

For his Complaint against Defendants The MetroHealth System, The MetroHealth System Board of Trustees, and Vanessa Whiting, J.B. Silvers, Inajo Davis Chappell, John Corlett, Maureen Dee, John M. Hairston, Jr., Robert Hurwitz, John M. Moss, Ezelle H. Walker, Plaintiff Akram Boutros, M.D., alleges and states as follows:

### **INTRODUCTION**

1. After nine years of acclaimed leadership as President and Chief Executive Officer of Defendant The MetroHealth System, Plaintiff Akram Boutros was driven from his job based on false accusations that he set personal goals, subjectively evaluated himself, and then “paid himself” incentive compensation to which he was not entitled and of which the Board of Trustees was supposedly unaware.

2. What should have been a community celebration and victory lap for Dr. Boutros as MetroHealth prepared for a change in leadership became a nightmare. An impeccable reputation for leadership, stewardship, honesty and uncompromising excellence was destroyed as the Defendants pursued a dubious investigation culminating in a late-night publicity campaign accusing Dr. Boutros of theft and dishonesty.

3. The movement against Dr. Boutros was not born out of legitimate concern for The MetroHealth System. It started as retaliation against him for identifying defects in the process by which the next Chief Executive Officer was being selected, and hired, then fed off the need of Defendant Whiting, Silvers, Chappell,

Corlett, Dee, Hairston, Jr., Hurwitz, Moss, and Walker's to deflect from the Board of Trustees' grossly negligent conduct as they claimed to be the sole authority who can evaluate Dr. Boutros' performance and compensation but, admittedly, failed to do so.

4. For years, the Board approved incentive pools for all senior leadership at MetroHealth – including Dr. Boutros – but never asked what amounts Dr. Boutros or any other senior leadership was receiving under these incentive programs or why. Such information was at all times readily available to them, on demand, from the ordinary business and payroll records of the System. Only after he confronted Defendants Whiting and Walker about the risks to which they were exposing the System due to illegality in the selection and hiring of the incoming CEO did the Trustees begin to question Dr. Boutros' compensation. Concluding he was “guilty until proven innocent,” they proceeded to conduct an unauthorized and slipshod “investigation” into his compensation notwithstanding the fact that Dr. Boutros' total pay, including supplemental incentives, never exceeded any limits the Board placed on his compensation.

5. Defendant Whiting, or some undisclosed committee of the Board, secretly hired one law firm, Mansour Gavin, to investigate Dr. Boutros. Rejecting their findings, Whiting then tried to hire another lawyer, John McCaffrey, who was more willing to treat Dr. Boutros as a criminal. McCaffrey interviewed Dr. Boutros under a “Garrity Warning.” Defendants Whiting and Silvers requested that Dr. Boutros “self-report” on the process by which he received compensation to the Ohio Ethics Commission – which he did. They coerced him to repay certain incentive

compensation, plus interest – which he did – in reliance on their promise to re-assess his performance and entitlement to the incentives – which they did not do.

6. The Defendants broke their promise, and immediately characterized Dr. Boutros' coerced repayment as evidence of guilt. The Board of Trustees punished Dr. Boutros by first attempting to coerce him into diminishing his authority under his Employment Agreement, and then later by doing so through Board Resolution, triggering his right to terminate his Employment Agreement for good reason and obligating the Defendants to cure their breach or face the consequences. Rather than cure, they rushed instead to try to fire Dr. Boutros "for cause" based on a brief presentation to the Board of the biased and incomplete report from John McCaffrey for which he interviewed no Board members other than Defendant Whiting, and in which he referenced hundreds of pages of exhibits that were not provided to the Board prior to action. The Board acted without having all the facts. They did not interview Dr. Boutros or make any effort to obtain or consider Dr. Boutros' side of the story. In reliance on the biased and incomplete report, the Board took a hasty vote, without public deliberation, to terminate Dr. Boutros' employment.

7. Rather than celebrating MetroHealth's accomplishments during Dr. Boutros' tenure, the Board chose to mire the System in controversy and scandal. But the scandal is not Dr. Boutros' earned incentive compensation which he returned on condition that the Board repay him after re-assessing his performance, it is the Board's extraordinary incompetence and abdication of duty, and the ensuing campaign –by Defendants Whiting, Silvers, Chappell, Corlett, Dee, Hairston,

Hurwitz, Moss, and Walker – to blame Dr. Boutros for the Board’s own failure to fulfill its duties and obligations.

8. Through their breaches of contract, defamation, broken promises, pressure tactics, wrongful termination of his employment and criminal acts, the Defendants cost Dr. Boutros more than \$8 million in earned compensation, severance and benefits. They obliterated Dr. Boutros’ legacy at MetroHealth and destroyed his future, costing him opportunities for prospective employment worth at least \$20 million additional dollars. The anguish and suffering from the Defendants’ groundless assault on his reputation has caused Dr. Boutros additional tens of millions more in damage.

### **PARTIES**

9. Plaintiff Akram Boutros, M.D. was the President and CEO of Defendant MetroHealth System from June 1, 2013 until November 21, 2022. He has a 30-year record of successful hospital leadership at academic medical centers, community hospitals and specialty hospitals. Under his leadership, the MetroHealth System underwent an unprecedented positive transformation in virtually all respects.

10. Defendant The MetroHealth System is an independent subdivision of Cuyahoga County Government, and as such, is considered a public agency subject to Ohio’s Open Meetings Act and Ohio ethics law. It was established as a county hospital and operates and is governed by Chapter 339 of the Ohio Revised Code. It is the governing authority for an integrated system of health care facilities and programs operated by the organization.

11. Defendant The MetroHealth Board of Trustees, in accordance with applicable provisions of the Ohio Revised Code, has the authority and responsibility for the management and control of the MetroHealth System. It can take action only during public meetings, and cannot delegate any of its responsibilities or actions to any committee of the Board. It can act only through resolutions passed during public meetings. The Board can and has delegated much of its management authorities to the CEO as evidenced by both Board resolutions and Board policy. Specifically, Board policy BOT-07 states “The CEO has the authority to employ individuals and set the wages and salaries for MHS employees.” This authority is granted without exception.

12. Pursuant to Ohio R.C. 339.02, the members of the Board of Trustees are nominated by the Cuyahoga County Executive together with the senior Cuyahoga County probate judge and senior judge of the Cuyahoga County Court of Common Pleas subject to approval of the Cuyahoga County Council.

13. Current members of the Board of Trustees are Inajo Davis Chappell, John Corlett, Maureen Dee, John M. Hairston, Jr., Robert Hurwitz, John M. Moss, J.B. Silvers, Ezelle H. Walker and Vanessa L. Whiting. Former Trustee Terry Monnolly resigned as of November 30, 2022.

14. Defendant Vanessa L. Whiting is the Chair of the Board of Trustees and was first appointed in 2011. She is a resident of Cuyahoga County.

15. Defendant J.B. Silvers is the Vice Chair of the Board of Trustees and was first appointed in 2011. He is a resident of Cuyahoga County.

16. Defendant Inajo Davis Chappell, on information and belief, chaired the unauthorized “Special Investigation Committee” examining Dr. Boutros’ compensation. She was first appointed to the Board in 2021. She is a resident of Cuyahoga County.

17. Defendant John Corlett was newly appointed to the Board in 2022. He is a resident of Cuyahoga County.

18. Defendant Maureen Dee has served on the Board since 2014. She is a resident of Cuyahoga County.

19. Defendant John M. Hairston, Jr., has served on the Board since 2019. He is a resident of Cuyahoga County.

20. Defendant Robert Hurwitz was appointed to the MetroHealth Board in 2017. He is a resident of Cuyahoga County.

21. Defendant John M. Moss has served on the Board since 2010. He is a resident of Cuyahoga County.

22. Defendant Ezelle H. Walker was first appointed to the Board in 2021. He is a resident of Cuyahoga County.

## **STATEMENT OF FACTS**

### **The MetroHealth Executive Incentive Compensation Programs**

23. In 2013, prior to Dr. Boutros’ appointment as CEO, MetroHealth was suffering significant financial losses, reputational damage, and its sustainability was in question.

24. At the time, the Board of Trustees were being publicly criticized for providing executive bonuses without metrics and at a time when the organization was losing money. At his appointment announcement, Dr. Boutros spoke of the need for a metric-driven program that would rely on income performance and transparency. He did this with the then Board Chair, Tom McDonald, as documented in Plain Dealer interviews of May 2013.

25. In June, 2013, the Board of Trustees tasked Dr. Boutros with creating a metric-driven executive incentive program. With the help of independent consultant Sullivan Cotter, Dr. Boutros presented an incentive program known as Performance-Based Variable Compensation (PBVC).

26. The Board of Trustees expressly approved the program, which included certain parameters, including:

- A financial trigger or “kill switch” to make sure incentives are paid only when the organization achieved financial performance;
- The Board of Trustees would set CEO base compensation and the CEO would determine the remainder but the maximum total cash compensation could not exceed 105% of 75<sup>th</sup> percentile without Board approval;
- The Board of Trustees would approve the metrics to be evaluated and achievement measures each year;
- The CEO would maintain and administer the program.

27. In 2017, Dr. Boutros and independent compensation consultant Sullivan Cotter proposed significant changes to the MetroHealth PBVC program, including

the addition of lower-level staff, bringing the number of eligible participants from approximately 80 to up to 200.

28. At that time, the Board of Trustees received multiple, detailed presentations on the revamped PBVC, even including one-on-one sessions with Board members.

29. The Board of Trustees hired its own independent advisor, Findley Davies, Inc., to advise them on the plan that had been produced with the assistance of the compensation consultant as well as on the CEO's compensation. Dr. Boutros was excluded from meetings where Findley Davies' assessment of the plan and the proposed changes were presented to the Board of Trustees.

30. Since that time, Findley Davies, Inc. (subsequently known as USI ONE Advantage) have reported directly to the Board of Trustees through General Counsel, Michael Phillips, and Co-General Counsels, Laura McBride and Sonja Rajki.

31. All meetings between the Board and Findley Davies, Inc./ USI ONE Advantage to advise on the incentive program or CEO compensation were held in executive session, without public access.

32. At no time did Findley Davies, Inc./USI ONE Advantage request any salary or compensation information directly from Dr. Boutros. Nor was Dr. Boutros permitted to attend meetings with these advisors or to receive their reports. He was simply informed of his new base salary as it was changed.

33. Throughout this time, MetroHealth continued to use the services of independent compensation consultant Sullivan Cotter, whose reports were aimed at

assessing market base salary for the coming year and 90<sup>th</sup> percentile Total Cash Compensation, so that Dr. Boutros could follow the board directive to not exceed the 90<sup>th</sup> percentile in “Total Cash Compensation,” which was a defined concept in Dr. Boutros’ written Employment Agreements and Board resolutions.

34. On June 28, 2017, the Board of Trustees approved substantive changes to the compensation program. Significantly, the Board-approved program permitted additional incentive payments for other MetroHealth employees, project-specific recognitions, and supplemental incentives if the health system financial performance was significantly above the expected levels.

35. Consistent with these changes, and as directed by the Board of Trustees’ executive compensation resolutions which state that the “President and Chief Executive Officer will set goals for senior leadership,” Dr. Boutros collaborated with other members of senior leadership to set institutional goals for all eligible employees. They established broad goals in 2017 and more specific and weighted goals in 2018 through 2021 for critical initiatives that created immense financial value for the organization which came to be known as supplemental PBVC (or “SPBVC”). These goals were annual and did not substantially overlap with the organizational goals for PBVC. Senior leadership, including Dr. Boutros, would evaluate each eligible employee’s contributions to the success of each goal. The process included self-evaluation, peer evaluation, and evaluation of subordinates. The amount of the SPBVC was dependent on PBVC achievement and could not exceed 100% of PBVC. With respect to Dr. Boutros, he would discuss each goal with other senior leadership

members and ask for input on his contribution. The same objective assessment and approach was used for each eligible employee.

36. During his entire tenure as CEO, Dr. Boutros reported to the Board on the successes of the prior year and the System goals and achievements as required by Board resolution. At no time did the Board of Trustees ask for person-specific metrics, payments, or other data related to the PBVC calculations or payments for other portions of the incentive program, including what amounts Dr. Boutros was receiving. When requested, Dr. Boutros or the CFO would report on the calculation of the incentive pool, the total amounts to be awarded, and the amount of unused incentive pool returned to The MetroHealth System.

37. For its part, the Board of Trustees approved annual total distribution of the incentive program amounts in a resolution that clearly identifies the components. For example, in 2022, the resolution states

Based upon these 2021 results above, the total performance-based incentive program funding shall not exceed \$10,000,000. This amount has been fully accrued in the calculation of the System's financial results as reflected in its audited financial statements. Performance based incentive program payments (PBVC, one-time recognition, ***supplemental incentives***) shall be distributed to eligible employees based on System and individual performance. The average incentive payment is approximately 21.6% of the base salary. ***The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution.***

(emphasis added)

38. From at least 2017 through 2021, all senior leadership at MetroHealth, including the CEO, Chief Financial Officer, Chief Ethics and Compliance Officer,

General Counsel, and Co-General Counsels, attended meetings to discuss SPBVC awards. They were all aware of and participated in the program. They also attended Dr. Boutros' annual presentations to the Board on the successes of the System, titled Year-in-Review, which included System goals and achievements. At no time did any of these individuals suggest to Dr. Boutros that a further presentation to the Board on any component of the incentive program was prudent, wise, or necessary, or that he lacked the authority to carry out the annual resolutions approved by the Board.

39. At no time did the amount of approved incentive payments – including PBVC, one-time recognition and supplemental incentives – ever exceed the incentive pool amount approved by the Board.

40. At no time did the Board express any interest in, or request any information on, how the approved incentive pool was allocated as between PBVC, one-time recognition and supplemental incentives.

41. At no time did the Board withdraw any authority granted to Dr. Boutros with regard to the disbursement of the incentive pool.

#### **Whiting And Silvers Question Dr. Boutros' Compensation**

42. In late 2021, Dr. Boutros' announced that he would be leaving MetroHealth at the end of 2022.

43. At that time, the Board of Trustees undertook a search for his successor. That process commenced on February 14, 2022 and involved a Board of Trustees Search Committee. All the work of the Search Committee was conducted in Executive Session, and every such Executive Session violated R.C. 121.22(G).

44. The search process was further tainted because the MetroHealth Board of Trustees never engaged in public discussion or passed a resolution approving the hiring of consultants to support the search process for an incoming CEO. Instead, Board Chair Whiting signed all the contracts with consultants in violation of R.C. 121.22 and in violation of Article XI, Section 1 of the MetroHealth Board of Trustee Bylaws, which states that

The President and Chief Executive Officer shall act as the duly authorized representative of the Board in all matters in which the Board has not formally designated some other person to so act.

45. Dr. Boutros did not authorize or sign agreements with either of the Search Committee's consultants and did not delegate this authority to any other senior leader. Under the circumstances, Defendant Whiting unlawfully obligated The MetroHealth System to hundreds of thousands of dollars of expense without proper Board authorization or Board resolution.

46. In addition to the above illegalities, Dr. Boutros challenged board members' "serial deliberation" regarding CEO candidates that was taking place outside of official board proceedings, including in parking lots, social gatherings and by text message, phone and email.

47. When Dr. Boutros became aware of these illegal proceedings surrounding the search for his successor, in late July or early August 2022, he alerted Defendant Whiting, Defendant Walker and MetroHealth Co-General Counsel Laura McBride. As a public employee, and consistent with MetroHealth's code of conduct, it

was Dr. Boutros' duty to bring to light any unlawful or unethical conduct at the institution, and to ensure that the incoming CEO was lawfully engaged.

48. Dr. Boutros was not merely raising some technical violation. The Open Meeting Act, R.C. 121.22, ensures that the public can review and scrutinize the actions of tax-funded entities like MetroHealth. The Board's noncompliance jeopardized both the legitimacy and validity of any ensuing action it took in hiring an incoming CEO. In calling Defendant Whiting out for the Board's statutory breaches, Dr. Boutros was protecting the Board from its own incompetence while vindicating the public interest. Undeterred, Defendant Whiting again acted without lawful authority when, on November 2, 2022, she ordered human resources to begin processing the incoming CEO's hiring as of December 5, 2022. This was carried out without the authorization of Dr. Boutros and in violation of R.C. 339.06 (J)(2), Article XI, Section 1 of the MetroHealth Board of Trustee Bylaws, and Board policy BOT-07 – Delegations of Authority.

49. Notwithstanding the Board's involvement and approval of the incentive pool and its delegation to him of authority to pay the incentive compensation, in early August, 2022, Defendant Whiting called Dr. Boutros inquiring about what she termed "a discrepancy" between his 2021 payroll amounts and the report of compensation consultant Findley Davies, Inc./USI ONE Advantage. Dr. Boutros identified the difference as supplemental payments under the incentive program.

50. Defendant Whiting knowingly responded "Oh, yes. Can you send me some more information?"

51. On August 10, 2022, Dr. Boutros provided the Board Chair with information and copies of presentations he had concerning the incentive program. He gave additional files to Co-General Counsel, Laura McBride and heard nothing for two months.

52. Then on Monday, October 10, 2022, Dr. Boutros' assistant received a call from Defendant Whiting demanding an urgent meeting with him for the next day. Such a demand was unprecedented in Dr. Boutros' tenure and he asked that the call be forwarded to him.

53. In response to his inquiry, Defendant Whiting refused to inform Dr. Boutros of the topic of this urgent meeting. In nearly 10 years of service to MetroHealth, Dr. Boutros had never been presented with a last-minute meeting demand with no transparency as to the topic to be discussed and no ability to prepare for a discussion. It was, simply put, an ambush.

54. At the meeting on October 11, 2022, Defendants Whiting and Silvers stated that that they were purportedly unaware Dr. Boutros was receiving SPBVC.

55. They claimed to be unaware that Dr. Boutros was even eligible for SPBVC, though they admitted that all PBVC-eligible staff (Directors, Executive Directors, Chairs, Service Line Leaders, Vice Presidents, Senior Vice Presidents, and Executive Vice Presidents) were eligible for SPBVC.

56. They claimed that their compensation advisor, Rob Rogers of Findley Davies, Inc./USI ONE Advantage, is charged with evaluating Dr. Boutros' base salary, benefits, total compensation, and the overall executive compensation program

and reported directly to them but Rogers' assessments did not include SPBVC award amounts. Dr. Boutros informed them that he had never directly provided Rogers any compensation data because he had never been asked to. He stated that it was his understanding that the compensation advisor received their information from the General Counsel and from payroll.

57. Finally, they claimed to be unaware of how the SPBVC metrics and weights were determined, how the evaluation process worked, and what individual amounts of SPBVC had been paid out. Earlier, Dr. Boutros had provided the 2019 through 2021 metrics to Defendant Whiting at her request. They claimed that they should have assessed Dr. Boutros and approved his achievements separately from the rest of senior leadership.

58. Whiting and Silvers then proceeded to question Dr. Boutros' authority to "pay" himself, to which he explained that he had carried out their delegated authority to pay all employees, including himself, for nearly 10 years and, specifically in the case of incentive compensation, by virtue of Board resolutions that state "The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution."

59. Whiting and Silvers suggested that Dr. Boutros hire an attorney, self-report to the Ohio Ethics Commission, and repay the amounts, all as a way to appease the Board and lower the Board's likelihood of being held negligent in "the court of public opinion."

60. They concluded the meeting by informing Dr. Boutros that they were going to present this issue to the Executive Committee of the Board the next day, Wednesday October 12, 2022, and anticipated hiring an attorney to investigate his conduct. Defendant Whiting let slip, however, that the law firm of Mansour Gavin LPA had already been retained to conduct an internal investigation into the compensation issue. According to Whiting, she was dissatisfied with the results of their work and was shopping for other counsel.

61. Before 7:00 a.m. on Wednesday, October 12, 2022, Dr. Boutros received a call from Defendant Silvers, Vice Chair of the Board, who stated that if Dr. Boutros presented his explanation to the Executive Committee, as he had done the day prior, this would go a long way to resolution.

62. Dr. Boutros agreed and further informed Silvers that he would self-report to the Ohio Ethics Commission, and volunteered to return all SPBVC monies received provided the Board conduct an independent assessment of his contribution, place the funds in escrow, and reissue the SPBVC payments at the Board's discretion. Dr. Boutros also communicated this request to Co-General Counsel Laura McBride and Defendant Whiting.

63. The Defendants agreed to this condition. But later in the day, Defendant Whiting informed Dr. Boutros that he could not attend the Executive Committee meeting, and there would be no opportunity for him to present his explanation.

64. Dr. Boutros informed McBride and Defendant Whiting that he was seeking as early an appointment as possible with the Ohio Ethics Commission to self-disclose, which meeting could be held as early as Monday, October 17, 2022.

65. The Executive Committee of the Board of Trustees held its pre-arranged Committee meeting on October 12, 2022 which produced no resolutions to present to the Board of Trustees.

66. On Thursday, October 13, 2022, Dr. Boutros retained counsel and informed the Defendants of that development.

67. The next day, on October 14, 2022, attorney John McCaffrey of the law firm Tucker Ellis LLP, sent an email to an attorney for Dr. Boutros in which McCaffrey claimed to “represent a Special Investigation Committee of the [MetroHealth] Board.”

68. Dr. Boutros’ counsel responded to McCaffrey on October 15, 2022, stating “At this time Dr. Boutros is willing to meet with you after you provide me with the Board of Trustees’ action authorizing your indicated review.”

69. McCaffrey responded that same day, writing:

There is no formal written “Board of Trustee Action” authorizing the engagement of legal counsel to review the issue of compensation paid to the CEO over the past several years. The Board has inherent authority to engage legal counsel (and in fact has previously engaged my firm on matters). The Board has the authority to conduct such a review without any written action.

70. In violation of Ohio R.C. 121.22, there was no “formal written” action authorizing the hiring of legal counsel, and there was no notice of any meeting where

the establishment of a “Special Investigation Committee” was to be discussed or presented.

71. There are no minutes of any meeting – or record of any other kind – reflecting the establishment or formation of a “Special Investigation Committee,” what it was charged with investigating, or who served on it.

72. Dr. Boutros requested the names of the members of the so-called “Special Investigation Committee” at a public meeting on November 9, 2022, and the Board summarily denied his request.

73. McCaffrey learned that Dr. Boutros had scheduled a visit to the Ohio Ethics Commission but insisted on interviewing Dr. Boutros before any such meeting occurred.

74. On Monday, October 17, 2022, McCaffrey interrogated Dr. Boutros under a “Garrity Warning.” The Garrity Warning provided that Dr. Boutros, as a government employee, must answer his questions, but that any “self-incriminating information” would not be referred for criminal prosecution. McCaffrey threatened, however, that lack of cooperation could result in possible termination.

75. At the interrogation, counsel for Dr. Boutros reiterated that the Board of Trustees had no lawful authorization for any investigation or for hiring McCaffrey, but that Dr. Boutros would answer McCaffrey’s questions, which he did, for more than 90 minutes.

76. McCaffrey asked Dr. Boutros how he could authorize checks to pay himself. Dr. Boutros explained that in the Human Resources system, and payroll

system, every check that is paid from MetroHealth to any person, corporation, or governmental entity has his signature as authorization.

77. At the very end of the interrogation, and in regard to Dr. Boutros' upcoming visit to the Ohio Ethics Commission, McCaffrey opined that if this became public, it would be "a shit show for everyone." Dr. Boutros responded that his conduct over the past 10 years has always been rooted in the most ethical standards, and that he has always relied on the advice of MetroHealth's General Counsel Michael Phillips, and Co-General Counsels Laura McBride and Sonja Rajki, in this and all other areas of ethics and compliance.

78. Dr. Boutros reaffirmed his commitment to pay back the total SPBVC amounts from performance years 2017-2021 conditioned upon the Board's agreement to conduct a fair, non-prejudicial, and independent assessment of his achievements against the SPBVC metrics, and to repay the incentive compensation to which he was entitled.

79. McCaffrey then asked Dr. Boutros if "the money would be coming from overseas."

80. In disbelief at this shocking and offensive discriminatory trope, Dr. Boutros responded "are you asking that because I'm Egyptian?"

81. McCaffrey offered no principled justification for his inquiry.

82. Dr. Boutros explained that the funds were coming from his account at Fifth Third Bank on Euclid Avenue in Cleveland.

83. After the interrogation, McCaffrey sent an email to counsel for Dr. Boutros stating that he had “been authorized to accept Dr. Boutros’ proposal to return to MetroHealth System the Supplemental Performance Based Variable Compensation Payments that Dr. Boutros received.” He stated that he would provide the amounts as soon as available, and that Dr. Boutros should make payments by wire transfer to PNC Bank.

84. On Tuesday, October 18, 2022, Defendant Board of Trustees published an announcement on the MetroHealth website of a Special Meeting of the Board of Trustees for Wednesday, October 19, 2022. On October 19, 2022, another notification was published on the MetroHealth website that the Special Meeting of the Board of Trustees had been moved to Thursday, October 20, 2022. The one-day notice violates Section 4 of The MetroHealth Board of Trustee Bylaws, which states that

Written notice of a special meeting shall be transmitted to each Trustee at least forty- eight (48) hours before the date of such special meeting. This notice shall state the business for which the special meeting has been called, and no business other than that stated in the notice shall be transacted at such special meeting.

85. Dr. Boutros’ counsel informed McCaffrey that Dr. Boutros would attend the public portions (before and after executive session) of the meeting, and Dr. Boutros informed Co-General Counsel Laura McBride of his intention. McCaffrey and McBride asked Dr. Boutros not to attend, stating “this would be better for all parties.” He agreed on the condition that no action would be taken during that meeting, to which these Defendants assented.

86. Dr. Boutros' counsel confirmed to McCaffrey that Dr. Boutros would return SPBVC payments conditioned upon the Board of Trustees' independent assessment of his contributions for the years in question, and that his offer to repay the aforementioned amounts was not an admission of any wrongdoing. Rather, it was a gesture of good will and reflected his consistent ethical and just approach to all matters.

87. The Defendants agreed that a condition of Dr. Boutros return of these incentive compensation payments was that the Board of Trustees would independently assess Boutros' contributions for the years at issue and repay him accordingly.

88. On Friday, October 21, 2022, McCaffrey sent an accounting of the amount of gross incentive compensation payments the Defendants were seeking to be repaid. He claimed the amounts had been verified by MetroHealth CFO Craig Richmond. McCaffrey also demanded repayment of SPBVC-related contributions to the SERP (457(f) plan) for performance years 2017-2021. He demanded full repayment of the SPBVC and the 457(f) by November 4, 2022, without providing any explanation for the urgency or short time-frame.

89. On Monday, October 24, 2022, Counsel for Dr. Boutros requested that McCaffrey reaffirm that once the SBPVC repayment was made, the Board of Trustees would independently assess his contributions for the years in question, and also, would reissue restated W-2s since the repayment of the taxable portions of the incentive compensation carried enormous tax consequences for Dr. Boutros. At day's

end, McCaffrey confirmed that upon repayment, the Board of Trustees would independently assess Dr. Boutros' contributions for the years in question but stated that the Defendants were now also demanding that Dr. Boutros pay interest on both the SPBVC and related 457(f) payments.

90. On Tuesday, October 25, 2022, Counsel for Dr. Boutros contacted McCaffrey to discuss an accelerated repayment of supplemental incentives based on discussion with accountants, and an accelerated repayment method of 457(f) SERP that would mitigate ERISA issues for MetroHealth. McCaffrey proposed a video call for Thursday, October 27, 2022 to discuss these points.

91. On Wednesday, October 26, 2022, during scheduled Board committee meetings, McCaffrey emailed Dr. Boutros' counsel with information for the upcoming call and with a chart setting forth the calculation of all payments the Defendants were demanding be repaid, including net supplemental PBVC payments and net 457(f) Deferred Compensation attributable to supplemental PBVC.

92. Dr. Boutros immediately arranged to have the monies ready in the bank to expedite a wire transfer for Monday, October 31, 2022.

93. On Thursday, October 27, 2022, just 30 minutes prior to the scheduled video call, McCaffrey emailed yet another new calculation of amounts due, which was nearly \$650,000 more than represented the day before. Dr. Boutros raised the impact of this sudden increase on his ability to pay but McCaffrey was unrelenting in his timeline for the demanded repayment. Dr. Boutros requested that the monies be placed in escrow while the Board conducted its assessment, which is customary in

these situations. McCaffrey became angry and stated that if this is the request, “this conversation is over now.” He provided no explanation for his steadfast refusal of using an escrow account.

94. McCaffrey reiterated a statement he had made several times, that members of the Board did not believe that Dr. Boutros would pay the funds. Dr. Boutros objected to this continued harassment and said they will find out on Monday one way or the other.

95. Dr. Boutros pledged to contact his bank immediately to ascertain when funds would be available. Since he was withdrawing the funds from an IRA, he requested that all amounts approved should be repaid to him within 60 days of his transfer to avoid taxes on the IRA withdrawal, that the revised W-2s be issued as soon as possible, and that the Board of Trustees complete its re-assessment by the regularly scheduled Board of Trustees meeting set for November 21, 2022.

96. McCaffrey stated he would relay these requests to the Board of Trustees but that Dr. Boutros should not expect an expedient response.

97. On Monday, October 31, 2022, Dr. Boutros wired funds to The MetroHealth System’s PNC Bank Account in the amount of \$2,104,337.12, including \$245,506.06 of 457(f) payments, and \$124,003.86 of interest.

98. On November 7, 2022, Defendants Whiting, Walker and Dee, called Dr. Boutros to a meeting, ostensibly to discuss a transition plan for the incoming CEO.

99. Instead, in yet another ambush, Defendant Whiting informed Dr. Boutros that they no longer had trust in him and as a result, wanted him to sign a

document, as part of a transition plan, pursuant to which he could no longer take specific actions involved in the day-to-day management of the organization without informing and obtaining consent from certain members of the Board, and the incoming CEO, who was not yet an employee of The MetroHealth System.

100. Dr. Boutros refused to sign.

101. At a subsequent meeting, the Board of Trustees then passed Resolution 19537, which required Dr. Boutros to report to – and receive agreement from – a Transition Oversight Team comprised of two Board Members and the incoming CEO on specific matters as to which he had always had authority during his tenure.

102. This limitation on Dr. Boutros’ authority breached Section 12.D.(ii) of his Employment Agreement, which permits him to terminate the agreement “with good reason” in the event of:

... (b) the assignment to Executive of any duties inconsistent with those performed by Executive or a substantial alteration in the nature or status of Executive’s responsibilities which renders Executive’s position to be of less dignity, responsibility or scope; (c) a requirement that the Executive report to another System officer or employee instead of reporting directly to the Board... [provided that] the System shall have thirty (30) days of written notice from Executive to cure such action or event.

103. Dr. Boutros provided the required written notice of breach on November 11, 2022, stating:

I am submitting written Notice pursuant to Section 17 of my termination of employment with good reason as defined in Section 12(D)(ii)(b) and (c), and breach of contract under Section 4 for failing to provide benefits “customarily provided by the System to its senior executive officers. . . consistent with the system’s policies and practices.”

The good reason basis for Section 12(D)(ii)(b) and (c) is a consequence of Board Resolution 19537, which requires me to report to a Transition Oversight Team, comprised of two Board Members and the Incoming CEO on specific matters that I have had authority for during my tenure, and limits my authority by stating “In the event that the Transition Oversight Team does not agree with the Current CEO’s proposal on the matter, the Current CEO cannot take the proposed action without Board approval”.

104. Dr. Boutros received no response to his notice.

**The Board Purports To Terminate Dr. Boutros’ Employment “For Cause”**

105. Before the System’s cure period even expired, the Board of Trustees, and Defendants Whiting, Silvers, Chappell, Dee, Hairston, Hurwitz, Moss, and Walker, rushed to terminate Dr. Boutros’ employment “for Cause” pursuant Section 12.A.(i) of his Employment Agreement.

106. On November 19, 2022, McCaffrey, on behalf of his law firm Tucker Ellis LLP, delivered a “Report to the Board of Trustees of the MetroHealth System” (the “McCaffrey Report”), despite never having been lawfully retained to conduct this work in compliance with Ohio law.

107. The McCaffrey Report concludes “at a minimum” that the Board of Trustees had the right to terminate Dr. Boutros’ employment “for cause” under his Employment Agreement for “willful illegal conduct,” “gross misconduct,” or “fraud, embezzlement, theft or other act of dishonesty.”

108. The McCaffrey Report opines that “at worse,” Dr. Boutros could face potential criminal liability “for Ohio ethics violations, theft in office, and other related statutes.”

109. By its own admission, the McCaffrey Report was based on an incomplete investigation:

- At page 7, the Report states that “Tucker Ellis is continuing to work with Sullivan Cotter for a more complete production of emails...”
- At footnote 1, the Report states “As part of this investigation, review of documents ... continues on a regular basis...”
- At page 24, the Report states “... the document requests and production process are not yet complete.”
- At page 25, the Report states “Efforts to locate a letter or documentation authorizing this payment are ongoing.”
- At page 26, the Report states “Tucker Ellis continues its work to identify communications between Sullivan Cotter and the System that will inform Sullivan Cotter’s specific requests for compensation data from the System and the compensation data actually provided to Sullivan Cotter.”

110. What evidence McCaffrey had gathered by the time he submitted his report was misrepresented. For example, his conclusion that Dr. Boutros’ presentation to a Plain Dealer editorial board dishonestly omitted critical information on MetroHealth’s base salary and incentive compensation system is belied by Exhibit 34, in which Dr. Boutros reported to the Board on the meeting, including Defendants Whiting and Silvers, and stated “I informed the [Plain Dealer] reporter that it may be difficult to understand [the information presented] and ***does not represent the full picture.***” (emphasis added) No one ever followed up with him.

111. On information and belief, when it was presented to and considered by the Board, the McCaffrey Report did not include any of the 38 Exhibits listed in its Appendix.

112. At the regularly scheduled Board of Trustees meeting on November 21, 2022, the Board of Trustees retired to Executive Session to receive a presentation from McCaffrey on his Report.

113. Neither the McCaffrey Report, nor its conclusions, were shared with Dr. Boutros prior to the Board of Trustees' meeting.

114. During the Executive Session, the Board of Trustees briefly deliberated on whether to accept the recommendation of the McCaffrey Report that Dr. Boutros' employment be terminated "for cause." Contrary to Ohio law, there was no meaningful public deliberation on this momentous decision.

115. On information and belief, during the Executive session, Defendant Whiting informed Board members not in attendance that the Board had voted to immediately terminate Dr. Boutros. The timing of her communication, at approximately 5:46pm, was nearly two hours prior to the Board's exit from Executive Session into public session.

116. Within minutes of exiting Executive Session, and without public deliberation, the Board of Trustees voted to terminate Dr. Boutros' employment, effective immediately, "for cause." The Board was given no opportunity to hear from Dr. Boutros or his counsel to present his side of the matter, or to rebut the incomplete and mischaracterized "evidence" against him.

117. Defendant Whiting telephoned Dr. Boutros and informed him of his termination at approximately 8:32 p.m. that evening.

118. She also issued a statement in which she falsely, and unequivocally, stated that:

- Dr. Boutros self-evaluated and determined his own entitlement to and amount of “additional bonus”
- Dr. Boutros repaid \$2,104,337.11 in response to the Board’s “immediate demand for repayment of the supplemental bonus money.”
- “The Board of Trustees did not delegate to Dr. Boutros the authority to self-evaluate his performance against metrics never disclosed to the Board, and then authorize supplemental bonus payments for himself in amounts never disclosed to the Board.”
- “Dr. Boutros omitted reporting his full compensation to the Board – and to a nationally recognized compensation consultant hired to annually review and assess Dr. Boutros’ compensation.”

119. The Defendants MetroHealth System and Vanessa Whiting knew these statements were false and misleading, or issued them in reckless disregard of their falsity when in fact:

- the Board never set goals for Dr. Boutros, despite an affirmative duty to do so.
- the Board never evaluated Dr. Boutros’ performance or compensation, despite an affirmative duty to do so.
- the Board never requested information on metrics applicable to the supplemental bonus plan, despite it being applied to hundreds of MetroHealth employees for five years.

- Dr. Boutros never failed to provide any compensation information requested of him by the Board.
- the “nationally recognized compensation consultant hired to annually review and assess Dr. Boutros’ compensation” never requested or received compensation information directly from Dr. Boutros.
- Dr. Boutros is the only one of more than 150 MetroHealth employees required to return supplemental incentive payments.
- the receipt of supplemental incentive payments by Dr. Boutros and other MetroHealth employees never caused the Board’s authorized bonus pool to be exceeded.
- Dr. Boutros’ total compensation, including supplemental incentives, never exceeded the limits placed on his compensation by the Board of Trustees.
- Dr. Boutros never exceeded any authority granted him by statute, by Board of Trustees’ delegation, or by contract.

120. In a meeting with the MetroHealth Foundation Board after Dr. Boutros’ termination, on or about December 1, 2022, Defendant Whiting spoke of Dr. Boutros’ conduct as “stealing” and “double-dipping.”

121. In a MetroHealth “Q and A” with Defendant Silvers on behalf of all members of the Board of Trustees issued on or about December 8, 2022, Silvers falsely and maliciously claimed that Dr. Boutros “hid” PBVC payments to himself, that his incentive payments were “unauthorized,” and that Dr. Boutros was unworthy of trust.

122. In making these statements, the Defendants failed to inform the Foundation Board, the public, the media, or any other third party, that Dr. Boutros never exceeded any authority granted him by statute, by board delegation or by contract, and never exceeded any limit on compensation or approved incentive compensation pool. They never disclosed that not a single dollar of funds devoted to Dr. Boutros' compensation, or to any incentive compensation program, was ever unaccounted for in the business and payroll records of The MetroHealth System.

123. Immediately upon the public release and dissemination of these false and misleading statements, and as a direct and proximate result thereof, Dr. Boutros was characterized in the media as a thief and his reputation was destroyed.

#### **Dr. Boutros' Employment Agreement**

124. Dr. Boutros was employed pursuant to a written Employment Agreement between himself and Defendant The MetroHealth System. A true copy of the Agreement is attached to this Complaint as Exhibit A.

125. The Agreement became effective January 1, 2020.

126. The term of the Agreement was for three years, with the possibility of two one-year extensions.

127. The Agreement provides, in relevant part, that:

Executive shall perform the duties and obligations of the position of President and Chief Executive Officer, as assigned by the Board of Trustees of the System ("Board"), in accordance with the Bylaws of the Board and in conformance with Sections 339.06 and 339.07 of the Ohio Revised Code and other applicable federal or state statutes and regulations.

128. With respect to Compensation, the Agreement entitles Dr. Boutros to “Base Salary” as well as “incentive compensation awards” including annual performance based compensation. Specifically, the Agreement provides, in relevant part:

... The initial Base Salary for 2020 was confirmed by the Board based upon the 2015 Agreement in accordance with the process provided in that agreement as set forth below. The Base Salary will be reassessed by the Board at least every two (2) years at the Target Base Salary as determined by the Board based upon data and analysis provided by a nationally recognized independent compensation consultant (“Compensation Consultant”), in consultation with Executive, with the understanding that the consultant will be chosen from nationally recognized compensation consultants such as Sullivan Cotter; Mercer; Towers Watson or other similar nationally recognized firms.

129. Nothing in the Employment Agreement states or implies that the Compensation Consultant has any role in evaluating Dr. Boutros’ incentive compensation, his Total Cash Compensation, or anything other than Dr. Boutros’ Base Salary.

130. As to incentive compensation, the Agreement states, in relevant part:

In addition to his Base Salary, Executive shall be eligible for annual performance based variable compensation for the services rendered by him pursuant of the Agreement under a Performance Based Variable Compensation Plan (the “Performance Plan”). All awards pursuant to the Performance Plan shall be subject to the terms of such plan as determined by the Board in consultation with the Executive, from time to time. The Performance Plan will include a range of specific System performance benchmark targets with the amount of the Performance Based Variable Compensation tied to such targets. Incentive compensation awards will be determined and paid within

forty-five (45) days of the System's receipt of its audited financial statements. The aggregate amount of Executive's Base Salary and any annual Performance Based Variable Compensation determined in accordance with the Performance Plan ("PBVC") shall be referred to as his "Total Cash Compensation."

131. In addition to Base Salary and incentive compensation awards, the Agreement entitles Dr. Boutros to generous retirement plan contributions, including participation in OPERS and establishment of a Section 457(f) plan, plus health insurance, paid vacation, and "any and all other benefits ... customarily provided by the System to its senior executive officers ... consistent with the System's policies and practices."

132. The Agreement also has provisions regarding termination by both the MetroHealth System, and Dr. Boutros, under various defined circumstances.

133. Section 12.A.(i) of the Employment Agreement permits "[t]he System, through its Board" to terminate Dr. Boutros employment "for Cause" only for the following reasons:

...(i) conviction of a felony in the conduct of Executive's official duties or the failure of Executive to contest prosecution of such a felony; (ii) refusal or failure to perform (other than by reason of incapacity caused by Disability), or gross negligence in the performance of Executive's duties and responsibilities to the System, or deliberate refusal or failure to follow or carry out any lawful and ethical direction of the Board, and which is not cured within thirty (30) days of written notice to Executive from the System; (iii) unauthorized disclosure to persons of confidential information which is demonstrably and materially adverse to the System; (iv) willfully engaging in illegal conduct or gross misconduct which is materially and demonstrably injurious to the System; (v) an act of fraud, embezzlement, theft or other act involving dishonesty by

Executive against the System; (vi) a material breach by Executive of any provision of this Agreement or any other agreement to which Executive and the System or any of its Affiliates are party, and which is not cured within thirty (30) days of written notice to Executive from the System; (vii) Executive's abuse of drugs or alcohol while performing services for the System which reflects poorly on the System as to customers, prospective customers, co-workers and/or the public in general; (viii) Executive's material violation of any System rule, regulation, policy or procedure, including, without limitation, the System values described in Section 2 hereof subject to written notice by the System detailing the alleged violation and which is not cured within thirty (30) days from the date of notice; provided, however, that this notice requirement shall not apply in the event System reasonably and in good faith determines that the breach cannot be cured; (ix) failure to cooperate with MetroHealth in connection with any litigation, investigation, audit, or other regulatory or administrative proceeding which is now pending or may arise and which involves matters arising during Executive's employment; in the event employee is called upon to cooperate per this contingency, Executive acknowledges MetroHealth's expectation that Employee would truthfully testify in any legal proceedings in which Executive may be a party or in which Executive may be called as a witness; or (x) any violation of Sections 7, 8, 9 and 10 of this Agreement. The System may suspend Executive (with pay and benefits) pending an investigation, assessment or determination as to whether Cause exists.

134. In the event the System successfully terminates Dr. Boutros' employment "for Cause," it can avoid any further obligation to pay Dr. Boutros salary, incentive compensation, benefits or retirement contributions.

135. If the System should terminate Dr. Boutros without "Cause," pursuant to Section 12.A.(ii), the contract entitles Dr. Boutros to "severance" consisting of his "then current Base Salary, annual Performance Based Variable Compensation, payments under the section 457(f) plan provided for in Section 3 of this Agreement,

and Group Health Insurance Benefits at the rate and on the terms in effect at the time of termination for the ‘Applicable Severance Period’ which is specified in Section 12.A.(iv) to be 24 months.

136. The agreement also entitles Dr. Boutros to severance compensation in the event he terminates his employment “with Good Reason.” Section 12.D.(ii) provides, in relevant part:

Executive may terminate his employment and continue to receive his Base Salary, Annual Performance Incentive using the target (35%) performance standard, and Group Health Insurance Benefits *in the same manner as if the System had terminated Executive’s employment without Cause as set forth in Section 11.A (ii)* of this Agreement in the event of: (a) involuntary material reduction in Executive’s Base Salary, unless such reduction occurs on a proportional basis simultaneously with a System-wide reduction in senior management salaries; (b) the assignment to Executive of any duties inconsistent with those performed by Executive or a substantial alteration in the nature or status of Executive’s responsibilities which renders Executive’s position to be of less dignity, responsibility or scope; (c) a requirement that the Executive report to another System officer or employee instead of reporting directly to the Board; (d) a material change in the geographic location at which the Executive must perform services, provided, however, that a relocation within Cuyahoga County shall not be deemed to be a material change; or (e) a change in control of the System (including a change in the person, entity or group having the right to appoint a majority of the System’s governing board from the public officials of Cuyahoga County having such right currently, provided, however, that a change in the manner in which the County, County Executive and County Council appoint members of the Board of Trustees shall not constitute a change in control), a sale of all or substantially all of the assets of the System or the merger, consolidation or combination of the System with any other entity which is not an affiliate of the System (each, being “Good Reason” for purposes of this Agreement).

Notwithstanding the foregoing, Executive shall not have Good Reason to terminate his employment in connection with any of the foregoing events if either: (i) Executive has consented in writing in advance to such event; or (ii) thirty (30) days has elapsed after Executive became aware of the actual occurrence of such event without Executive submitting the required written notice to the System triggering an opportunity to cure. In such event, the System shall have thirty (30) days of written notice from Executive to cure such action or event.

(emphasis added)

137. Section 12.D.(i) of the Agreement provides that Dr. Boutros can terminate his employment if he chooses to retire, resign or decline continued employment. In that event, “The System shall continue to pay to Executive his Base Salary for the shorter of: (i) ninety (90) days; or (ii) the notice period provided by Executive with respect to his termination.”

#### **Dr. Boutros’ Authority**

138. As President and CEO of The MetroHealth System, Dr. Boutros had wide-ranging authority over the management and control of the organization, delegated to him by the Board of Trustees, and subject only to specific and narrowly defined exceptions.

139. Section 339.06 of the Ohio Revised Code sets forth the powers and duties of the board of county hospital trustees. It provides, in relevant part, that

(B) The board of county hospital trustees shall have the entire management and control of the county hospital. The board may in writing delegate its management and control of the county hospital to the administrator of the county hospital employed under section 339.07 of the Revised Code.

140. Pursuant to Resolutions adopted by the MetroHealth Board of Trustees, “the entire management and control of the county hospital” was delegated to the CEO, consistent with the Ohio statute.

141. With respect to control and disbursement of funds, Section 339.06(D)(1) provides that “[t]he board of county hospital trustees has control of all funds used in the county hospital’s operation...” Subsection (D)(5) further specifies that “[f]unds under the control of the board of the county hospital trustees may be disbursed by the board, consistent with the approved budget, for the uses and purposes of the county hospital... [but] [e]ach disbursement of funds shall be made on a voucher signed by signatories designated and approved by the board of county hospital trustees.”

142. The only signatory designated and approved by the Board of Trustees was Dr. Boutros.

143. Dr. Boutros also had independent, explicit authority under R.C. 339.07 “to administer the county hospital, make reports, and ***take any other action that the administrator determines is necessary for the operation of the hospital.***” (emphasis added)

144. In 2017, the MetroHealth Board of Trustees adopted Resolution 19284 which concerned the delegation of its authority to the CEO.

145. Pursuant to this resolution, the Board of Trustees delegated to Dr. Boutros its authority over “[c]ontrol of all funds used in the county hospital’s operation” as follows:

II. Finance and Spending	
Delegated Authority/Function	Conditions of Delegation
<p>1. Control of all funds used in the county hospital's operation. Adoption of policies to govern the disbursement of funds.</p>	<p>Delegated to the Chief Executive Officer subject to the operating and capital budgets as approved by the Board (together, "Budget").</p> <p>The Chief Executive Officer may approve and direct the reallocation or transfer of funds between or among projects to meet the goals of the System.</p> <p>All actions taken should be consistent with Budget.</p> <p>All such approvals and actions by the Chief Executive Officer must be in accordance with policies approved by the Board.</p> <p>The Chief Executive Officer will regularly report policies and all material changes to the Board.</p>

146. This delegation of finance and spending authority in Resolution 19284 was subject only to the following, specific limits:

Unless approved by the Board of Trustees, all such approvals and actions by the Chief Executive Officer pursuant to this delegated authority are subject to the following limitations:

1. No expenditure for a project (or series of related projects) in excess of \$5 million.
2. Any new service not approved through the Budget in excess of \$5 million.
3. Any reallocation of available funds that would result in “defunding” of a Board approved project.
4. Any reallocation of a specific Capital Budget item in excess of \$5 million.
5. Any expenditure that requires regulatory approval (federal, state, or local).

147. With respect to Salary, Benefits and Compensation, Dr. Boutros’ delegated authority under Resolution 19284 was as follows:

IV. Salary and Benefits/Compensation	
Delegated Authority/Function	Conditions of Delegation
<ol style="list-style-type: none"> <li>1. Adopt the wage and salary schedule for employees.</li> <li>2. Grant fringe benefits to employees.</li> <li>3. Provide holiday leave for four minor holidays on days other those specified in the Ohio Revised Code.</li> <li>4. Grant employees group or individual health, life and other insurance.</li> <li>5. Grant employees personal holidays.</li> <li>6. Provide employee recognition awards and hold employee recognition dinners.</li> <li>7. Grant to employees recruitment and retention benefits.</li> </ol>	<p>Delegated to the CEO subject to, and all actions consistent with, the Board’s policies.</p> <p>Budgetary Impact in excess of \$5 million will be reported to the Board.</p> <p>The CEO will regularly report all material changes to the Board.</p>

148. With respect to the PBVC program, Dr. Boutros was also delegated broad authority by the Board.

149. Resolution 19108, adopted by the Board in 2017, and Resolution 19219, both state that the “Board will delegate authority to the President and Chief Executive Officer to implement and follow this Performance-Based Variable Compensation plan, as amended annually.”

150. These resolutions also empower “the President and Chief Executive Officer, or his designee ... to take necessary actions consistent with th[e] resolution.”

151. Nothing in these resolutions states that the CEO is ineligible to participate in the incentive compensation program without approval by the Board of the amounts he would receive under the established guidelines.

152. When the Board would annually approve an incentive compensation pool from which PBVC and other incentives and supplemental incentives were to be awarded, Dr. Boutros was granted plenary authority to distribute the money consistent with the previously approved principles. The March 2020 Resolution 19345, for example, with respect to the 2019 results, stated:

Based upon these 2019 results above, the total incentive program funding shall not exceed \$8,600,000. This amount has been fully accrued in the calculation of the System's financial results as reflected in its audited financial statements. Incentive program payments (PBVC, one-time recognition, supplemental incentives) shall be distributed to eligible employees based on corporate and individual performance. The average incentive payment is approximately 19.3% of the base salary. The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution.

153. Neither this resolution, nor those for 2017, 2018, 2019 or 2021, exclude or condition distributions to the CEO from the approved incentive compensation pool, and the total incentive compensation distributed never exceeded the approved amounts.

154. All of the foregoing facts concerning Dr. Boutros' authority were known and understood by the Defendants.

155. In fact, in May 2022, at a meeting of the Board of Trustees' Governance Committee, Dr. Boutros discussed the issue of his delegated authority and proposed changes to the then-current delegation.

156. Defendant Chappell expressed concern about the proposed changes and suggested the hiring of outside counsel. Co-General Counsel McBride suggested the law firm K&L Gates.

157. On July 28, 2022, K&L Gates presented a memo to The MetroHealth System containing its analysis and conclusion of what responsibilities the Board can lawfully delegate to the CEO. The law firm identified no limitations on the delegation of authority over "management and control" that would call into question the CEO's activities with respect to compensation of all employees.

**Subsequent Changes To The Board's Delegation  
Confirm The Extent Of Dr. Boutros' Authority**

158. The Board terminated Dr. Boutros without ever identifying any specific authority granted to him which he exceeded, or any specific authority reserved to the Board which he usurped.

159. Nevertheless, on the same day and at the same meeting as they voted to terminate Dr. Boutros' employment, the Board of Trustees adopted changes to the Executive Compensation plan, known as BOT-06, that had been in effect during Dr. Boutros' tenure.

160. Those changes purport to reassign certain authority from the CEO to the Board regarding executive compensation, and reveal the full extent to which Dr. Boutros' conduct was well within his delegated authority.

161. For example, an addition to the first clause of the Policy specifically calls out review of CEO prior year compensation and proposed changes. This addition demonstrates that such review was not required nor completed previous to this change.

162. Section 2.1 was changed to specify that the consultant that previously reported to management will now report directly to the Compensation Committee of the Board of Trustees, which committee did not previously exist. This shows that this reporting relationship for the consultant was previously delegated to the CEO.

163. Section 3.2 was added to the policy to specify that the Board shall approve all compensation paid to the CEO. Absence of such a provision in earlier versions of BOT-06, coupled with language in Resolution 19219, indicate that previous authority to approve all compensation paid to the CEO had been delegated to the CEO subject only to compliance with the terms of the maximum compensation most recently, the 90th percentile. Previously, the CEO Employee Agreement required the Board to approve only the base salary of the CEO.

164. An endnote was added to the policy distinguishing between the CEO and all other senior leaders. Absence of such a distinction in prior versions demonstrates that the CEO was considered an “Executive” for the purpose of compensation and performance review and thus, included in all applicable compensation programs available to Executives.

### **The Defendants' Malicious and Bad Faith Conduct**

165. The conduct of the Defendants at all material times exhibited bad faith, a lack of fair dealing or actual malice.

166. For the Defendants, all of whom are subject to Ohio's Open Meetings Act, R.C. 121.22, conducting an "investigation" in secret, without proper authority or board resolution, constitutes bad faith as the breach of a known duty.

167. The Defendants' conduct in terminating Dr. Boutros' employment based on an incomplete report, without exhibits, without affording him due process or an opportunity to be heard or to respond to the allegations against him, and without public deliberation, constitutes bad faith and malice.

168. The Defendants' conduct, through their agent John McCaffrey, was in bad faith, and malicious, in administering a Garrity Warning to Dr. Boutros, which meant his statements could not be used in a criminal investigation or prosecution, and then improperly issuing and relying on a report concluding that Plaintiff could face specific, criminal liability.

169. The Defendants' conduct, through their agent John McCaffrey, was in bad faith, and malicious, in issuing and relying on a report concluding that Dr. Boutros concealed and failed to disclose material information from the board when the documents accompanying the report show Dr. Boutros specifically stating that the information provided "does not represent the full picture."

170. The Defendants' termination of Dr. Boutros' employment and accusing him of theft and dishonesty for allegedly failing to provide information which the

Board never requested, and which was always available to them among the business records of the organization, constitutes bad faith.

171. Accusing Dr. Boutros of theft of incentive compensation payments when such payments never exceeded any amount the Board authorized to be paid constitutes bad faith and malicious conduct.

172. Accusing Dr. Boutros of exceeding his authority when the Board had received an exhaustive analysis of the CEO's delegated authorities from K&L Gates, confirming the CEO's authorities to make such payments, constitutes bad faith and malicious conduct.

173. The Defendants' promise to conduct a prompt re-assessment of Dr. Boutros' entitlement to incentive compensation if he repaid them, and then failing to do so and purporting instead to fire him and accuse him of theft constitutes bad faith and malicious conduct.

174. The Defendants' failure and refusal to follow through on Dr. Boutros' information that the hiring of MetroHealth's incoming CEO violated Ohio law, and instead investigating his compensation without any consideration of their own misconduct constitutes bad faith and malicious conduct.

175. The Defendants' claim that "cause" existed to terminate Dr. Boutros' employment because of his "excessive demands" constitutes bad faith and malicious conduct when he was demanding only that the Board act in compliance with the law.

176. The Defendants' failure to provide notice and an opportunity to cure any perceived breach as required by Dr. Boutros' Employment Agreement constitutes bad faith and malicious conduct.

177. The Defendants' statements that Dr. Boutros' conduct with regard to incentive compensation was unauthorized, was concealed from them, and constituted theft, were made with knowledge of their falsity or with reckless disregard for whether they were true or false.

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

178. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

179. The Employment Agreement is a valid and binding contract.

180. Plaintiff performed his duties under the contract.

181. Without justification or excuse, Defendant The MetroHealth System breached the contract by failing to pay Dr. Boutros incentive compensation for the performance years 2017, 2018, 2019, 2020, and 2021.

182. Dr. Boutros was contractually entitled to these incentive payments under Section 2 of the Employment Agreement, and pursuant to the terms of the incentive compensation program.

183. Dr. Boutros had earned these bonuses – and was paid those for performance years 2017 through 2021 – by virtue of objective criteria which the

System had achieved in the relevant years, but the Defendant forced and coerced him to repay them.

184. Dr. Boutros' Employment Agreement imposes on Defendant The MetroHealth System an implied duty of good faith and fair dealing in its performance and enforcement of the agreement.

185. Good faith requires The MetroHealth System not to take opportunistic advantage of Dr. Boutros in a way that could not have been contemplated by the parties at the time the agreement was drafted.

186. Good faith requires The MetroHealth System to adhere to the parties' agreed common purpose in entering the Employment Agreement and requires it to honor Dr. Boutros' justified expectations.

187. The MetroHealth System breached this implied duty, including, without limitation, by forcing Dr. Boutros to repay incentive compensation he had earned and to which he was entitled, and to do so based on false promises to reassess him and repay him as the reassessment dictated.

188. As a result of The MetroHealth System's breaches of contract, including breaches of the implied covenant of good faith and fair dealing in respect to particular contractual obligations, Dr. Boutros has been damaged.

**COUNT TWO**  
**(Promissory Estoppel – Incentive Compensation)**

189. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

190. Defendants The MetroHealth System and the Board of Trustees made a clear and unequivocal promise that, if Dr. Boutros repaid certain supplemental incentives he had received for performance years 2017-2021, with interest, they would independently re-assess his contributions for the years at issue and re-issue incentive compensation to which his contributions entitled him.

191. It was reasonable and foreseeable that Dr. Boutros would rely on that promise in repaying the supplemental bonuses in question because, among other reasons, it was Dr. Boutros who requested that promise as a condition to his repayment of the amounts the Defendants were demanding from him.

192. Dr. Boutros actually relied on the promise, promptly paying, by wire transfer, all the supplemental bonus, 457(f) and interest payments the Defendants had demanded from him.

193. As a result of his reliance, Dr. Boutros has been injured. The Defendants never conducted their promised independent re-assessment of his contributions, and never repaid incentive compensation which he had rightfully earned and to which he was rightfully entitled.

194. Dr. Boutros' damages include \$2,104,337.12, plus lost opportunity for investment and growth of that money, plus penalties he will be assessed for early withdrawal of the funds from qualified retirement accounts, plus accounting and other fees incurred and to be incurred in correcting and restating years worth of federal, state and local tax returns.

**COUNT THREE**  
**(Breach of Contract – Reduction in Duties)**

195. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

196. Without justification or excuse, Defendant The MetroHealth System breached Dr. Boutros' Employment Agreement by limiting his authority and requiring him to report to a subcommittee of Trustees together with the incoming CEO, rather than report to the Board as specified in Sections 1 and 12 of the Agreement.

197. This reduction in authority is reflected in Resolution 19537.

198. As a result of The MetroHealth System's breach of contract, Dr. Boutros has been damaged.

**COUNT FOUR**  
**(Breach of Contract - Severance)**

199. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

200. When the Board passed Resolution 19537, which required Dr. Boutros to report to – and receive agreement from – a Transition Oversight Team comprised of two Board Members and the incoming CEO on specific matters as to which he had always had authority during his tenure, it gave rise to Dr. Boutros' right to terminate the Employment Agreement “with good reason” under Section 12.D.(ii).

201. Dr. Boutros gave proper notice of this termination and breach as required by contract, and afforded Defendants The MetroHealth System and The Board of Trustees a 30-day opportunity to cure the breach.

202. Rather than attempting to cure the breach, the Defendants purported to terminate the Employment Agreement “for Cause” under Section 12.A.(i).

203. Dr. Boutros’ termination of the Agreement “with Good Reason” under Section 12.D.(ii) entitles him to continuing payments, including severance payments “in the same manner as if the System had terminated [his] employment without cause as set forth in Section 12.A.(ii).

204. Defendant The MetroHealth System breached the agreement, without justification or excuse, by failing to treat Dr. Boutros’ termination “with Good Reason” in the same manner as if the System had terminated his employment without cause.

205. As a result of The MetroHealth System’s breach of contract, Dr. Boutros has been damaged.

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

206. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

207. Without justification or excuse, Defendant The MetroHealth System breached his Employment Agreement by purporting to terminate Dr. Boutros “for Cause” under Section 12.A.(i) when no cause existed.

208. Based on an improper, incomplete and biased “investigation” into his compensation, Defendant The MetroHealth System asserted “Cause” to terminate Dr. Boutros, including “willful illegal conduct or gross misconduct” and acts of “fraud, embezzlement, theft or other acts of dishonesty.” Dr. Boutros did not engage in illegal conduct, gross misconduct, fraud, embezzlement, theft or dishonesty.

209. In addition to falsely claiming that he acted unlawfully, the Board supported its decision to terminate Dr. Boutros’ employment due to his making “excessive demands.” This is an improper and unfair position when all he ever sought was for the Board to act in compliance with the law.

210. In violation of Section 12.A.(i) of the Agreement, the Defendants terminated Dr. Boutros for an alleged “breach” of the contract, but never provided him written notice of the alleged breach or an opportunity to cure.

211. Dr. Boutros’ Employment Agreement imposes on Defendant The MetroHealth System an implied duty of good faith and fair dealing in its performance and enforcement of the agreement.

212. Good faith requires The MetroHealth System not to take opportunistic advantage of Dr. Boutros in a way that could not have been contemplated by the parties at the time the agreement was drafted.

213. Good faith requires The MetroHealth System to adhere to the parties’ agreed common purpose in entering the Employment Agreement, and requires it to honor Dr. Boutros’ justified expectations.

214. The MetroHealth System breached this implied duty, including, without limitation, by purporting to terminate Dr. Boutros “for Cause” when no cause existed.

215. As a result of The MetroHealth System’s breaches of contract, including breaches of the implied covenant of good faith and fair dealing in respect to particular contractual obligations, Dr. Boutros has been damaged.

**COUNT SIX**  
**(Breach of Contract - Disparagement)**

216. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

217. In Section 8.C. of the Employment Agreement, Defendant The MetroHealth System “agrees that it will not engage in any conduct or communications which are disparaging of” Dr. Boutros.

218. Without justification or excuse, the Defendant MetroHealth System breached this provision of the contract by, among other things, issuing statements and reports which disparage Dr. Boutros by accusing him of illegal conduct, gross misconduct, theft and dishonesty.

219. As a result of The MetroHealth System’s breaches of contract Dr. Boutros has been damaged.

**COUNT SEVEN**  
**(Defamation)**

220. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

221. The Defendants made false and defamatory statements about Dr. Boutros, including stating or implying that he was guilty of illegal conduct, gross misconduct, theft and dishonesty.

222. These statements were made to the public, in the Statement of Defendant Whiting posted on the MetroHealth website and distributed to various media outlets, in the McCaffrey Report, also posted on the MetroHealth website and distributed to various media outlets, and in the MetroHealth “Q and A” with Defendant Silvers issued on or about December 8, 2022.

223. False and defamatory statements were also made to members of the MetroHealth Foundation board, when Defendant Whiting addressed that body and spoke of Dr. Boutros’ conduct as “stealing” and “double-dipping.” The MetroHealth Foundation board is a separate and distinct legal entity from any of the Defendants.

224. All of these statements were made with actual malice. Defendants had actual knowledge that they were false, or acted with reckless disregard for their truth or falsity as described above.

225. These statements, to the effect that Dr. Boutros had engaged in criminal acts of theft and dishonesty and gross misconduct in the performance of his duties as President and CEO of MetroHealth, are defamatory per se. On their face, these false statements have held Dr. Boutros to ridicule, hatred, and contempt, and have injured him in his trade or profession.

226. Defendants Whiting, Silvers, Chappell, Corlett, Dee, Hairston, Jr., Hurwitz, Moss, and Walker are not entitled to immunity under R.C. 2744.03(A)(6)

because their acts were taken with malicious purpose, in bad faith, and/or in a wanton or reckless manner as described above.

227. Defendants The MetroHealth System and the Board of Trustees are not entitled to immunity under R.C. 2744.09(B).

228. As a direct and proximate result of the Defendants' defamatory statements, Dr. Boutros has suffered mental anguish, humiliation, embarrassment, annoyance, ridicule, loss of reputation, loss of social standing and impairment of occupational and employment opportunities. To date, he has lost two employment opportunities for which he was under consideration once his employment with MetroHealth was to expire, seats on the boards of three technology companies, an opportunity with an investment management company, as well as funding for a philanthropic endeavor to address gun violence in Cleveland.

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

229. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

230. Section 2921.05 of the Ohio Revised Code provides that "No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against a public servant ... because the public servant ... discharged the duties of the public servant..."

231. Violation of R.C. 2921.05 is a felony of the third degree.

232. In alerting Defendants to illegality in the hiring of MetroHealth's incoming CEO, Dr. Boutros was discharging his duty as a public servant.

233. The Defendants' retaliation against Dr. Boutros for discharging this duty involved unlawful threats of harm through deprivation of property, employment and other valuable rights, including threatened consequences if he did not self-report to the Ohio Ethics Commission and return the supplemental incentive compensation, and eventually, purposefully forcing him from his job.

234. Section 2307.60 of the Ohio Revised Code provides that anyone injured in person or property by a criminal act may recover full damages in a civil action.

235. As a direct and proximate result of the discharge of his duty and the Defendants' conduct proscribed in R.C. 2921.05, Dr. Boutros suffered adverse employment actions, including the forced return of incentive compensation, diminution in his authority and his subsequent termination, in addition to other past and future damages as a result of the conduct proscribed in R.C. 2921.05.

#### **COUNT NINE**

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

236. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

237. Under R.C. 2921.03, no person, knowingly and by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant in the discharge of the person's duty.

238. In addition to the civil liability created under R.C. 2921.03(C), R.C. 2307.60 provides that anyone injured in person or property by a criminal act may recover full damages in a civil action.

239. As President and CEO of MetroHealth, Dr. Boutros was a public servant.

240. The McCaffrey Report was a materially false or fraudulent writing. It was used by Defendants knowingly as a basis to intimidate Dr. Boutros and to terminate his employment, thereby hindering the discharge of his duties to the public and to the MetroHealth System.

241. As a direct and proximate result of this unlawful conduct, Dr. Boutros has suffered and will continue to suffer economic and non-economic damages for which for which Defendants Whiting, Silvers, Chappell, Corlett, Dee, Hairston, Hurwitz, Moss, and Walker are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, other terms, privileges, and conditions of employment, and attorneys' fees.

242. The Defendants' acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

**COUNT TEN**  
**(Discharge In Violation Of Public Policy)**

243. Plaintiff incorporates by reference all the foregoing paragraphs of the Complaint as if fully re-written herein.

244. Ohio maintains a clear public policy, set forth in its Open Meetings Act, R.C. 121.22, setting forth mandatory requirements for the conduct of public entities such as the MetroHealth System.

245. The clear public policy, as articulated in R.C. 121.22(A), is “to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.”

246. Contrary to the law, and to the policy embodied in the law, the Defendants conducted a search for a CEO to succeed Dr. Boutros, and hired the incoming CEO, in secret meetings, held in unlawful executive session, that consistently violated R.C. 121.22.

247. They hired consultants, and entered into contracts with the incoming CEO, without properly held public meetings or deliberations, and without the proper authority which following the law would have afforded them.

248. The public policy embodied in R.C. 121.22 is threatened if employees such as Dr. Boutros are subject to adverse employment actions when they point out ways in which the public entity employing them has violated the statute requiring open meetings, public deliberation and proper authority before taking official action.

249. Dr. Boutros’ dismissal was motivated by conduct related to the foregoing public policy.

250. Defendants lacked an overriding legitimate business justification for terminating Dr. Boutros’ employment. While the accusation that he “paid himself

bonuses” was false, there was no apparent harm to the System because the “bonuses” or incentive compensation in question had already been repaid on the condition that the Board re-assess his entitlement to them. Dr. Boutros’ performance as CEO, moreover, had at all times exceeded reasonable expectations and been hailed for its transformative excellence. His contract was set to expire by December 31, 2022, obviating any need to terminate his employment at all.

251. As a direct and proximate result of Defendants’ unlawful conduct, Dr. Boutros has suffered damaged, including back pay, front pay, incentive compensation, benefits and other advantages of employment.

WHEREFORE, Plaintiff Akram Boutros, M.D., prays for judgment in his favor and for the following relief:

(i) On Count One, damages against Defendant The MetroHealth System in an amount to be proven at trial; plus

(ii) On Count Two, damages against all Defendants, jointly and severally, in an amount to be proven at trial; plus

(iii) On Count Three, damages against Defendant The MetroHealth System in an amount to be proven at trial; plus

(iv) On Count Four, damages against Defendant The MetroHealth System in an amount to be proven at trial; plus

(v) On Count Five, damages against Defendant The MetroHealth System in an amount to be proven at trial; plus

(vi) On Count Six, damages against Defendant The MetroHealth System in an amount to be proven at trial; plus

(vii) On Count Seven, damages against all Defendants, jointly and severally, in an amount to be proven at trial together punitive damages as allowed by law; plus

(viii) On Count Eight, damages against all Defendants, jointly and severally, in an amount to be proven at trial; plus

(ix) On Count Nine, damages against all Defendants, jointly and severally, in an amount to be proven at trial; plus

(x) On Count Ten, damages against all Defendants, jointly and severally, in an amount to be proven at trial; plus

(xi) To the extent not encompassed by the foregoing, full compensatory damages, economic and non-economic, including, but not limited to, damages for back pay, front pay, pain and suffering, mental anguish, emotional distress, humiliation and inconvenience that he has suffered and is reasonably certain to suffer in the future; plus

(xii) Punitive damages as appropriate for all intentional and malicious violations of Dr. Boutros' rights and of state law; plus

(xiii) Costs, expenses of suit and attorney fees as permitted by contract and law; plus