" when his agreement specifically limits his compensation to a Base Salary and "performance based variable compensation . . . under a Performance Based Variable Compensation Plan." In further responding to Paragraph 128 of the Complaint, Defendants state that the Employment Agreement speaks for itself. Defendants deny any remaining allegations contained in Paragraph 128 of the Complaint.

129. In response to Paragraph 129 of the Complaint, Defendants state that the Employment Agreement speaks for itself. Defendants deny any remaining allegations contained in Paragraph 129 of the Complaint.

130. In response to Paragraph 130 of the Complaint, Defendants state that the Employment Agreement speaks for itself.

131. Defendants deny that the Employment Agreement provided Dr. Boutros with generalized “incentive compensation awards” and admits that Dr. Boutros’ agreement was already generous, but appropriate, based on market comparables *before* he awarded himself over \$1.9 million in additional unauthorized compensation. Further responding, Defendants state that the Employment Agreement speaks for itself and deny all remaining allegations contained in Paragraph 131 of the Complaint.

132. In response to Paragraph 132 of the Complaint, Defendants state that the Employment Agreement speaks for itself.

133. In response to Paragraph 133 of the Complaint, Defendants state that the Employment Agreement speaks for itself.

134. In response to Paragraph 134 of the Complaint, Defendants state that the Employment Agreement speaks for itself. Defendants deny all remaining allegations contained in Paragraph 134 of the Complaint.

135. In response to Paragraph 135 of the Complaint, Defendants state that the Employment Agreement speaks for itself. Defendants deny all remaining allegations contained in Paragraph 135 of the Complaint.

136. In response to Paragraph 136, Defendants state that the Employment Agreement speaks for itself. Defendants deny all remaining allegations contained in Paragraph 136 of the Complaint.

137. In response to Paragraph 137, Defendants state that the Employment Agreement speaks for itself. Defendants deny the remaining allegations contained in Paragraph 137 of the Complaint.

138. Defendants admit that Dr. Boutros was President and CEO of The MetroHealth System and that, as CEO, Dr. Boutros had certain authority over management and control of the organization as set forth in Ohio law and in the MHS Board's written delegations to the CEO. Defendants deny the remaining allegations contained in Paragraph 138 of the Complaint.

139. In response to Paragraph 139 of the Complaint, Defendants state that the Section 339.06 of the Ohio Revised Code speaks for itself.

140. Defendants deny the allegations set forth in Paragraph 140.

141. In response to Paragraph 141 of the Complaint, Defendants state that the Section 339.06(D)(1) of the Ohio Revised Code speaks for itself.

142. Defendants deny the allegations contained in Paragraph 142 of the Complaint.

143. In response to Paragraph 143 of the Complaint, Defendants state that Ohio Revised Code Section 339.07 speaks for itself. In further responding, Defendants deny that Dr. Boutros' authority to "take any other action" is independent, exclusive or not otherwise subject to statutory or other limits, including the Ohio Ethics Laws. Defendants further deny that Dr. Boutros' actions in awarding himself additional compensation is "necessary for the operation of the hospital." Defendants deny all remaining allegations contained in Paragraph 143 of the Complaint.

144. Defendants admit the allegations contained in Paragraph 144 of the Complaint.

145. In response to Paragraph 145 of the Complaint, Defendants state that Resolution 19284 speaks for itself. Defendants deny all remaining allegations contained in Paragraph 145 of the Complaint.

146. In response to Paragraph 146 of the Complaint Defendants state that the 2017 version of Resolution 19284 speaks for itself. Defendants deny the remaining allegations contained in Paragraph 146 of the Complaint, including that these limits were the only limitations on Dr. Boutros' ability to authorize the expenditure of funds.

147. In response to Paragraph 147 of the Complaint, Defendants state that Resolution 19284 speaks for itself. Defendants deny all remaining allegations contained in Paragraph 147 of the Complaint.

148. Defendants deny the allegations contained in Paragraph 148 of the Complaint.

149. In response to Paragraph 149 of the Complaint, Defendants state that Resolutions 19284 and 19108 speak for themselves. In further responding, Defendants deny any suggestion that Dr. Boutros was permitted to authorize additional compensation to himself under Resolutions 19284 or 19108.

150. In response to Paragraph 150 of the Complaint, Defendants state that Resolutions 19284 and 19108 speak for themselves. In further responding, Defendants deny any suggestion that Dr. Boutros was permitted to authorize additional compensation to himself under Resolutions 19284 or 19108.

151. In response to Paragraph 151 of the Complaint, Defendants state that Resolutions 19284 and 19108 speak for themselves. Defendants deny the remaining allegations contained in Paragraph 151 of the Complaint.

152. In response to Paragraph 152 of the Complaint, Defendants state that Resolution 19345 speaks for itself. Defendants deny the remaining allegations contained in Paragraph 152 of the Complaint, including that Dr. Boutros had "plenary authority" to award himself additional compensation that was not approved by the MHS Board.

153. Defendants deny the allegations contained in Paragraph 153 of the Complaint.

154. Defendants deny the allegations contained in Paragraph 154 of the Complaint.

Dr. Boutros' characterization of his authority over his own compensation are false.

155. Defendants admit that Dr. Boutros discussed the proposed Delegations Policy that the Governance Committee considered in its May 2022 meeting, but deny any remaining allegations contained in Paragraph 155, including the suggestion that those discussions in any way related to Dr. Boutros' authority to compensate himself.

156. Defendants admit that Governance Chair Chappell requested an opinion from outside counsel on the scope of permissible delegations under Ohio Revised Code Chapter 339. Defendants deny the remaining allegations contained in Paragraph 156 of the Complaint, including any suggestion that those questions related to Dr. Boutros' authority to compensate himself. Dr. Boutros' lack of authority to compensate himself was never in question.

157. Defendants admit that on July 28, 2022, K&L Gates presented a memo to MetroHealth, which memorandum is subject to attorney-client privilege. Defendants deny that the memorandum in any way discussed Dr. Boutros' authority to compensate himself. Defendants deny any remaining allegations contained in Paragraph 157 of the Complaint.

158. Defendants deny the allegations contained in Paragraph 158 of the Complaint.

159. Defendants admit that the MHS Board adopted changes to its Executive Compensation policy, BOT-06, as a result of the facts revealed by Mr. McCaffrey's report and the actions Dr. Boutros took to award himself additional compensation not authorized by the MHS Board. Defendants deny any remaining allegations contained in Paragraph 159 of the Complaint.

160. Defendants deny that the changes implemented to BOT-06 reflected any "reassign[ment]" of authority. Dr. Boutros never had the authority to award additional

compensation to himself. He had no such authority under Ohio law (including the Ohio Ethics Laws), under MHS Board policy, or under common sense. Defendants deny the remaining allegations contained in Paragraph 160 of the Complaint.

161. Defendants admit that the changes to MHS Board policy BOT-06 now explicitly require MetroHealth to detail the CEO's prior year compensation – as a disappointingly necessary measure to further protect against a CEO awarding themselves additional compensation without approval from the MHS Board after concealing information and circumventing numerous controls. In response to Paragraph 161 of the Complaint, Defendants state that BOT-06 speaks for itself. Defendants deny any remaining allegations contained in Paragraph 161 of the Complaint.

162. Defendants deny the allegations contained in Paragraph 162 of the Complaint. In further response to Paragraph 162 of the Complaint, Defendants state that BOT-06 speaks for itself.

163. Defendants deny that the CEO was ever delegated the authority “to approve all compensation to the CEO” and Dr. Boutros' blatant mischaracterizations of the MHS Board's resolutions and his Employment Agreements. Defendants deny the remaining allegations contained in Paragraph 163 of the Complaint.

164. Defendants deny the allegations contained in Paragraph 164 of the Complaint. Dr. Boutros was and is well aware of the terms of his Employment Agreement and the terms of the MHS Board's policy regarding executive compensation, neither of which are reflected accurately in Paragraph 164. In further responding, Defendants state that BOT-06 speaks for itself. Defendants deny any and all remaining allegations contained in Paragraph 164 of the Complaint.

165. Defendants deny the allegations contained in Paragraph 165 of the Complaint.

166. Defendants admit that they are subject to the Open Meeting Act. Defendants deny all remaining all allegations contained in Paragraph 166 of the Complaint, including any suggestion that they acted in bad faith when investigating Dr. Boutros' wrongful conduct.

167. Defendants deny the allegations contained in Paragraph 167 of the Complaint, including that Defendants relied on an incomplete report and that Dr. Boutros was entitled to due process.

168. Defendants deny the allegations contained in Paragraph 168.

169. Defendants deny the allegations contained in Paragraph 169.

170. Defendants deny the allegations contained in Paragraph 170 of the Complaint.

171. Defendants deny the allegations contained in Paragraph 171 of the Complaint.

172. Defendants deny the allegations contained in Paragraph 172 of the Complaint.

173. Defendants deny the allegations contained in Paragraph 173 of the Complaint.

174. Defendants deny the allegations contained in Paragraph 174 of the Complaint. Dr. Boutros never raised any such issues until after he was notified of concerns regarding his unauthorized compensation.

175. Defendants deny the allegations contained in Paragraph 175 of the Complaint. Dr. Boutros was terminated for Cause for, among other things, acts of dishonesty in awarding himself compensation that was not approved by the MHS Board.

176. Defendants deny the allegations contained in Paragraph 176 of the Complaint.

177. Defendants deny the allegations contained in Paragraph 177 of the Complaint.

COUNT ONE
(Breach of Contract — Incentive Compensation — Good Faith and Fair Dealing)

178. Defendants incorporate by reference all of the previous paragraphs as if fully re-written herein.

179. Defendants admit the allegations contained in Paragraph 179 of the Complaint.

180. Defendants deny the allegations contained in Paragraph 180 of the Complaint.

181. Defendants deny the allegations contained in Paragraph 181 of the Complaint.

182. Defendants admit that Dr. Boutros was contractually eligible to incentive payments through the Performance-Based Variable Compensation Program, which payments were approved by the MHS Board in each relevant year. Defendants deny that Dr. Boutros was entitled to any further “incentive payments” or payments under his Supplemental PBVC program.

183. Defendants deny the allegations contained in Paragraph 183 of the Complaint.

184. Defendants admit the allegations contained in Paragraph 184 of the Complaint.

185. The allegations in Paragraph 185 are legal conclusions to which no response is required. To the extent any response is warranted, Defendants deny the allegations contained in Paragraph 185 of the Complaint.

186. The allegations in Paragraph 186 are legal conclusions to which no response is required. To the extent any response is warranted, Defendants deny the allegations contained in Paragraph 186 of the Complaint.

187. Defendants deny the allegations contained in Paragraph 187 of the Complaint.

188. Defendants deny the allegations contained in Paragraph 188 of the Complaint.

COUNT TWO
(Promissory Estoppel — Incentive Compensation)

189. Defendants incorporate by reference all of the previous paragraphs as if fully re-written herein.

190. Defendants deny the allegations contained in Paragraph 190 of the Complaint.

191. Defendants deny the allegations contained in Paragraph 191 of the Complaint.

192. Defendants deny the allegations contained in Paragraph 192 of the Complaint.

193. Defendants deny the allegations contained in Paragraph 193 of the Complaint.

194. Defendants deny the allegations contained in Paragraph 194 of the Complaint.

COUNT THREE
(Breach of Contract — Reduction in Duties)

195. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

196. Defendants deny the allegations contained in Paragraph 196 of the Complaint.

197. In response to Paragraph 197 of the Complaint, Defendants state that Resolution 19537 speaks for itself. All remaining allegations contained in Paragraph 197 of the Complaint are denied.

198. Defendants deny the allegations contained in Paragraph 198 of the Complaint.

COUNT FOUR
(Breach of Contract - Severance)

199. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

200. Defendants deny the allegations contained in Paragraph 200 of the Complaint.

201. Defendants deny the allegations contained in Paragraph 201 of the Complaint.

202. Defendants deny the allegations contained in Paragraph 202 of the Complaint.

203. Defendants deny the allegations contained in Paragraph 203 of the Complaint.

204. Defendants deny the allegations contained in Paragraph 204 of the Complaint.

205. Defendants deny the allegations contained in Paragraph 205 of the Complaint.

COUNT FIVE
(Breach of Contract — Termination for Cause When There Is No Cause - Good Faith and Fair Dealing)

206. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

207. Defendants deny the allegations contained in Paragraph 207 of the Complaint.

208. Defendants deny the allegations contained in Paragraph 208 of the Complaint.

209. Defendants deny the allegations contained in Paragraph 209 of the Complaint.

210. Defendants deny the allegations contained in Paragraph 210 of the Complaint.

211. The allegations in Paragraph 211 are legal conclusions to which no response is required. To the extent any response is warranted, Defendants deny the allegations contained in Paragraph 211 of the Complaint.

212. The allegations in Paragraph 212 are legal conclusions to which no response is required. To the extent any response is warranted, Defendants deny the allegations contained in Paragraph 212 of the Complaint.

213. The allegations in Paragraph 213 are legal conclusions to which no response is required. To the extent any response is warranted, Defendants deny the allegations contained in Paragraph 213 of the Complaint.

214. Defendants deny the allegations contained in Paragraph 214 of the Complaint.

215. Defendants deny the allegations contained in Paragraph 215 of the Complaint.

COUNT SIX
(Breach of Contract - Disparagement)

216. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

217. In response to Paragraph 217 of the Complaint Defendants state that the Employment Agreement speaks for itself. Defendants deny any and all remaining allegations contained in Paragraph 217 of the Complaint.

218. Defendants deny the allegations contained in Paragraph 218 of the Complaint.

219. Defendants deny the allegations contained in Paragraph 219 of the Complaint.

COUNT SEVEN
(Defamation)

220. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

221. Defendants deny the allegations contained in Paragraph 221 of the Complaint.

222. Defendants deny the allegations contained in Paragraph 222 of the Complaint.

223. Defendants admit that the MetroHealth Foundation is a separate and distinct legal entity from MetroHealth. Defendants deny the remaining allegations contained in Paragraph 223 of the Complaint.

224. Defendants deny the allegations contained in Paragraph 224 of the Complaint.

225. Defendants deny the allegations contained in Paragraph 225 of the Complaint.

226. Defendants deny the allegations contained in Paragraph 226 of the Complaint.

227. Defendants deny the allegations contained in Paragraph 227 of the Complaint.

228. Defendants deny the allegations contained in Paragraph 228 of the Complaint.

COUNT EIGHT
(Retaliation in Violation of R.C. 1921.05 - Civil Liability For Criminal Conduct R.C. 2307.60)

229. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

230. In response to Paragraph 230, Defendants state that R.C. 2921.05 speaks for itself. Defendants deny any and all remaining allegations contained in Paragraph 230 of the Complaint.

231. Paragraph 231 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations are directed at Defendants, these allegations are denied.

232. Defendants deny the allegations contained in Paragraph 232 of the Complaint.

233. Defendants deny the allegations contained in Paragraph 233 of the Complaint.

234. In response to Paragraph 234 Defendants state that R.C. 2307.60 speaks for itself. Defendants deny any and all remaining allegations contained in Paragraph 234 of the Complaint.

235. Defendants deny the allegations contained in Paragraph 235 of the Complaint.

COUNT NINE
(Intimidation Under R.C. 2921.03 - Using False Or Fraudulent Writing - Civil Liability For Criminal Conduct R.C. 2307.60)

236. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

237. In response to Paragraph 237, Defendants state that R.C. 2921.03 speaks for itself. Defendants deny any and all remaining allegations contained in Paragraph 237 of the Complaint.

238. In response to Paragraph 238, Defendants state that the Ohio laws speak for themselves. Defendants deny any and all remaining allegations contained in Paragraph 238 of the Complaint.

239. Defendants admit the allegations contend in Paragraph 239 of the Complaint.

240. Defendants deny the allegations contained in Paragraph 240 of the Complaint.

241. Defendants deny the allegations contained in Paragraph 241 of the Complaint.

242. Defendants deny the allegations contained in Paragraph 242 of the Complaint.

COUNT TEN
(Discharge In Violation Of Public Policy)

243. Defendants incorporate by reference all previous paragraphs as if fully re-written herein.

244. Paragraph 244 of the Complaint fails to assert any allegations against Defendants, and therefore no response is required. To the extent that any allegations are directed at Defendants, these allegations are denied.

245. In response to Paragraph 245, Defendants state that R.C. 121.22(A) speaks for itself. Defendants deny any remaining allegations contained in Paragraph 245 of the Complaint.

246. Defendants deny the allegations contained in Paragraph 246 of the Complaint.

247. Defendants deny the allegations contained in Paragraph 247 of the Complaint.

248. Defendants deny the allegations contained in Paragraph 248 of the Complaint.

249. Defendants deny the allegations contained in Paragraph 249 of the Complaint.

250. Defendants deny the allegations contained in Paragraph 250 of the Complaint.

251. Defendants deny the allegations contained in Paragraph 251 of the Complaint.

252. In response to Plaintiff's prayer for relief, Defendants deny that Dr. Boutros is entitled to the relief requested in his Complaint.

ADDITIONAL DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted against the Defendants.
2. Plaintiff's claims should be dismissed, in whole and in part, because Plaintiff engaged in fraud.
3. Plaintiff's action is barred by the doctrines of waiver and estoppel.
4. Plaintiff's action is barred by laches.

5. Plaintiff engaged in improper conduct and acted in bad faith, and Plaintiff's action is barred by the doctrine of unclean hands.
6. Defendants are entitled to all available common law and statutory immunities, including but not limited to, those provided pursuant to Ohio Rev. Code Chapter 2744.
7. Plaintiff's claims, in whole or in part, are barred by the applicable statute of limitations or contractual limitations.
8. Plaintiff's claims are barred because Defendants have, at all relevant times herein, acted in good faith and have not violated any rights that may be secured to Plaintiff under any federal, state, or local laws, rules, regulations, or guidelines.
9. Plaintiff's claims are barred, in whole or in part, because all decisions made with respect to his employment were made for legitimate and non-retaliatory reasons.
10. Plaintiff's claims for punitive damages are barred or must be reduced on account of Ohio Rev. Code Section 2315.21.
11. Plaintiff's claims for damages are barred or must be reduced on account of Ohio Rev. Code Sections 2315.18, 2315.20, 2315.21, and Chapter 2744.
12. Plaintiff's claims, in whole or in part, are barred by a qualified privilege and/or Defendants actions are protected by a qualified privilege.
13. Plaintiff's claims are barred because Plaintiff has failed to mitigate his damages and other relief claimed, or, in the alternative, the damages and other relief claimed are limited to the extent Plaintiff has failed to mitigate the same.
14. The existence of the binding Employment Agreement between Plaintiff and The MetroHealth System bars, in whole or in part, Plaintiff's claims in this lawsuit.

15. Plaintiff is not entitled to punitive damages or attorneys' fees and costs, and Plaintiff's prayers for such relief should be denied.

16. Defendants expressly reserve the right to seek the recovery of fees and costs, including attorneys' fees, for Plaintiff's frivolous conduct under Ohio Revised Code Section 2323.51.

17. Defendants expressly reserve the right to plead additional defenses as may become available throughout the course of discovery.

WHEREFORE, having fully answered, Defendants pray that Plaintiff's Complaint be dismissed, that judgment be entered in their favor and against the Plaintiff, that the Court issue an Order stating that Defendants be awarded their costs and attorneys' fees, and any further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mark I. Wallach

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2023, a copy of the foregoing Defendants' Answer to Plaintiff's Complaint was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Mark I. Wallach _____
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