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Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
November 19, 2024 11:56

By: JASON R. BRISTOL 0072989

Confirmation Nbr. 3332063

AKRAM BOUTROS, M.D.

vs.

METROHEALTH SYSTEM ET AL.

CV 24 107465

Judge: SHANNON M. GALLAGHER

Pages Filed: 101

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

AKRAM BOUTROS, M.D. 1684 Lorain Avenue Cleveland, Ohio 44113, Plaintiff, v. **THE METROHEALTH SYSTEM** 2500 MetroHealth Drive Cleveland, Ohio 44109 and **THE METROHEALTH SYSTEM BOARD OF TRUSTEES VANESSA L. WHITING, J.B. SILVERS, INAJO DAVIS CHAPPELL, JOHN CORLETT, MAUREEN DEE, JOHN M. HAIRSTON, JR., ROBERT HURWITZ, JOHN M. MOSS, E. HARRY WALKER** 2500 MetroHealth Drive Cleveland, Ohio 44109 and **VANESSA L. WHITING** 2489 Coventry Road Cleveland Heights, Ohio 44118 and **J.B. SILVERS** 4800 Valley Parkway Fairview Park, Ohio 44126 and	)	Case No.: Judge **COMPLAINT** (With Jury Demand)

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INAJO DAVIS CHAPPELL
32725 Shadowbrook Drive
Solon, Ohio 44139

and

JOHN MOSS
2457 West 11th Street
Cleveland, Ohio 44113

and

EZELLE H. WALKER
4005 SOM Center Road
Moreland Hills, Ohio 44022

and

MAUREEN DEE
1598 Oakwood Drive
Cleveland Heights, Ohio 44121

and

JOHN HAIRSTON, JR.
17591 Wildwood Lane
Cleveland, Ohio 44119

and

ROBERT HURWITZ
3900 Tradewinds Circle
Pepper Pike, Ohio 44124

and

JOHN CORLETT
1647 Wagar Avenue
Lakewood, Ohio 44107

Defendants.

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

INTRODUCTION

1. After more than nine years of acclaimed leadership as President and Chief Executive Officer of Defendant The MetroHealth System, Plaintiff Akram Boutros, M.D. was unjustly fired from his position and publicly defamed with baseless accusations that he received unearned incentive compensation without the Board of Trustees' knowledge.

2. These accusations were false and destroyed Dr. Boutros's career.

3. The compensation at issue – from the MetroHealth "Performance Plan" for more than 200 executives – was available only because of the extraordinary financial results Dr. Boutros and his team had achieved and was paid from funds expressly approved by the Board of Trustees for such bonuses.

4. What should have been a moment of celebration and recognition for Dr. Boutros as MetroHealth prepared to transition to new leadership instead became a nightmare.

5. Dr. Boutros's reputation for leadership, stewardship, integrity, honesty and uncompromising excellence was ruined.

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6. Rather than relying on the proper public agencies and authorities if they had legitimate questions about the ethics or legality of Dr. Boutros's participation in the Performance Plan, the Defendants instead pursued a dubious private investigation culminating in a late-night smear campaign that falsely accused Dr. Boutros of theft and dishonesty.

7. Had the Defendants followed proper procedures, they would not have wasted public funds on private investigators and law firms with no particular expertise in executive compensation or the governance of a public, county hospital. They would have immediately referred their questions about Dr. Boutros's compensation to the Ohio Auditor of State – the highest authority on the use and misuse of public funds. Dr. Boutros would have left MetroHealth at the end of his contract, as the parties had already planned, and the proper authorities would have evaluated whether any misconduct had occurred.

8. But the Defendants would not allow the Ohio or Cuyahoga County authorities the opportunity to look objectively at the situation. As early as October 14, 2022, coincident with the launch of their private investigation, they employed a private crisis communications consultant to shape their compensation dispute with Dr. Boutros into a drama with a "villain," a "victim," and a "vindicator."

9. This public relations "spin" obscured the truth.

10. During Dr. Boutros's entire tenure, the Board approved incentive pools for all eligible employees at MetroHealth – including Dr. Boutros – but never asked what amounts anyone was receiving under the system's Performance Plan or why.

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11. Such information was at all times readily available to Board members, on demand, from the ordinary business and payroll records of the System where every penny of Dr. Boutros's compensation was accurately recorded.

12. Only after Dr. Boutros challenged Defendants Whiting, Walker and MetroHealth Co-General Counsel Laura McBride about the risks to which they were exposing the System if they failed to adhere to the Ohio Revised Code and MetroHealth's governing documents in the selection and hiring of the incoming CEO did the Board question the legality of Dr. Boutros's compensation.

13. In response, the Co-General Counsel offered the Board of Trustees a calculated attack plan whereby they would falsely claim to be the sole authority who could determine Dr. Boutros's incentive compensation, despite their never having done so for more than 9 years, despite his Employment Agreement that provided them with sole authority only over his base salary, and despite their having delegated fringe benefit and bonus authority to Dr. Boutros without reservation of any rights to the Board.

14. Concluding he was "guilty until proven innocent," the Defendants rushed to conduct an unauthorized and slipshod private "investigation" into his compensation notwithstanding the fact that every part of Dr. Boutros's compensation was authorized by the Board, memorialized in Board resolutions, and never exceeded any Board-imposed limits.

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15. In their rush to judgment, the Defendants repeatedly broke promises and dissembled, even as Dr. Boutros proceeded in good faith to address what he understood to be the Board's concerns.

16. By the time Dr. Boutros was made aware that the Board had questions about his compensation, Defendant Whiting had already hired a law firm to investigate Dr. Boutros, but she rejected its findings.

17. She then informed Dr. Boutros that the Board would hire an undisclosed expert in Ohio ethics law to review the situation, but instead hired another law firm, Tucker Ellis, to act as a private investigator more willing to treat Dr. Boutros as a criminal – the "villain" in the version of the story the Defendants decided to tell.

18. The Board's private investigator interviewed Dr. Boutros under a "Garrity Warning," assuring him the information he shared would not result in referral for prosecution but eventually lobbied the Cuyahoga County Prosecutor to take action against Dr. Boutros.

19. Defendants Whiting and Silvers encouraged Dr. Boutros to "self-report" to the Ohio Ethics Commission – which he did.

20. The Board used its private investigator to coerce Dr. Boutros to remit the compensation in question, 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.

21. The Defendants immediately trumpeted Dr. Boutros's coerced repayment as evidence of guilt, even though their acceptance of these funds was

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accompanied by an email from Dr. Boutros's counsel stating that his offer to "temporarily repay the … amounts is not an admission of any wrongdoing … it is a gesture of goodwill … reflective of his consistent ethical and just approach to all matters."

22. After Dr. Boutros tendered these funds, the Board of Trustees tried to coerce him into agreeing to diminished authority under the ruse that it was part of a transition plan for the new CEO.

23. When he refused, they enforced such diminished authority through Board Resolution.

24. Dr. Boutros informed the Board that diminishing his authority would trigger his right to terminate his Employment Agreement for good reason and he requested mediation to amicably resolve the matter.

25. Rather than cure their breach of contract or make any effort to resolve the dispute, the Defendants solicited a "settlement demand" from Dr. Boutros, never responded, and immediately fired Dr. Boutros "for cause" based on a presentation by the Board's private investigator of a flawed and admittedly incomplete report.

26. The private investigation report concluded that "the Board" did not know of Dr. Boutros's participation in the Performance Plan, despite the fact the investigator interviewed no Board members except for Defendant Whiting.

27. The report concluded that Dr. Boutros lacked "authority" to receive the disputed compensation, despite having conducted no review of the applicable

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delegations of authority whereby the Board in fact did delegate to Dr. Boutros all authority over fringe benefits and all authority to administer the Performance Plan.

28. The private investigator did not interview Dr. Boutros about documents the investigator relied upon and made no effort to have Dr. Boutros respond to or rebut any of his findings.

29. The private investigation effort ignored numerous documents within MetroHealth's possession that supported Dr. Boutros's lawful and authorized receipt of the compensation in question. In short, the Board acted without having all the facts and without understanding their own delegations of authority.

30. The Board took a hasty vote, without public deliberation, to terminate Dr. Boutros's employment, recklessly concluding that Dr. Boutros's request to mediate the compensation dispute constituted "excessive demands" and that he committed "acts involving dishonesty against the System" that were potentially criminal despite being fully aware that Dr. Boutros's demands were for the return of the monies he temporarily deposited with Metro and for the opportunity to resolve a compensation dispute amicably through mediation.

31. Determined to push its narrative of "victim-villain-vindicator," the Board mired the System in controversy and scandal. But the scandal is not Dr. Boutros's earned incentive compensation which he returned on condition that the Board repay him after re-assessing his performance. The scandal is the Board's extraordinary incompetence and abdication of duty, and the ensuing campaign to blame Dr. Boutros for the Board's own failure to fulfill its duties and obligations.

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32. As of today, Dr. Boutros's "self-report" to the Ohio Ethics Commission on November 1, 2022, has resulted in no finding of ethical violations against him.

33. The Defendants' referral of Dr. Boutros to the Cuyahoga County Prosecutor on or about November 29, 2022 has resulted in no charges of any kind against him.

34. And the Ohio Auditor of State, who launched a comprehensive special investigation on or about January 2023 – *after* the Defendants had destroyed Dr. Boutros's career and reputation – issued its Report on November 12, 2024, finding Dr. Boutros's conduct was not criminal, that he did not conceal his participation in the Performance Plan from the System, this his interpretation of the Employment Agreement in regards to his right to receive the supplemental payments under the Performance Plan was not unreasonable, and that the Board of Trustees failed in its oversight function.

35. Through their breaches of contract, defamation, broken promises, pressure tactics and wrongful termination of his employment, the Defendants cost Dr. Boutros more than $8 million in earned compensation, severance and benefits. They obliterated his 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 tens of millions more in damage.

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PARTIES

36. Plaintiff Akram Boutros, M.D. was the President and CEO of Defendant MetroHealth System from June 1, 2013, until November 21, 2022.

37. He has a 30-year record of successful hospital leadership at academic medical centers, community hospitals and specialty hospitals.

38. Under his leadership, the MetroHealth System underwent an unprecedented positive transformation in virtually all respects.

39. Born in Egypt, he emigrated with his family to the United States at the age of 12, learning English only after arriving in this country.

40. 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.

41. It was established as a county hospital and operates and is governed by Chapter 339 of the Ohio Revised Code.

42. It is the governing authority for an integrated system of health care facilities and programs operated by the organization.

43. Defendant The MetroHealth Board of Trustees, in accordance with applicable provisions of the Ohio Revised Code, has the "power and duties" under R.C. 339.06 for "the entire management and control of the county hospital."

44. Under the statute, 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."

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45. Pursuant to R.C. 121.22, the MetroHealth Board can act only through resolutions passed during public meetings and cannot delegate any of its responsibilities or actions to any committee of the Board.

46. The Board could and did delegate much of its management authorities to Dr. Boutros as evidenced by both Board resolutions and Board policy.

47. Specifically, Board policy BOT-07 stated "The CEO has the authority to employ individuals and set the wages and salaries for MHS employees," which authority was granted to Dr. Boutros without exception.

48. 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.

49. Members of the Board of Trustees at the time Dr. Boutros was fired were 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.

50. Former Trustee Terry Monnolly resigned as of November 30, 2022, in part over his disagreement with Dr. Boutros's firing.

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

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

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

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

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

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

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

58. Defendant John M. Moss has served on the Board since 2010. He is a resident of Cuyahoga County and currently serves as Vice Chair.

59. Defendant Ezelle H. Walker was first appointed to the Board in 2021 and currently serves as Chair. He is a resident of Cuyahoga County.

PROCEDURAL HISTORY

60. This case was originally filed December 15, 2022 and was assigned Cuyahoga County Court of Common Pleas Case No. CV 22 972601 (the "First Action").

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61. After some discovery was completed, it was voluntarily dismissed without prejudice pursuant to Civil Rule 41(a)(1)(a) on December 8, 2023 so that Dr. Boutros could pursue intensive treatment for a serious health condition.

STATEMENT OF FACTS

Dr. Boutros's Employment Agreement

62. 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.

63. The Agreement became effective January 1, 2020.

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

65. 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.

66. With respect to Compensation, the Agreement entitles Dr. Boutros to "Base Salary" as well as "incentive compensation awards" including annual performance-based compensation.

67. As to base salary, 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

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> 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.

68. 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."

69. The Employment Agreement does not delineate the methodology for or any limitations under the Performance Plan.

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

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71. Pursuant to Section 3, the Agreement entitles Dr. Boutros to generous retirement plan contributions, including participation in OPERS and establishment of a Section 457(f) plan.

72. Pursuant to Section 4, Dr. Boutros was entitled to 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.

73. All senior executives became eligible for the supplemental PBVC portion of the Performance Plan in 2017.

74. "[C]onsistent with the System's policies and practices," Dr. Boutros also became eligible for supplemental PBVC at that time.

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

76. 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***

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> ***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.

(emphasis added)

77. The definition of "Cause" under the Agreement does not provide that Dr. Boutros's employment may be terminated upon suspicion of or the possibility that Dr. Boutros "willfully engag[ed] in illegal conduct or gross misconduct… or fraud, embezzlement, theft or other act involving dishonesty…"

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78. Rather, he must have affirmatively performed one or more of the prohibited acts.

79. If the parties had intended for the standard of "Cause" to be based on suspicion or ambiguity, they would have included the appropriate language in their contract.

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

81. 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.

82. The agreement also entitles Dr. Boutros to severance compensation in the event he terminates his employment "with Good Reason."

83. 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

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> 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)

84. 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,

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> 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.

The MetroHealth Executive Incentive Compensation Program Known As The "Performance Plan"

85. For 10 years prior to Dr. Boutros's appointment as CEO, MetroHealth suffered significant financial losses, reputational damage, and its sustainability was in question.

86. In 2013, the Board of Trustees was being publicly criticized for providing executive bonuses without metrics and at a time when the organization was losing money.

87. At his appointment announcement, Dr. Boutros spoke of the need for a metric-driven incentive 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.

88. In June 2013, the Board of Trustees tasked Dr. Boutros with creating a metric-driven executive incentive plan.

89. With the help of independent consultant Sullivan Cotter, Dr. Boutros presented an incentive plan known as Performance-Based Variable Compensation ("Performance Plan").

90. On July 24, 2013, the Board of Trustees adopted Resolution 18608, which expressly approved the plan, and set forth certain parameters, including:

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- 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 a pre-determined limit relative to comparable executives at comparable institutions;

- The Board of Trustees would approve the metrics to be evaluated and achievement measures each year;

- The CEO would maintain and administer the program.

91. In late 2016, the Board adopted Resolution 19088 which provided for the issuance of up to $1.3 billion in revenue bonds to effectuate its long-term strategic plan and campus transformation.

92. The Board recognized that exceptional financial performance was necessary to cover the debt service on what finally became a $945.7 million bond issue and to retain the talented executives needed to do so.

93. Accordingly, it was necessary to revise the Performance Plan.

94. At the time, the Board estimated that the System's earnings before interest, taxes, depreciation, and amortization ("EBIDA") would need to double to ensure long term viability.

95. The average long-term EBIDA was targeted to be $120 million per year, which was a financial achievement that had not been reached in MetroHealth's 180-year history.

96. The goals of the revised Performance Plan were to improve MetroHealth's share of cash flow, to create meaningful incentives for exceptional

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performance, to utilize third-party long term financial metrics to assess performance, to create a cap on executive compensation, and to separate funding and performance metrics.

97. In 2017, Dr. Boutros and independent compensation consultant Sullivan Cotter proposed significant changes to the MetroHealth Performance Plan to achieve the foregoing goals, including the addition of lower-level staff, bringing the number of eligible participants from approximately 80 up to 200.

98. All documents, presentations and attachments to resolutions pertaining to the 2017 Performance Plan modifications identify the CEO as eligible to participate as a member of "senior executives" or "senior leadership."

99. On June 8, 2017, the Board adopted Resolution 19108 which approved the modifications to the executive compensation methodology and Performance Plan.

100. Immediately thereafter, Dr. Boutros and his senior executives, including the Chief Financial Officer and the Chief Legal Officer, set about to further define the supplemental incentive component of the Performance Plan based on exceptional financial performance.

101. Initially, the various components of the Plan were designated as "PBVC Tier 1 and PBVC Tier 2," but were subsequently also referred to as base "PBVC" and Supplemental PBVC or "SPBVC," respectively.

102. The Supplemental PBVC metrics and the Supplemental PBVC awards were all part of one Performance Plan with three components – PBVC tied to target percentage of base salary (hereafter sometimes referred to as "salary-based PBVC"),

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supplemental incentives (hereafter sometimes referred to as "supplemental PBVC") and one-time recognitions.

103. The Performance Plan applied to more than 240 employees between 2017 and 2022.

104. There was never a separate and distinct "SPBVC program" as the Defendants contend.

105. While working on the 2017 changes to the Performance Plan, Dr. Boutros authorized the engagement of a special independent compensation consultant to report directly and exclusively to the Board. Dr. Boutros's authorization for this hire was required since there was no Board resolution, and the Board had delegated to him all such contracting authority. The Board's consultant was Robert J. ("Rob") Rogers, a principal of a firm called Findley Davies/USI Insurance Services, LLC.

106. Dr. Boutros encouraged the Board to have its own consultant to ensure the Board understood what the modified Performance Plan entailed, how it operated, and how it impacted CEO and other executives' compensation.

107. Pursuant to Findley Davies' engagement letter, Mr. Rogers and his firm were to report to the Board on all aspects of Dr. Boutros's total compensation, including his "current remuneration," his "base," and his "variable compensation."

108. The engagement letter stated that the consultant would provide the Board an "analysis of MetroHealth executives' total remuneration package with recommendations and observations concerning specific items of consideration."

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109. The engagement letter further provided that the consultant would provide the Board with a review and analysis of "compensation history" and "incentive compensation documentation" for Dr. Boutros and other executives.

110. Once the Board's independent compensation consultant was in place, Dr. Boutros was recused from the consultant's discussions with the Board.

111. Dr. Boutros was not involved in the Board consultant's compensation analyses or presentations to the Board in 2017 or at any time thereafter.

112. At the time the Board's independent compensation consultant was retained, and at all times thereafter, Dr. Boutros understood that the Board's independent compensation consultant had access to all records of the System, including records that showed how the supplemental incentive payments were calculated, records that showed the actual payments that were made to Dr. Boutros and other executives, and all other records relating to the Performance Plan.

113. At the time the Board's independent compensation consultant was retained, and at all times thereafter, Dr. Boutros, believed that the consultant was doing exactly what it was retained to do in analyzing and reporting Dr. Boutros's actual total compensation, including incentive compensation, to the Board.

114. At no time did any Defendant inform Dr. Boutros that the Board's independent compensation consultant was not doing exactly what it had been retained to do.

115. At no time did Rob Rogers or Findley Davies request any salary or compensation information directly from Dr. Boutros. Nor was Dr. Boutros permitted

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to attend meetings with these advisors or to receive their reports. He was simply informed of his new base salary as it was changed.

116. 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 90th percentile Total Cash Compensation, so that Dr. Boutros could follow the board directive not to exceed the 90th percentile in "Total Cash Compensation" which was a defined term in Dr. Boutros's written Employment Agreements and Board resolutions.

117. Consistent with the revised Performance Plan, and as directed by the Board resolutions providing 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.

118. 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 serve as the basis for supplemental PBVC.

119. These goals were annual and did not substantially overlap with the "organizational scorecard" goals for the Performance Plan.

120. In a November 28, 2017 email to Defendant Whiting and then-Board Chair Tom McDonald, MetroHealth's Chief Legal Officer circulated a memorandum titled "Timeline for BOT Consideration of Executive Compensation Arrangements" which recommended that in February of each year: the "CEO submits self-evaluation

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and recommendation to BOT Chair for the requested compensation for the CEO for current year."

121. The Board was aware of and accepted this provision for self-evaluation relating to Dr. Boutros's annual compensation.

122. Dr. Boutros was objective in his self-evaluations and did not score himself at the highest level. Nor did he assign any value for personal achievements.

123. By contrast, when the Board reviewed him, it unanimously granted Dr. Boutros the highest ratings across all aspects of performance.

124. During his entire tenure as CEO, Dr. Boutros reported to the Board on the successes of the System and the System goals and achievements, including the initiatives which served as the basis for supplemental PBVC awards.

125. At no time did the Board of Trustees ask for person-specific achievements, payments, or other data related to the Performance Plan calculations or payments for any portion of the Performance Plan, including what amounts Dr. Boutros was receiving.

126. 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 MetroHealth.

127. For its part, the Board of Trustees approved annual total distribution of the Performance Plan amounts in resolutions that clearly identified the Performance Plan's three components.

128. For example, in 2022, Resolution 19495 stated:

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> 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)

129. 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.

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

131. At no time did the Board withdraw any authority granted to Dr. Boutros with regard to the disbursement of the incentive pool. To the contrary, each Resolution stated:

> The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution.

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The Supplemental PBVC Component of the Performance Plan Was Openly Discussed by Dr. Boutros, Defendants, MetroHealth Employees and The Media

132. In 2017, the Board of Trustees received multiple, detailed presentations on the redesigned Performance Plan, including one-on-one sessions with Board members.

133. Dr. Boutros made multiple presentations to the Board, highlighting examples that illustrated a variety of potential scenarios ranging from underperformance to outstanding financial results.

134. Most importantly, he highlighted scenarios where the total payments under the redesigned plan more than doubled the payments of the prior year and exceeded the maximum amounts under the "organizational scorecard" component, or salary-based PBVC portion of the Plan.

135. On October 11, 2022, Defendants Whiting and Silvers met with Dr. Boutros to discuss their concerns about Dr. Boutros's compensation.

136. They acknowledged awareness that Dr. Boutros's subordinates were receiving supplemental incentives under the Performance Plan but claimed to be unaware that Dr. Boutros was eligible to receive supplemental PBVC.

137. During the meeting, Defendants Whiting and Silvers reported that their only concern was the lack of Board evaluation of Dr. Boutros's achievements against the supplemental PBVC metrics.

138. In fact, Whiting and Silvers failed to understand the scope of the authority the Board had delegated to the CEO.

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139. They failed to understand how the 2017 changes to the Performance Plan impacted Dr. Boutros as a member of senior leadership.

140. They failed to understand that Rob Rogers's contract obligated Findley Davies to provide the Board with Dr. Boutros's total compensation.

141. They failed to understand that it was their job, as Board members, to obtain information on the CEO's compensation, which information was at all times readily available to them.

142. Senior leadership at MetroHealth were aware of and participated in all components of the Performance Plan, including supplemental PBVC.

143. From 2017 through 2021, all senior leadership at MetroHealth, including the CEO, Chief Financial Officer, Chief Clinical Officer and Chief of Staff attended meetings to discuss supplemental PBVC awards.

144. They also attended Dr. Boutros's monthly and annual presentations to the Board on the successes of the System, which included reference to achievements and initiatives related to both salary-based PBVC and the supplemental PBVC component of the Performance Plan.

145. At no time did any of these individuals suggest to Dr. Boutros that a further presentation to the Board on any component of the Performance Plan was prudent, wise or necessary, or that he lacked the authority to carry out the annual resolutions approved by the Board.

146. Dr. Boutros openly discussed the supplemental incentive component of the Performance Plan with the System's compensation consultant, Sullivan Cotter,

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and even added the Chief Legal Officer and the Board's independent compensation consultant, Rob Rogers to emails on the topic.

147. On August 13, 2019, Dr. Boutros added MetroHealth's Chief Legal Officer and Findley Davies, who were not initially included, in his response to a Sullivan Cotter email where he described the supplemental PBVC component of the Performance Plan and its impact on Total Cash Compensation.

148. In the email, Dr. Boutros wrote:

> The tally sheet shows the expected payout from PBVC at target. Each individual PBVC payout changes depending on personal performance. Additional Supplemental incentive is distributed only (1) after everyone has been awarded their [salary-based] PBVC payments, (2) there are monies remaining in the funded incentive pool, and (3) there are personal and significant achievements outside the organization scorecard. Please contact me for further explanation.

149. MetroHealth issued a personalized "Performance-Based Variable Compensation Statement" to all eligible employees, including Dr. Boutros, which included "Performance Based Variable Compensation," "Supplemental Performance Compensation" and "Total PBVC."

150. Such documents are all part of the books and records of the System, available to the Board and its compensation consultant at any time for any reason.

151. In January 2019, Defendant John Moss asked Dr. Boutros to present on the impact of the revised Performance Plan after he noted that the total payout for the 2016 Performance Year was $3,690.214 and for the 2017 Performance Year was $6,962,455.

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152. In response, Dr. Boutros made two presentations to the Executive and Compensation Committee of the Board on February 27, 2019. The first was titled "Organizational Goals and Achievements" and the second was titled "Performance Based Variable Compensation – 2018 Executive Awards."

153. In the first presentation, Dr. Boutros detailed the achievements for salary-based PBVC initiatives and for the supplemental PBVC components of the Performance Plan.

154. In the second presentation, Dr. Boutros disclosed base salary and total cash compensation for all senior executives, including himself, for the years 2017 and 2018. The total cash compensation amounts included awards under the salary-based PBVC and supplemental PBVC components of the Performance Plan.

155. Failing to recognize that these presentations contained precisely the information which the Board now claims was intentionally and maliciously concealed from them, Defendant Whiting has since admitted she "would not have done the quick math" to understand what the figures for Dr. Boutros and the other executives revealed.

156. Nevertheless, four weeks after these presentations, in March 2019, the Board approved the payments as presented by Dr. Boutros.

157. While reviewing the funding and authorizing resolution which had been prepared by the legal department, Dr. Boutros urged the Chief Legal Officer and the Chief Financial Officer to add language referencing all three components of the Performance Plan – "PBVC, one-time incentives, and supplemental incentives."

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158. That language clearly identifying the three components of the Performance Plan was included from 2019 through 2022 in each Resolution in which the Board approved the annual total distribution of Performance Plan amounts.

159. The 2022 Resolution, for example, quoted above, clearly stated that Performance Plan payments included "PBVC, one-time recognition, supplemental incentives" and that Dr. Boutros, "or his designee, are hereby authorized to take necessary actions consistent with this resolution."

160. Several media reports over the years 2018 through 2020 reported on Dr. Boutros's and other executives' compensation.

161. All media disclosures directed by Dr. Boutros – including to Cleveland Business Journal, Cincinnati Business Courier, and Columbus Business First – set forth his total cash compensation ***including*** the supplemental PBVC component of the Performance Plan.

162. A simple internet search would have revealed Dr. Boutros's total cash compensation, including the supplemental PBVC component of the Performance Plan, from those sources.

Dr. Boutros's Authority

163. 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.

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164. 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.

165. 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.

166. 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…"

167. Subsection (D)(5) further specifies that

> Funds 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.

168. At all relevant times, the only signatory designated and approved by the Board of Trustees was Dr. Boutros.

169. 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."

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

171. 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
1. Control of all funds used in the county hospital's operation. Adoption of policies to govern the disbursement of funds.	Delegated to the Chief Executive Officer subject to the operating and capital budgets as approved by the Board (together, "Budget"). 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. All actions taken should be consistent with Budget. All such approvals and actions by the Chief Executive Officer must be in accordance with policies approved by the Board. The Chief Executive Officer will regularly report policies and all material changes to the Board.

172. 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.

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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).

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

IV. Salary and Benefits/Compensation	
Delegated Authority/Function	Conditions of Delegation
1. Adopt the wage and salary schedule for employees. 2. Grant fringe benefits to employees. 3. Provide holiday leave for four minor holidays on days other than those specified in the Ohio Revised Code. 4. Grant employees group or individual health, life and other insurance. 5. Grant employees personal holidays. 6. Provide employee recognition awards and hold employee recognition dinners. 7. Grant to employees recruitment and retention benefits.	Delegated to the CEO subject to, and all actions consistent with, the Board's policies. Budgetary Impact in excess of $5 million will be reported to the Board. The CEO will regularly report all material changes to the Board.

174. With respect to the Performance Plan, Dr. Boutros was also delegated broad authority by the Board.

175. Resolution 19108, adopted by the Board in 2017, and Resolution 19219, both state that the

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> Board will delegate authority to the President and Chief Executive Officer to implement and follow this Performance-Based Variable Compensation plan, as amended annually.

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

177. 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.

178. When the Board would annually approve a funding resolution creating an incentive compensation pool from which salary-based PBVC and supplemental PBVC were to be awarded, Dr. Boutros was granted plenary authority to distribute the money consistent with the previously approved principles.

179. 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.

180. Neither this resolution, nor those for 2017, 2018, 2019 or 2021, exclude or condition distributions to the CEO from the approved incentive compensation pool.

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181. Under Dr. Boutros's direction, the total incentive compensation distributed never exceeded the approved amounts.

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

183. 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.

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

185. 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.

186. 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.

Events Leading To Questions About Dr. Boutros's Compensation

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

188. At the time, the Board of Trustees undertook a search for his successor.

189. That process commenced on February 14 and involved a Board of Trustees Search Committee.

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190. All the work of the Search Committee was conducted in Executive Session.

191. The search process was 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.

192. Instead, Defendant Whiting simply signed all the contracts with consultants, without proper Board authorization or formal resolution, thereby obligating the System to pay hundreds of thousands of dollars.

193. Such unilateral conduct violated R.C. 121.22 and Article XI, Section 1 of the MetroHealth Board of Trustees 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.

194. Dr. Boutros did not authorize or sign agreements with either of the Search Committee's consultants and the Board did not formally delegate this authority to Defendant Whiting or anyone else.

195. 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.

196. When Dr. Boutros became aware of these illegal proceedings surrounding the search for his successor, in late July or early August 2022, he alerted

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Defendant Whiting, Defendant Walker, who was chair of the CEO Search Committee, and MetroHealth Co-General Counsel Laura McBride.

197. As a public employee, and consistent with MetroHealth's code of conduct, it was Dr. Boutros's duty to bring to light any unlawful or unethical conduct at the institution, and to ensure that the incoming CEO was lawfully engaged.

198. Notwithstanding the Board's involvement and approval of the incentive pool and its delegation to Dr. Boutros of authority to pay the incentive compensation, in early August, 2022, Defendant Whiting met with Dr. Boutros to inquire about what she termed "a discrepancy" between his 2021 payroll amounts and the report of the Board's independent compensation consultant Rob Rogers of Findley Davies.

199. Dr. Boutros was unaware of the information provided by the Board's independent compensation consultant and requested the information from Defendant Whiting, who provided a summary of the compensation.

200. Dr. Boutros identified the difference as supplemental PBVC under the Performance Plan which had been approved annually by the Board and he provided Whiting a written description to remind her of the supplemental PBVC component of the Performance Plan.

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

202. On August 10, 2022, Dr. Boutros did so, providing her with information and copies of presentations he had concerning the Performance Plan. He also gave additional files to MetroHealth Co-General Counsel Laura McBride for safe keeping

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as he was moving offices to the administrative building, and then leaving MetroHealth by the end of the year.

203. Dr. Boutros heard nothing further about the matter until Monday, October 10, 2022, when his 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's tenure, and he asked that the call be forwarded to him.

204. In response to his inquiry, Defendant Whiting refused to inform Dr. Boutros of the topic of this urgent meeting.

205. 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.

206. It was, simply put, an ambush.

207. At the meeting on October 11, 2022, Defendants Whiting and Silvers claimed to be unaware that Dr. Boutros was participating in the supplemental PBVC portion of the Performance Plan.

208. They claimed that their compensation advisor, Rob Rogers of Findley Davies, was charged with evaluating Dr. Boutros's base salary, benefits, total compensation, and the overall executive compensation program and reported directly to them but that Rogers' assessments did not include Supplemental PBVC award amounts.

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209. Dr. Boutros informed them that he had never provided Rogers with any compensation data because he had never been asked to. He stated that it was his understanding that the compensation advisor received information from the General Counsel and from payroll.

210. Finally, they claimed that they should have assessed Dr. Boutros and approved his achievements separately from the rest of senior leadership.

211. Whiting and Silvers then proceeded to question Dr. Boutros's 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 stating that "The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution."

212. By contrast, Whiting and Silvers could point to no contract, resolution or bylaw to support their position.

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

214. 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 and anticipated hiring an ethics attorney to assess if any violations of Ohio ethics law were implicated by his receipt of the disputed compensation.

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215. 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.

216. Before 7:00 a.m. on 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. Dr. Boutros agreed.

217. He further informed Silvers that he would self-report to the Ohio Ethics Commission and volunteered to temporarily return the monies in question so long as the Board agreed to conduct an independent assessment of his contribution, place the funds in escrow, and reissue the payments at the Board's discretion.

218. Dr. Boutros also communicated this request to MetroHealth's Co-General Counsel Laura McBride and Defendant Whiting.

219. The Defendants agreed to his proposal.

220. Later that day, however, 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.

221. 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.

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

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

Private Investigation Into Dr. Boutros's Compensation

224. The next day, on October 14, 2022, Defendant Whiting reneged on her pledge to hire an ethics attorney and instead requested the law firm of Tucker Ellis LLP to serve as a private investigator on behalf of the Board.

225. On or about that same day, the Board, or Tucker Ellis, retained a private "crisis" communications firm, Hennis Communications.

226. Hennis immediately counseled the Defendants of the need to pre-empt any effort by Dr. Boutros to justify his receipt of supplemental PBVC by publicly shaping the dispute into a drama consisting of a "victim," a "vindicator" and a "villain" whereby Dr. Boutros, obviously, was the villain.

227. By e-mail dated October 14, 2022, the Board's private investigation counsel contacted Dr. Boutros's attorney claiming to "represent a Special Investigation Committee of the [MetroHealth] Board."

228. Dr. Boutros's counsel responded 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."

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229. The Board's private investigation counsel 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.

230. 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.

231. When Dr. Boutros requested the names of the members of the so-called "Special Investigation Committee," the Board summarily denied his request.

232. The Board's private investigation counsel learned that Dr. Boutros had scheduled a visit to the Ohio Ethics Commission for November 1, 2022, but insisted on interviewing Dr. Boutros before any such meeting occurred.

233. On Monday, October 17, 2022, the Board's investigator interrogated Dr. Boutros under a "Garrity Warning."

234. The Garrity Warning provided that Dr. Boutros, as a government employee, must answer his questions, but that neither "self-incriminating statements nor the fruits of any self-incriminating statements" would be used against him "in any criminal legal proceedings." The Board's private investigation counsel threatened, however, that lack of cooperation could result in possible termination.

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235. At the interrogation, counsel for Dr. Boutros reiterated that the Board of Trustees had no lawful authorization for any investigation or for hiring a private investigator, but that Dr. Boutros would answer his questions, which he did, for more than 90 minutes.

236. The Board's private investigation counsel asked Dr. Boutros how he could authorize checks to pay himself. Dr. Boutros explained that while he did not specifically authorize the annual incentive payments, every check paid by MetroHealth to any person, corporation, or governmental entity properly bears his signature as authorization.

237. Dr. Boutros explained that under R.C. 339.06 "[t]he 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" and that under the statutes, "[t]he CEO has the authority to employ individuals and set the wages and salaries for MHS employees."

238. He explained that this authority was granted by the Board to Dr. Boutros without exception.

239. Dr. Boutros further explained that annually the funding disbursement resolutions for the incentive program stated, "The President and Chief Executive Officer, or his designee, are hereby authorized to take necessary actions consistent with this resolution," another example of the Board empowering Dr. Boutros without reserving any authority to itself.

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240. The Board's private investigation counsel showed no interest in any of this information.

241. At the very end of the interrogation, and in regard to Dr. Boutros's upcoming visit to the Ohio Ethics Commission, the private investigation counsel opined that if this became public, it would be "a shit show for everyone."

242. 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 Chief Legal Officer and Co-General Counsels in this and all other areas of ethics and compliance.

243. Dr. Boutros reaffirmed his commitment to temporarily repay the amounts in question for performance years 2017-2021 conditioned upon the Board's agreement to conduct a fair, non-prejudicial, and independent assessment of his achievements against the supplemental PBVC metrics, and to repay him the incentive compensation to which he was entitled.

244. After the interrogation, the Board's investigation counsel sent an email to Dr. Boutros's attorney stating that he had "been authorized to accept Dr. Boutros's 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.

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245. On Tuesday, October 18, 2022, the Board of Trustees published an announcement on the MetroHealth website of a Special Meeting of the Board of Trustees for the next day.

246. The next day, 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.

247. 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.

248. Dr. Boutros's counsel informed the Board's private investigation counsel that Dr. Boutros would attend the public portions of the meeting, and Dr. Boutros informed MetroHealth Co-General Counsel Laura McBride of his intention.

249. These attorneys asked Dr. Boutros not to attend, stating "this would be better for all parties."

250. Dr. Boutros agreed on the condition that no action would be taken during that meeting, to which the Defendants assented.

251. Dr. Boutros's attorney confirmed to the Board's private investigation counsel that Dr. Boutros would temporarily repay the amounts in question 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

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not an admission of any wrongdoing. Rather, it was a gesture of goodwill and reflected his consistent ethical and just approach to all matters.

252. The Defendants agreed that a condition of Dr. Boutros's temporary repayment of amounts in question was that the Board of Trustees would independently assess Dr. Boutros's contributions for the years at issue and pay him accordingly.

253. On Friday, October 21, 2022, the Board's private investigator sent an accounting of the amount of incentive compensation payments the Defendants were seeking to be repaid. He claimed the amounts had been verified by MetroHealth's Chief Financial Officer.

254. He also demanded repayment of Supplemental PBVC-related contributions to the SERP (457(f) plan) for performance years 2017-2021 and demanded full repayment of all these amounts by November 4, 2022, providing no explanation for the urgency or short timeframe.

255. On Monday, October 24, 2022, counsel for Dr. Boutros requested that the Board's investigation counsel reaffirm that once the repayment was made, the Board of Trustees would independently assess Dr. Boutros's contributions for the years in question, and also, would issue restated W-2s since the repayment of the taxable portions of the incentive compensation carried enormous tax consequences for Dr. Boutros.

256. At day's end, the Board's private investigation counsel confirmed that upon repayment, the Board of Trustees would independently assess Dr. Boutros's

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contributions for the years in question but stated that the Defendants were now also demanding that Dr. Boutros pay interest on both the disputed compensation and related 457(f) payments.

257. On October 25, 2022, Dr. Boutros's attorney contacted the Board's private investigation counsel 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. They agreed to a video call for Thursday, October 27, 2022, to discuss these points.

258. On Wednesday, October 26, 2022, during scheduled Board committee meetings, the Board's private investigation counsel emailed Dr. Boutros's attorney with information for the upcoming call and with a chart setting forth the calculation of all payments the Defendants were demanding be repaid.

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

260. On Thursday, October 27, 2022, just 30 minutes prior to the scheduled video call, the Board's private investigation counsel emailed yet another new calculation of amounts due, which was nearly $650,000 more than represented the day before.

261. Dr. Boutros raised the impact of this sudden increase on his ability to pay but the Board, through its private investigation counsel, was unrelenting on the timeline for the demanded repayment.

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262. Dr. Boutros requested that the monies be placed in escrow while the Board conducted its assessment.

263. Given the Board's promise to re-evaluate him and repay him as they saw fit, and Dr. Boutros's proviso that his tender of payment was not a concession of any wrongdoing, there was nothing improper, unreasonable or unfair about this request.

264. The Board's private investigation counsel nevertheless became angry and stated that if this is the request, "this conversation is over now."

265. He provided no explanation for his steadfast refusal to escrow the disputed funds.

266. Instead, he reiterated a statement he had made several times, that members of the Board did not believe that Dr. Boutros would tender the funds at all.

267. Dr. Boutros objected to this continued harassment and said they will find out on Monday one way or the other.

268. 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.

269. The Board's private investigation counsel stated he would relay these requests to the Defendants, but that Dr. Boutros should not expect an expedient response.

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270. 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.

Events Leading To Dr. Boutros's Termination

271. At 12:30 p.m. that same day, Dr. Boutros texted MetroHealth Co-General Counsel Laura McBride to ask her to meet him in his office.

272. At the meeting, she confirmed receipt of the funds into MetroHealth's account.

273. Dr. Boutros informed her that he was meeting with investigators from the Ohio Ethics Commission the following day, that he would "self-report" as Defendants Whiting and Silvers had requested, and that he would also report what he deemed to be Board violations of applicable laws and rules. He concluded the meeting by stating "I guess I am a whistleblower now."

274. On November 2, 2022, Dr. Boutros and his counsel met with an investigator and attorneys from the Ohio Ethics Commission in their offices in Columbus for three hours.

275. Dr. Boutros provided all the information they requested as well as a written narrative of the circumstances and events leading to the interview. He informed the investigators of 4 violations by the Board that he was reporting under R.C. 4113.52 – "Reporting violations of law by employer or fellow employee."

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276. Dr. Boutros informed the Ohio Ethics Commission's investigator that he believed the investigation and repayment demand by the Board may be construed as disciplinary and retaliatory action against Dr. Boutros for making such reports.

277. Just days later, on November 7, 2022, Defendant Whiting and Dee called Dr. Boutros to a meeting to discuss a transition plan for the incoming CEO.

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

279. Dr. Boutros refused to sign.

280. 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, who was not yet an employee of MetroHealth, on specific matters as to which he had always had authority during his tenure.

281. This limitation on Dr. Boutros's 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

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> 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.

282. 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".

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

The Board's Termination of Dr. Boutros's Employment "For Cause" And Subsequent Public Statements

284. Before the System's cure period under Section 12.D.ii(c) even expired, the Board of Trustees rushed to terminate Dr. Boutros's employment "for Cause" pursuant Section 12.A.(i) of his Employment Agreement.

285. On November 19, 2022, the Board's private investigation counsel delivered his "Report to the Board of Trustees of the MetroHealth System" (the "Report" or "Private Investigative Report").

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

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

288. By its own admission, the Private Investigative 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."

289. The Board's private investigation counsel failed to explain why there was a such urgency to deliver its report prior to conclusion of the investigation, when

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Dr. Boutros's was already to committed to leaving MetroHealth at the end of his contract, just weeks away.

290. What evidence the Board's private investigation counsel had gathered by the time he submitted his report was misrepresented.

291. For example, the conclusion that Dr. Boutros's 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 to the Report, in which Dr. Boutros wrote an email to the Board about 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.

292. The Report fails to note that Dr. Boutros did not provide the salary information to the Plain Dealer and that it was actually the Board Chair who provided the data which had been vetted by the MetroHealth Law Department and approved by the Assistant General Counsel.

293. On November 21, 2022, just 3 days after receiving the incomplete Report, the Board of Trustees met to consider Dr. Boutros's employment.

294. They retired to Executive Session to receive a presentation from their private investigation counsel on his Report.

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

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296. During the Executive Session, the Board of Trustees briefly deliberated on whether to accept the recommendation of the investigator that Dr. Boutros's employment be terminated "for cause."

297. Contrary to Ohio law, there was no meaningful public deliberation on this momentous decision.

298. Within minutes of exiting Executive Session, and without public deliberation, the Board of Trustees voted to terminate Dr. Boutros's employment, effective immediately, "for cause."

299. 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.

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

301. She also issued a statement in which she falsely stated that:

- Dr. Boutros admitted to wrongdoing.
- Dr. Boutros repaid $2,104,337.11 in response to the Board's "immediate demand for repayment of the supplemental bonus money."
- Dr. Boutros's employment agreement "makes clear that the Board sets Dr. Boutros's compensation," including incentive payments.
- "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."

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- "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's compensation."

302. 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:

- Dr. Boutros never admitted to wrongdoing.

- Dr. Boutros was pressured and coerced into tendering the disputed compensation with promises that the Board would evaluate him and repay the funds.

- The Board authorized and approved the three components of the Performance Plan and the self-evaluation by Dr. Boutros without reservation as to his participation.

- The Board consistently evaluated Dr. Boutros's performance at the highest levels.

- The Board authorized all Performance Plan payments to all eligible employees each year through resolution and without reservation as to Dr. Boutros.

- The Board delegated the authorities to Dr. Boutros "to take necessary actions consistent with" its funding and disbursement resolution for the Performance Plan without reservation as to Dr. Boutros's participation.

- The Board's independent compensation consultant failed to deliver on its contract and the Board failed to ask for the CEO's actual compensation from their consultant.

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- The System's "nationally recognized compensation consultant" hired to annually review and assess Dr. Boutros's compensation" never requested or received compensation information directly from Dr. Boutros.

- In 2019, Dr. Boutros explained the supplemental PBVC component of the Performance Plan and its impact on Total Cash Compensation to the System's compensation consultant, the Board's independent compensation consultant and the Chief Legal Officer.

- Also in 2019, Dr. Boutros provided his and other senior executives' total cash compensation, including the supplemental PBVC component of the Performance Plan for 2017 and 2018 when requested of him by the Board.

- Dr. Boutros regularly provided the Board details on the initiatives applicable to the supplemental PBVC component of the Performance Plan.

- The Board never requested information on individual payments for the supplemental PBVC component of the Performance Plan despite it being applied to hundreds of MetroHealth employees for five years.

- Dr. Boutros's employment agreement gives the Board exclusive authority only over base salary, not Performance Plan payments.

- Dr. Boutros is the only one of some 189 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's total compensation, including supplemental incentives, never exceeded the limits

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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.

303. In a meeting with the MetroHealth Foundation Board after Dr. Boutros's termination, on or about December 1, 2022, Defendant Whiting or Defendant Walker spoke of Dr. Boutros's conduct as "stealing" and "double-dipping."

304. 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" Performance Plan payments to himself, that his incentive payments were "unauthorized," and that Dr. Boutros was unworthy of trust.

305. 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's compensation, or to any incentive compensation program, was ever unaccounted for in the business and payroll records of The MetroHealth System.

306. 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 dishonest, and a thief, and his reputation was destroyed.

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

307. 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.

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

309. 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's conduct was well within his delegated authority.

310. For example, an addition to the first clause of the Policy specifically calls for a review of CEO prior year compensation and proposed changes. This addition demonstrates that such review was not required or completed prior to this change.

311. 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 change shows that this reporting relationship for the consultant was previously delegated to Dr. Boutros as the CEO.

312. 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 and in Dr. Boutros's

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Employment Agreement, 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.

313. 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 was included in all applicable compensation programs available to Executives.

The Defendants' Malicious and Bad Faith Conduct

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

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

316. The Defendants' conduct in terminating Dr. Boutros's employment based on an incomplete Report, 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.

317. The Defendants' conduct, through the Board's private investigation counsel, was in bad faith, and malicious, in administering a Garrity Warning to Dr. Boutros and then issuing a Report concluding that Plaintiff could face specific

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criminal liability and lobbying the Cuyahoga County Prosecutor to press charges against Dr. Boutros.

318. The Defendants' conduct was in bad faith, and malicious, in issuing and relying on the 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."

319. The Defendants' termination of Dr. Boutros's 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.

320. 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.

321. Accusing Dr. Boutros of exceeding his authority when the Board had recently 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.

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

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323. The Defendants' failure and refusal to follow through on Dr. Boutros's 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.

324. The Defendants' claim that "cause" existed to terminate Dr. Boutros's employment because of his "excessive demands" constitutes bad faith and malicious conduct when he was demanding only that the Board act in compliance with applicable law, applicable Board By-Laws, and with the terms of his Employment Agreement.

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

326. The Defendants' statements that Dr. Boutros's 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.

327. The Defendants' statements were made with actual malice because there were obvious reasons for Defendants to doubt their veracity or accuracy and they were made with purposeful avoidance of the truth. Such reasons include, but are not limited to:

- institutional knowledge of Dr. Boutros's participation in the supplemental PBVC portion of the Performance Plan by the Chief Legal Officer, the Chief Financial Officer and certain Board members;

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- universally accessible payroll and tax records, including W-2s issued annually to Dr. Boutros, contained accurate and timely information concerning his total cash compensation, including the supplemental PBVC portion of the Performance Plan;

- books and records of MetroHealth include a February 27, 2019 presentation by Dr. Boutros to the Board's Executive/Personnel Committee which accurately disclosed his total remuneration for 2017 and anticipated total for 2018, including supplemental PBVC;

- in September 2020, multiple media sources, including Cleveland Business Journal, Cincinnati Business Courier, and Columbus Business First accurately set forth Dr. Boutros's total cash compensation including the supplemental PBVC component of the Performance Plan;

- when stating "the Board" did not know, the Board's private investigation counsel and Defendant Silvers intentionally failed to consult with all current and former Board members to ascertain the truth of that statement, and not all Board members agree with it.

The Defendants' Cover-Up and Alleged Spoliation of Evidence

328. In the Ohio Auditor of State's November 12, 2024 report on its Special Audit, it concluded, among other things, that the MetroHealth Board "did not effectively oversee [Dr. Boutros]'s compensation…"

329. As of at least October 11, 2022, during the meeting with Dr. Bourtros detailed above, Defendants Whiting and Silvers claimed to be concerned about the best interests of the organization.

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330. The transcript of a recording of that meeting, however, reveals that these Defendants were equally motivated by a desire not to be "exposed" and not to be accused that they "should have known" and were therefore "culpable" in regards to Dr. Boutros's disputed compensation.

331. In addition to casting Dr. Boutros as a "villain" by wrongfully accusing him of concealment and theft, the Defendants have taken steps to cover-up evidence and findings that tell the true story.

332. On December 8, 2022, after firing Dr. Boutros, the Board caused its private investigation counsel to hire BDO, a private audit firm (rather than the Ohio Auditor of State), to conduct a forensic accounting examination and analysis of Dr. Boutros's compensation.

333. BDO was not independent.

334. BDO was paid out of MetroHealth assets.

335. The work of BDO was overseen by the Board's private investigation counsel, who had no accounting or audit expertise, yet conducted many of BDO's interviews with MetroHealth personnel.

336. The final version of the BDO report was released on February 22, 2023.

337. The report's "Conclusions" assigned no culpability to the Board of Trustees.

338. A draft of the BDO report dated February 15, 2023, however, concluded that a "Lack of Inquiry from BOT [Board of Trustees] Regarding PBVC Payouts and

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Resolution [sic]" was a "CEO compensation control weakness[] resulting in unauthorized compensation."

339. The draft BDO report stated, in relevant part:

> Based on our analysis, the BOT did not inquire further regarding aspects of the PBVC program funding and related usage. … Inquiry is the primary means by which the BOT can test the veracity of information provided to them by the System's executives.

340. The Defendants and their private investigation counsel caused this conclusion to be omitted from BDO's final report.

341. They did so to avoid the Board being "exposed" as "culpable" for the alleged misconduct they attributed to Dr. Boutros and in furtherance of their "victim-villain-vindicator" public relations strategy.

342. MetroHealth's Chief Financial Officer was provided a draft of the BDO report before its release.

343. He detailed more than a dozen inaccuracies to the then Chief Executive Officer, Airica Steed, and stated that the Defendants should not release the report.

344. In particular, the Chief Financial Officer identified specific instances where the BDO report suppressed facts that he had personally provided to the Board's private investigation counsel and to BDO concerning Dr. Boutros's disclosures, his authority, and the Board's knowing approval of the supplemental PBVC portion of the Performance Plan.

345. The Defendants rejected the Chief Financial Officer's comments and denied his request not to release the report.

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346. In the First Action, the Defendants produced no evidence to contradict the Chief Financial Officer's critiques of the BDO report.

347. The Defendants ignored the Chief Financial Officer's critiques of the BDO report in an effort to suppress the truth and to support their "victim, villain, vindicator" public relations strategy.

348. The Chief Financial Officer resigned his position at MetroHealth over the inaccuracies in the BDO report and his loss of faith in the Defendants to govern the institution.

349. On information and belief and based on media reports after the Defendants fired Dr. Boutros's successor Airica Steed, the Defendants engaged in the destruction of evidence that would have supported Dr. Boutros's position that he never concealed anything from his employer and was fully authorized to participate in the supplemental PBVC portion of the Performance Plan.

350. For example, on information and belief, the emails from 2019 where Dr. Boutros informed Sullivan Cotter and Rob Rogers about the supplemental PBVC portion of the Performance Plan were not produced by Defendants in response to document requests in the First Action. Instead, they were obtained in response from third-parties.

351. On information and belief, MetroHealth's internal auditor, EY, informed the Defendants that the allegations of destruction of documents necessitated a forensic audit or they would be unable to provide an opinion.

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352. On information and belief, MetroHealth engaged Benesch Friedlander Coplan & Aronoff LLP to investigate credible allegations of destruction of documents.

353. On information and belief, shortly after Benesch interviewed co-general counsel Laura McBride, the Board halted the investigation or altered the scope of it.

354. On information and belief, Benesch withdrew from the engagement at that time.

355. On information and belief, then-CEO Airica Steed requested that MetroHealth's newly appointed interim General Counsel continue the investigation, and he did so.

356. On information and belief, the Defendants then fired Airica Steed and the interim General Counsel, terminating his investigation.

357. The Defendants then assigned their private investigation counsel, Tucker Ellis, to investigate the allegations of spoliation of evidence.

358. The Board's private investigation counsel is not independent or free of influence from the Defendants since it has also acted as an advocate to support the Defendants' firing of Dr. Boutros.

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

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

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

361. Plaintiff performed his duties under the contract.

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362. 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.

363. 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.

364. 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.

365. Dr. Boutros's 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.

366. 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.

367. 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's justified expectations.

368. The MetroHealth System breached this implied duty, including, without limitation, by forcing Dr. Boutros to repay incentive compensation he had earned and

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to which he was entitled, and to do so based on false promises to reassess him and repay him as the reassessment dictated.

369. 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)

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

371. 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.

372. 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.

373. 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.

374. As a result of his reliance, Dr. Boutros has been injured. The Defendants never conducted their promised independent reassessment of his contributions, and

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never repaid incentive compensation which he had rightfully earned and to which he was rightfully entitled.

375. Dr. Boutros's 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)

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

377. Without justification or excuse, Defendant The MetroHealth System breached Dr. Boutros's 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.

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

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

COUNT FOUR
(Breach of Contract - Severance)

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

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381. 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's right to terminate the Employment Agreement "with good reason" under Section 12.D.(ii).

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

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

384. Dr. Boutros's 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).

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

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

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

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

388. 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.

389. 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."

390. Dr. Boutros did not engage in illegal conduct, gross misconduct, fraud, embezzlement, theft or dishonesty.

391. In addition to falsely claiming that he acted unlawfully, the Board supported its decision to terminate Dr. Boutros's 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.

392. 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 with written notice of the alleged breach or an opportunity to cure.

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393. Dr. Boutros's 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.

394. 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.

395. 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's justified expectations.

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

397. 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)

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

399. 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.

400. Without justification or excuse, the Defendant MetroHealth System breached this provision of the contract by, among other things, issuing statements

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and reports which disparage Dr. Boutros by accusing him of illegal conduct, gross misconduct, theft and dishonesty.

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

COUNT SEVEN
(Breach of Written Amendment)

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

402. Section 19 of the Employment Agreement states in relevant part that:

> This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof, and the parties have made no agreements, representations, or warranties relating to the subject matter of this Agreement that are not set forth herein… This Agreement may not be modified, amended, or waived in any manner except by an instrument in writing signed by each of the parties hereto…

404. Defendants have admitted that no writing exists wherein the Board of Trustees reserved to itself the exclusive authority to determine the amount of Dr. Boutros's Performance Plan compensation.

405. Notwithstanding that no such writing exists, in breach of Section 19 of the Agreement Defendant MetroHealth terminated Dr. Boutros's employment in reliance on an unwritten amendment to the Agreement to the effect that the Board reserved to itself the exclusive authority to determine the amount of Dr. Boutros's Performance Plan compensation.

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

COUNT EIGHT
(Defamation)

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

408. 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.

409. 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 Private Investigative 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.

410. False and defamatory statements were also made to members of the MetroHealth Foundation board when Defendants Whiting and Walker addressed that body and spoke of Dr. Boutros's conduct as "stealing" and "double-dipping." The MetroHealth Foundation board is a separate and distinct legal entity from any of the Defendants.

411. 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.

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412. 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.

413. 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.

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

415. 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.

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

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(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, Defendant The MetroHealth System in an amount to be proven at trial together punitive damages as allowed by law; plus

(viii) On Count Eight, damages against Defendants according to the defamatory statements attributable to each in an amount to be proven at trial together punitive damages as allowed by law; plus

(ix) 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

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

(xi) An inference adverse to Defendants to the effect that evidence they destroyed would have supported Dr. Boutros's position that he was fully authorized to participate in the supplemental PBVC portion of the Performance Plan and that he never concealed his participation from "the Board" together with other appropriate relief for the spoliation of evidence; plus

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

(xiii) Pre- and post-judgment interest as permitted by law; plus

(xiv) All other relief, legal or equitable, to which he may be entitled.

/s/ Jason R. Bristol
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Attorneys for Plaintiff
Akram Boutros, M.D.

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JURY DEMAND

Plaintiff demands a trial by jury on all eligible claims and issues.

/s/ Jason R. Bristol
Jason R. Bristol (0072989)

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EXECUTION COPY

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into at Cleveland, Ohio, effective as of the date provided below, by and between **AKRAM BOUTROS M.D. FACHE** ("Executive") and **THE METROHEALTH SYSTEM**, a county hospital established and operating pursuant to Chapter 339 of the Ohio Revised Code ("System").

WITNESSETH:

WHEREAS, Executive has been employed as President and Chief Executive Officer of the System pursuant to that certain Amended and Restated Employment Agreement dated effective as of July 1, 2015 (the "2015 Agreement"); and

WHEREAS, the System and Executive desire to enter into a new agreement (the "Agreement") to retain Executive's services to the System, to protect the System's confidential information, and to protect the System from competition by Executive upon the termination of his employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and provided sufficient funds are able to be appropriated, the parties hereto agree as follows:

1. Employment; Term. The System hereby employs Executive, effective as of January 1, 2020 ("Effective Date"), and Executive accepts employment by the System upon the terms and conditions set forth in this Agreement. Executive's employment under this Agreement shall continue for a continuing three-year period (3) year period of time ending on the third anniversary of the Effective Date ("Initial Term"), provided, however, that the term of this Agreement shall be automatically extended in one-year increments for not more than two additional one-year periods beyond the third anniversary (each, an "Extended Term"), with such extensions being effective on the first anniversary of the Effective Date and the second anniversary of the Effective Date subject to the right of the System or Executive to notify the other party in writing of the intention not to extend the term beyond the expiration of the Initial Term or an Extended Term, as the case may be, and such notice is provided to the other at least one year in advance of such expiration (the Initial Term and any Extended Term being collectively referred to as the "Term").

A. 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. The Executive shall perform such duties promptly and in a professional manner and in accordance with MetroHealth's rules, regulations, policies and procedures, which Executive acknowledges shall include MetroHealth's "Values" in the form attached hereto as Exhibit A-1, as they may be amended from time to time.

B. Executive agrees to devote his full time to the performance of his duties hereunder for the purpose of advancing the best interests of System. Executive shall not, directly

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or indirectly, alone or as a member of any partnership, or as an officer, director, trustee or employee of any other corporation, partnership, or other organization, be actively engaged in any other duties or pursuits that interfere with or compete with the performance of Executive's duties hereunder; provided, however, that Executive may: (i) make any passive investments where he is not obligated or required to, and shall not in fact, devote any managerial efforts, (ii) participate in charitable or community activities or in trade or professional organizations, and/or (iii) subject to Board approval, hold directorships in other companies, except only that the Board shall have the right to limit such services as a director or such participation whenever the Board shall reasonably believe that the time spent on such activities infringes in any material respect upon the time required by Executive for the performance of his duties under this Agreement or is otherwise incompatible with those duties, it being understood that Executive's position(s) identified on Appendix A (attached hereto) are approved and accepted by the Board. Notwithstanding any provision to the contrary, Executive shall not hold any position or engage in any activity which violates the Ohio Ethics Law.

2. Compensation.

A. Executive shall be compensated for his services as President and Chief Executive Officer at a base rate determined as set forth below, less applicable payroll deductions and withholdings, in accordance with the System's bi-weekly payroll system ("Base Salary"), which will be effective for the full 2020 calendar year commencing as of the Effective Date. 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 and 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") and confirmed to the Board by its compensation advisor, utilizing such data provided by the Compensation Consultant. The Board will select the 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.

B. In addition to his Base Salary, Executive shall be eligible for annual performance based variable compensation for the services rendered by him pursuant to 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".

3. Retirement Plans. During the Term, Executive will be eligible to participate in the Ohio Public Employees Retirement System ("OPERS") and for contributions to OPERS under the terms and conditions of OPERS and the System's policies, with the understanding that the System's contribution shall be at the rate of 14% of Executive's compensation under current

law (as such compensation is limited under OPERS to reflect tax code restrictions). In addition to OPERS, the System will provide additional retirement compensation in the form of a Section 457(f) arrangement.

A. The System will establish a new Section 457(f) plan for Executive effective for contributions attributable to 2019 and subsequent years. The plan is intended to qualify as an unfunded, non-qualified, deferred compensation plan maintained by a government organization for which the benefits are subject to a substantial risk of forfeiture within the meaning of Code Section 457(f). Distribution under the Section 457 plan shall occur upon or as soon as is practicable after (and to the extent) amounts thereunder become taxable as income to Executive under the applicable tax code requirements).

B. For each year during the Term of Executive's employment hereunder, and including the contribution for calendar year 2019, System shall make an annual contribution credit equal to twenty five percent (25%) of Executive's Total Cash Compensation for such year, with the amount calculated and paid to a funding mechanism established for this purpose no later than sixty (60) days following the end of the prior year; provided, however, that the amount of such contribution which would be calculated based upon the PBVC provided in Section 2.B. will be made as soon as practicable following the final calculation and payment of such PBVC.

C. The plan arrangement established by the System will include mutually agreeable provisions with respect to the holding of such funds in an account and a mechanism for crediting investment earnings and losses to such account.

D. An amount equal to one-third of each Plan Year Contribution, together with one-third of any income, gain, interest or loss credited with respect to such Plan Year account, shall vest each year provided Executive remains employed by the System on the last day of each of the subsequent three years. Except as provided in paragraph E, below, Executive shall be entitled to prorated contributions through any date of separation each year, which shall include a prorated calculation of the Annual Performance Incentive. Executive also, in any event, shall become fully vested in his account on (i) the date of his separation from employment due to his death or Disability, (ii) the date of his termination without Cause, or (iii) the date of his termination for Good Reason.

E. There shall be no vesting if Executive is terminated for Cause or Executive terminates this Agreement without Good Reason before becoming vested under paragraph D, above.

F. The specific terms and conditions of this proposed plan shall be set forth in an arrangement established by the System which incorporates the necessary terms and conditions to accomplish the objectives set forth in paragraph A. above and reflects the terms of this Section 3.

4. Health Insurance, Other Benefits, Perquisites, Liability Insurance, Etc. During the Term, the System shall provide Executive and Executive's spouse and eligible dependents (as dependents are defined by the System for such purposes) with medical, prescription drug, dental and vision insurance coverage (hereafter "Group Health Insurance Benefits") in amounts and on terms as determined from time to time by the System similar to the Group Health Insurance Benefits afforded by the System to its other senior executive officers. Any such insurance

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coverage will be limited to and provided only in accordance with the express terms of the applicable plan document or policy and subject to any conditions, restrictions or limitations of such plan document or policy. Except as expressly provided otherwise under such plan document or policy, under Section 12 of this Agreement, or by applicable law, all Group Health Insurance Benefits referred to in this Section shall cease upon termination of employment, regardless of the reason for termination and regardless of which party initiated the termination, except as set forth in Section 12 below. In addition, Executive will be entitled to any and all other benefits (including, without limitation, coverage for officer liability and medical malpractice and long term disability) customarily provided by the System to its senior executive officers (or, in the case of malpractice coverage, its medical practitioners) consistent with the System's policies and practices. Executive shall accrue six (6) weeks' vacation during each year of the Agreement. In addition to the vacation weeks, the Executive shall be entitled to attend, at the expense of System, one (1) non-work related educational programs and meetings of professional associations during each year of the Agreement.

5. Expenses, Reimbursements, In-Kind Benefits. Executive shall be reimbursed in accordance with the System's policies for all reasonable and necessary out-of-pocket expenses incurred by Executive in the performance of Executive's duties while actively employed by the System under this Agreement. Upon termination of this Agreement pursuant to Section 12, the System's obligations under this Section shall cease immediately except as provided in Section 12. Notwithstanding any other provision of this Agreement or the applicable plans, programs, policies, and/or arrangements, all reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the final regulations issued thereunder (collectively, "Section 409A"), including, where applicable, the requirement that (i) the amount of expenses eligible for reimbursement and the provisions of benefits in kind during a calendar year shall not affect the expenses eligible for reimbursement or the provision of in-kind benefits in any other calendar year; (ii) the reimbursement for an eligible expense will be made on or before the last day of the calendar year following the calendar year in which the expense is incurred; (iii) the right to reimbursement or right to in-kind benefit is not subject to liquidation or exchange for another benefit; and (iv) each reimbursement payment or provision of in-kind benefit shall be one of a series of separate payments (and each shall be construed as a separate identified payment) for purposes of Section 409A.

6. Employment at Will. Subject to the applicable notice provisions provided in Section 12, Executive acknowledges and agrees that despite the terms of this Agreement, during his employment with the System he serves at the will of the Board and may be removed by the Board whenever the Board determines it to be in the best interests of the System, at any time, with or without notice and with or without Cause.

7. Confidential Information. Executive acknowledges that, during the course of Executive's employment with the System, Executive will have access to Confidential Information. "Confidential Information" shall mean any information, data or knowledge relating to the System or any of its affiliated businesses which is considered proprietary by the System or information which constitutes trade secrets under the laws of the State of Ohio. Executive acknowledges that the Confidential Information has been maintained as confidential by the System and is highly valuable to the System and the disclosure of it to third parties or unauthorized use of it by Executive would cause the System serious competitive harm.

8. Non-Disclosure of Confidential Information.

A. Executive shall, immediately upon termination of employment, return to the System all Confidential Information, as well as any copies made of the information and any other material, including handwritten notices made or derived from that information.

B. Executive shall not during Executive's employment, unless required by law, disclose to any third parties Confidential Information, and Executive shall confine use of Confidential Information exclusively to carrying out Executive's responsibilities for the System. Executive shall not after termination of employment, unless required by law, disclose or use in any way for any purpose Confidential Information.

C. Executive agrees that during and after Executive's term of employment, Executive will not make any representations, orally or in writing, which are disparaging of the System or its affiliates and their directors, trustees, officers, employees, and agents. In turn, the System agrees it will not engage in any conduct or communications which are disparaging of Executive.

9. Work Product. All Work Product (defined below) created by Executive shall belong exclusively to the System. Executive acknowledges that all of Executive's writing, works of authorship and other items of Work product are works made for hire and the property of the System, including any copyrights, patents or other intellectual property rights pertaining thereto. Executive covenants that Executive shall promptly:

A. disclose to the System in writing any newly created Work Product;

B. assign to the System or to a party designated by the System, at the System's request and without additional compensation, all of Executive's rights to such Work Product created by Executive for the United States and all foreign jurisdictions;

C. executive and deliver to the System such applications, assignments, and other documents as the System may request in order to apply for and obtain patents or other registrations with respect to any Work Product created by Executive in the United States and any foreign jurisdictions;

D. sign all other papers necessary to carry out the above obligations; and

E. give testimony and render any other assistance in support of the System's rights to any Work Product created by Executive.

For purposes of this Agreement, the term "Work Product" shall include (a) any idea, invention, technique, modification, process, or improvement (whether patentable or not), and any work of authorship (whether or not copyright protection may be obtained for it) that is (i) created, conceived, or developed by Executive, either solely or in conjunction with others, and (ii) created during the period of Executive's employment with the System, and (iii) useful in the System's business, and (b) any such item created by Executive, either solely or in conjunction with others, following termination of Executive's employment with the System, that is based upon or uses Confidential Information and which relates to, or is useful in, the System's

business. The System acknowledges that it shall have no rights in any Work Product or other intellectual property owned by the businesses identified in Appendix A.

10. Restrictive Covenants. The Executive agrees that certain restrictions on his activities during and after his employment are necessary to protect the goodwill, confidential information and other legitimate interests of the System. During this Agreement and, except as otherwise expressly provided in this Section 10, for a period of two (2) years following its termination, the Executive will not, directly or indirectly, do or suffer any of the following:

A. Own, manage, control, or participate, in the ownership, management, or control of, or be employed or engaged by or otherwise affiliated or associated as a consultant, independent contractor or otherwise with, or otherwise provide any assistance to, any other corporation, partnership, proprietorship, firm, association, or other business entity engaged in, or otherwise engage in any business competitive with the System's Business (as defined below); *provided, however*, that the following shall not be deemed a violation of this covenant: (i) the Executive's ownership of less than 5% of any class of publicly-traded securities of an entity in the System's Business or (ii) the Executive's ownership of up to 5% of the equity of a privately-held entity so long as such ownership is a passive investment only that does not interfere with Executive's obligations under this Agreement.

B. Induce, directly or indirectly, any person who is an employee, officer or agent of the System (or any of its affiliates) to terminate or otherwise modify that person's relationship with the System or solicit or encourage any customer or vendor of the System (including any provider or any insurance company, payor or similar entity with which the System contracts) to terminate or diminish its relationship with them, or, in the case of a customer, to conduct with any person any business or activity which such customer conducts or could conduct with the System.

C. For purposes of this Agreement, "System Business" means: (i) the provision in Cuyahoga County of hospital services (inpatient or outpatient), and (ii) the provision in Cuyahoga County of services or programs, whether through the provision of services and programs for the medical center, health system, or other health care entity such as those services or programs offered by the System in Cuyahoga County.

11. Reasonableness of Restraints; Irreparable Harm; Breach of Agreement No Defense.

A. Executive acknowledges that the covenants of Sections 7, 8, 9 and 10 of this Agreement are reasonably necessary to protect the goodwill, trade secrets, and other business interests of the System and that they will cause Executive no undue hardship.

B. Executive acknowledges that any breach of these covenants will cause the System immediate irreparable harm for which injunctive relief would be necessary.

C. Executive acknowledges that the covenants of Sections 7, 8, 9 and 10 of this Agreement are of the essence of this Agreement. They shall be construed as independent of any other provision in this Agreement, and the existence of any claim or cause of action of Executive against the System, whether predicated on this Agreement or otherwise, will not constitute a defense to the enforcement by the System of these covenants. Executive also

acknowledges that the covenants of Sections 7, 8, 9 and 10 of this Agreement survive the termination of this Agreement and survive the termination of Executive's employment. Executive further acknowledges that the System shall have no obligation to provide any severance payments and benefits should Executive violate Sections 7, 8, 9 and 10 of this Agreement.

D. Executive agrees that (1) any breach of Sections 7, 8, 9 and 10 by Executive will cause immediate irreparable harm to the System, (2) that the remedy at law if Executive breaches any part of Sections 7, 8, 9 and 10 will be inadequate to properly redress the System's injury, and (3) that the damages flowing from such breach will not be readily susceptible to being measured in monetary terms. Therefore, the System shall have, in addition to any and all remedies provided by law, the right to immediate injunctive relief, specific performance, and/or other equitable relief to prevent the violation of Executive's obligations hereunder, and the prevailing party in any such action shall be entitled to recover any attorneys' fees, expenses, and costs that it incurs in enforcing or defending a claim under Sections 7, 8, 9 and 10. In the event that Executive violates any part of the restrictive provisions of Sections 7, 8, 9 and 10 as to which there is a specific time period during which Executive is prohibited from taking certain actions or from engaging in certain activities, such violation shall toll the running of such time period from the date of such violation until the violation ceases to the extent permitted by law.

12. Termination of Employment.

A. Termination by the System

(i) By the System for Cause. The System, through its Board, may terminate this Agreement and Executive's at-will employment for Cause. For the purpose of this Agreement, the System shall have "Cause" to terminate employment hereunder 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. Except as otherwise provided in this Agreement, the System's obligations under this Agreement, including any obligations under Sections 2, 3 and 4, shall cease from and after the effective date of Executive's termination for Cause.

(ii) By the System without Cause. The System, through its Board, may terminate Executive's employment and this Agreement at any time without Cause consistent with Executive's at-will employment relationship. If termination is pursuant to this Section 12.A(ii), Executive will receive as severance Executive's 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", as defined below, after the effective date of termination, contingent upon Executive executing a general release in the form reflected in Attachment A, and subject to the offset for "Other Salary" as set forth below. Upon such termination of employment, the System, at its expense, will also provide Executive with a senior executive level outplacement assistance package with a firm selected by the Executive, up to a maximum of $25,000. Further, following such termination, the System shall pay to the Executive: (i) the Base Salary earned but not paid through the date of termination, (ii) any vacation time earned but not used through the date of termination, (iii) any Performance Based Variable Compensation earned but unpaid on the date of termination for a year ended prior to such termination and for the year of such termination prorated through the date of termination and determined in accordance with Section 2.B using the established target performance standard in effect for such periods prorated as provided below, and Performance Based Variable Compensation and section 457(f) plan payments for the "Applicable Severance Period" at the average of the percentage of Base Salary equal to that received during the two (2) years prior to the date of termination, and (iv) any business expenses incurred by Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within thirty (30) days of termination and that such expenses are reimbursable under the System's policy. The payment of any Performance Based Variable Compensation earned for the year of such termination will be based upon a proration determined as follows: the number of months the Executive worked in such year plus three (3) months. In such event the Performance Based Variable Compensation will be calculated at Target unless Executive worked nine (9) months or more, in which case the calculation will be made based on actual results.

(iii) By the System's Notice of Non-Extension. Pursuant to Section 1.A, the System can allow the Term of this Agreement to expire at the end of the Initial Term or an Extended Term by providing the Executive with at least one year of advance notice of such expiration. If this Agreement expires pursuant notice by the System (as opposed to notice by the Executive) under this Section 12.A(iii): in the case of an expiration upon the end of the Initial Term, the Executive will receive as severance Executive's then current Base Salary, Annual Performance Incentive using the target performance standard, and Group Health Insurance

Benefits at the rate and on the terms in effect at the time of termination for the "Applicable Severance Period" after the effective date of termination, contingent upon Executive executing a general release in the form reflected in Attachment A, and subject to the offset for "Other Salary" as set forth below. Further, in the event of any such termination by expiration of the Term, the System shall pay to the Executive: (i) the Base Salary earned but not paid through the date of termination, (ii) any vacation time earned but not used through the date of termination, (iii) any Performance Based Variable Compensation earned but unpaid on the date of termination for a year ended prior to such termination and for the year of such termination prorated through the date of termination and determined in accordance with Section 2.B using the established target performance standard in effect for such periods, and (iv) any business expenses incurred by Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within thirty (30) days of termination and that such expenses are reimbursable under the System's policy.

(iv) Applicable Severance Period. The Applicable Severance Period shall mean a period of twenty-four (24) months. In addition, MetroHealth shall have the right to suspend such obligations for payments and benefits pursuant to Sections 12.A.(ii), 12.C., or 12.D.(ii) hereunder in the event Executive is charged with a matter described in Section 12.A(i) of this Agreement and to terminate such obligations in the event of the occurrence of an action described in Section 12.A.(i) of this Agreement, in either case provided that such action arises in connection with or out of Executive's employment with MetroHealth.

B. Termination for Death. In the event of Executive's death during the Term of this Agreement, Executive's employment and this Agreement shall terminate immediately and automatically. If Executive's employment is terminated because of Executive's death, the System shall pay to Executive's estate: (i) the Base Salary earned but not paid through the date of termination, (ii) any vacation time earned but not used through the date of termination, (iii) any Performance Based Variable Compensation earned but unpaid on the date of termination for a year ended prior to such termination and for the year of such termination prorated through the date of termination and determined in accordance with Section 2.B using the established target performance standard in effect for such periods, and (iv) any business expenses incurred by Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within thirty (30) days of termination and that such expenses are reimbursable under the System's policy. The System shall have no further obligation to Executive hereunder.

C. Termination for Disability. Executive's employment hereunder and this Agreement will terminate upon the date of termination specified in a written notice of termination by reason of Disability, determined as set forth below and delivered by the System to Executive at least thirty (30) days prior to the specified date of termination, which is any date after the expiration of any consecutive six (6) month period during all of which Executive is unable to perform the essential duties required of Executive under this Agreement by reason of any physical or mental condition of Executive that substantially incapacitates Executive from performing such essential duties; provided, however, that such notice shall be null and void if Executive fully resumes the performance of Executive's essential duties hereunder prior to the date of termination as set forth in the notice. A determination of "Disability" for purposes of this Agreement shall be made by a physician satisfactory to both the System and the Executive; provided, however, that if the System and the Executive do not agree on a physician, the System

and the Executive shall each select a physician and these two together shall select a third physician, whose determination as to disability shall be binding on all parties. The Executive's receipt of disability benefits under Employer's long-term disability benefits plan or receipt of Social Security disability benefits shall be deemed conclusive evidence of Disability for purpose of this Agreement. If Executive's employment is terminated because of Executive's Disability, the System shall pay to the Executive: (i) the Base Salary earned but not paid through the date of termination, (ii) any vacation time earned but not used through the date of termination, (iii) any Performance Based Variable Compensation earned but unpaid on the date of termination for a year ended prior to such termination and for the year of such termination prorated through the date of termination and determined in accordance with Section 2.B using the established target performance standard in effect for such periods, and (iv) any business expenses incurred by Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within thirty (30) days of termination and that such expenses are reimbursable under the System's policy. The System shall have no further obligation to Executive hereunder.

D. Termination by Executive.

(i) Without Good Reason. In the event Executive retires, resigns or declines continued employment with the System without Good Reason, the System's obligations under this Agreement, including any obligations under Sections 2, 3 and 4, shall cease from and after the effective date of Executive's termination. 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.

(ii) With Good Reason. 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.

(iii) By the Executive's Notice of Non-Extension. Pursuant to Section 1.A, the Executive can allow the Term of this Agreement to expire at the end of the Initial Term or an Extended Term by providing the System with at least one year of advance notice of such expiration. If this Agreement expires pursuant notice by the Executive (as opposed to notice by the System) under this Section 12.D(iii), the System shall pay to the Executive: (i) the Base Salary earned but not paid through the date of termination, (ii) any vacation time earned but not used through the date of termination, (iii) any Performance Based Variable Compensation earned but unpaid on the date of termination for a year ended prior to such termination and for the year of such termination prorated through the date of termination and determined in accordance with Section 2.B using the established target performance standard in effect for such periods, and (iv) any business expenses incurred by Executive but unreimbursed on the date of termination, provided that such expenses and required substantiation and documentation are submitted within thirty (30) days of termination and that such expenses are reimbursable under the System's policy.

E. Other Provisions Regarding Termination with Severance.

(i) Provision of Severance and Continuation of Group Health Insurance Benefits. In executing this Agreement, the System agrees to appropriate from non-tax revenue sufficient funds to meet the System's obligations for continued Base Salary, Group Health Insurance Benefits, and outplacement assistance to the extent otherwise required under Section 12.A(ii), 12.A(iii) and 12.D(ii). Anything in this Agreement to the contrary notwithstanding, the System shall not be obligated to provide any severance and benefits should Executive fail, unless good cause exists, to return any material property, both tangible and intangible, that belongs to the System within thirty (30) days of termination; provided that the Executive is given at least fifteen days advance notice by the System of the failure and the Executive does not cure such failure within ten (10) days of such notice.

(ii) Release. Payment of severance, including the continuation of Base Salary, Group Health Insurance Benefits and the provision of outplacement assistance, shall commence within forty-five (45) days following Executive's termination of employment; provided that Executive has delivered an executed general release, in a form prescribed by the System, to the System ("General Release") and the seven (7) day statutory period during which Executive may revoke the General Release has expired before commencement of severance payments; and provided further that if such forty-five (45) days period begins in one calendar year and ends in a second calendar year, payment shall always commence in the second calendar year ("Severance Payment Effective Date"). If Executive fails timely to sign and deliver the General Release, the System shall not be obligated to provide any continued Base Salary, Group Health Insurance Benefits or outplacement assistance, as applicable.

(iii) Group Health Insurance Benefits. The right to continue the Group Health Insurance Benefits also shall be offered pursuant to Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended, and Section 4980B of the Code (collectively, "COBRA") from the Severance Payment Effective Date (retroactive to the

termination date) through the end of the Applicable Severance Period for such termination, or if less, through the end of the COBRA coverage period. Executive shall be required to pay an amount for Group Health Insurance Benefits that is equal to the employee contribution for such coverage that Executive was required to pay at the time of Executive's termination date; provided, however, that, in the event such Group Health Insurance Benefits would result in adverse tax consequences to Executive or trigger the imposition of a penalty on the System under applicable law, then Executive shall pay the full cost of the amount for such coverage (both employee and employer) on an after-tax basis and, if permitted under applicable law, as determined in good faith by the System, the System shall reimburse Executive for the employer payments on a monthly basis. Any right to continue Group Health Insurance Benefits at the employee contribution level shall apply only after the Severance Payment Effective Date (retroactive to the termination date) and through the Applicable Severance Period, or if earlier, through the end of the COBRA coverage period.

(iv) Payment of Severance and Offset for "Other Salary". While severance is being paid during the Applicable Severance Period, if Executive secures other employment, any salary or incentive compensation or payments under the Section 457(f) Plan received by Executive from such employment will reduce, on a dollar-for-dollar basis, an amount equal to the sum of the Base Salary payments and Annual Performance Incentive payments by MetroHealth in accordance with paragraph A(iv).

F. Section 409A Compliance. All payments and benefits to be made or provided to Executive upon a termination of employment may only be made upon a "separation from service" of Executive, within the meaning of Section 409A. For purposes of Section 409A, (i) each payment made under this Agreement shall be treated as a separate payment; (ii) Executive (his spouse or beneficiary) may not, directly or indirectly, designate the calendar year of payment; and (iii) except as provided by Section 409A, no acceleration of the time and form of payment of any nonqualified deferred compensation to Executive or any portion thereof, shall be permitted. All compensation, including nonqualified deferred compensation within the meaning of Section 409A, payable pursuant to the terms of this Agreement or otherwise, shall be subject to all applicable tax withholdings.

13. Cooperation. Executive agrees that if the System becomes involved in any legal or administrative claims or proceedings relating to events which occurred during Executive's employment or as to which, in the System's opinion, Executive has personal knowledge, Executive will cooperate to the fullest extent possible in the System's investigation or prosecution of their claims or defense without the necessity of a subpoena. Executive shall not be entitled to any reimbursement for such cooperation during the period in which Executive is receiving severance pursuant to Section 12.A(ii), 12.A(iii) or 12D(ii) above, if and as applicable. Thereafter, Executive shall be reimbursed for any expenses occasioned by Executive's compliance with this Section upon the presentation of appropriate receipts and other documentation; provided, however, that Executive shall not be entitled to reimbursement for time spent on matters for which Executive's allegedly wrongful actions form the basis of the action or claim.

14. Severance of Clauses. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate any of the other provisions of this Agreement. The parties intend that any such provision shall be severed

from this Agreement and that this Agreement shall be enforced to the full extent permitted by law.

15. Assignees. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, and administrators of Executive, and to the successors and assigns of the System.

16. Governing Law. This Agreement shall be governed by the laws of the State of Ohio, without regard to provisions regarding conflict of laws, and both parties consent to venue and personal jurisdiction over them in the courts of that state, including the federal courts, for purposes of construction and enforcement of this Agreement.

17. Notice. For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Executive:

Akram Boutros M.D., FACHE
1684 Lorain Avenue
Cleveland, Ohio 44113

If to the System:

The MetroHealth System
2500 MetroHealth Drive
Cleveland, Ohio 44109
Attention: Chair of the Board

With a copy to:

The MetroHealth System
2500 MetroHealth Drive
Cleveland, Ohio 44109
Attention: Senior Vice President and Chief Legal Officer

18. Gender. A masculine or feminine term is to be construed as including all genders.

19. Entire Agreement; Amendment; Waiver. This Agreement constitutes the entire agreement of the parties pertaining to the subject matter hereof, and the parties have made no agreements, representations, or warranties relating to the subject matter of this Agreement that are not set forth herein. This Agreement shall supersede any existing employment agreement between Executive and the System and the provisions of this Agreement shall govern with the exception of the contributions previously made under the terms of the Agreement, which shall be subject to the requirements of the Agreement with respect to contributions attributable to 2016, 2017 and 2018 calendar years. This Agreement may not be modified, amended, or waived in any manner except by an instrument in writing signed by each of the parties hereto. The waiver by any party of compliance with any provision of this Agreement by the other party does not

operate as a waiver of any other provision of this Agreement, or of any other breach of such party of a provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date but on the actual dates written below.

THE METROHEALTH SYSTEM

By: Vanessa K White

Date: 1/24/2020

EXECUTIVE

Akram Boutros M.D., FACHE

Date: 1/24/2020

APPENDIX A

COMPANY: PATIENT INNOVATIONS, LLC

OWNERSHIP: 27% owned by Executive and Executive's Family

CURRENT POSITION: Founder

AREAS OF FOCUS PRIOR TO EFFECTIVE DATE: Patient-centered information technology company

CHANGES AFTER EFFECTIVE DATE:

- Executive will maintain current ownership
- Executive will resign as Principal, but provide advisory services, as needed

PRE-EXISTING INTELLECTUAL PROPERTIES: On-Time Care, Loved-One Updates, My Secure Medical Record

EXHIBIT A-1

METROHEALTH VALUES

Our Values (STAR-IQ)

Service to Others
We strive to meet the needs of our patients first, by serving with compassion and advocating for the well-being of the community, especially those without the ability to pay.

Teamwork
We establish an environment of trust and engagement that focuses on the needs of the organization in order to leverage our collective strengths to do the right thing for our patients and colleagues.

Accountability
We accept responsibility for the decisions we make, the outcomes achieved and our personal behavior.

Respect
We treat everyone equally with dignity, candor, compassion and empathy.

Inclusion and Diversity
We foster a community where our differences are celebrated and everyone has an opportunity to be part of our success.

Quest for Excellence
We exemplify the highest standards of patient-centered care and continue to improve through discovery and innovation.

MetroHealth

ATTACHMENT A

GENERAL RELEASE AND SEPARATION AGREEMENT

This General Release and Separation Agreement (**"Agreement"**) is made and concluded by and between **THE METROHEALTH SYSTEM**, a county hospital established and operating under Ohio Revised Code Chapter 339 ("MetroHealth") and **AKRAM BOUTROS M.D., FACHE** (the "Executive"). All references to "MetroHealth" in this Agreement include The MetroHealth System's past, present and future trustees, officers, directors, administrators, employees, shareholders, parents, holding companies, subsidiaries, divisions, affiliates, insurers, employee benefit plans, benefit plans administrators and fiduciaries, agents, representatives, attorneys, and all of their predecessors, successors, and assigns, whether in official, representative, company, or individual capacities.

RECITALS

WHEREAS, the Executive is currently employed at MetroHealth as President and Chief Executive Officer pursuant to an Employment Agreement effective as of January 1, 2020 (**"Employment Agreement"**); and

WHEREAS, the Executive and MetroHealth wish to enter into this Agreement to resolve any and all existing and potential claims between the parties arising out of the Executive's employment with and separation of employment with MetroHealth, consistent with Section 12 of the Employment Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants and undertakings in this Agreement, the receipt and sufficiency of which are hereby acknowledged, MetroHealth and the Executive agree as follows (unless otherwise defined in this Agreement, defined terms shall have the meanings ascribed to them in the Employment Agreement):

1. Mutual Release of Claims.

a. The Executive's Release. The Executive hereby agrees, on behalf of the Executive and the Executive's spouse, heirs, administrators, executors and assigns, to release and forever discharge MetroHealth from any and all suits, claims, demands, and causes of action of any nature or kind whatsoever, which the Executive now has or ever had, up to the date of this Agreement (the **"Release of Claims"**). This Release of Claims includes, without limitation, any suits, claims, demands, or causes of action under federal, state or local laws, regulations, executive orders, common law or other source concerning civil rights, employment discrimination, Executive benefits, wrongful discharge, breach of express or implied contract, promissory estoppel, defamation, emotional distress, whistleblower claims, tort, attorneys' fees and other professional fees or any claims which may have arisen in connection with the Executive's employment with MetroHealth or the cessation thereof including, but not limited to any claims, suits, demands or causes of action under the Employment Agreement. The Executive is not waiving any rights that cannot be waived by law but does forever waive the right to recover any damages should any state or federal agency ever pursue a claim on the

Executive's behalf against MetroHealth relating to any matter whatsoever, up to the execution date of this Agreement. This Release of Claims does not preclude the Executive from exercising his/her rights or remedies under this Agreement.

Without limiting the foregoing, this Release of Claims includes any claim the Executive may have up to the date of this Agreement pursuant to the Federal Age Discrimination in Employment Act, 29 U.S.C. Section 621, *et seq.* and the Older Workers Benefit Protection Act.

The Executive has been advised to consult with an attorney before executing this Agreement and has been given at least forty-five (45) calendar days from the receipt of this Agreement to consider this Agreement before signing it; provided that in no event shall such Release of Claims (and this Agreement) be returned to MetroHealth later than twenty-one (21) days after the Executive's Separation from Service Date (as defined below in Paragraph 2(a)). The Executive may, within seven (7) calendar days after such execution and delivery of this Agreement, revoke the Agreement in its entirety by written notice to MetroHealth and forfeit all payments and benefits under this Agreement. The parties agree that this Agreement shall not become effective until seven (7) calendar days after such execution and delivery to MetroHealth. Any delivery or notice should be received by the Senior Vice President, Chief Legal Officer at The MetroHealth System, 2500 MetroHealth Drive, Cleveland, Ohio 44109.

b. MetroHealth's Release. In consideration of the mutual promises set forth within, MetroHealth hereby agrees to release and forever discharge the Executive from any and all suits, claims, demands, and causes of action of any nature or kind whatsoever, which it has or may ever have had, up to the date of this Agreement arising out of or related to the Executive's employment or the performance of any services to or on behalf of MetroHealth, with the exception of any claims related to misappropriation of funds, embezzlement or fraud. This Release does not preclude MetroHealth from exercising its rights or remedies under this Agreement.

2. Benefits and Perquisites. In connection with the execution of this Agreement, the parties agree as follows:

a. Separation from Service. MetroHealth and the Executive agree that the Executive's termination of employment shall constitute a "separation from service" within the meaning of Section 409A and shall occur on _____, 20__ (the **"Separation from Service Date"**), coinciding with the Executive's last work day as an Executive.

b. Base Salary. In consideration for the Executive's obligations under this Agreement, including the Release of Claims under Paragraph 1, MetroHealth agrees to pay (commencing within forty-five (45) days following the Separation from Service Date) the Executive (or, in the event of the Executive's death, the surviving spouse, or in the event the Executive's spouse does not survive the Executive, the estate) the Executive's Base Salary and such other payments as provided in Section 12 of the Employment Agreement, and subject to the conditions thereof, for a twenty-four (24) month period retroactive to the Separation from Service Date. Such payments will be paid in accordance with MetroHealth's normal payroll procedures and schedule and will be subject to appropriate withholdings.

In addition, MetroHealth shall have the right to suspend such obligations for payments and benefits pursuant to Sections 12.A.(ii), 12.C., or 12.D.(ii) hereunder in the event Executive is charged with a matter described in Section 12.A(i) of this Agreement and to terminate such obligations in the event of the occurrence of an action described in Section 12.A.(i) of this Agreement, in either case provided that such action arises in connection with or out of Executive's employment with MetroHealth.

c. Group Health Insurance Benefits. The Executive shall, commencing with the Separation from Service Date, be provided with all group health insurance benefits (medical, prescription drug, dental and vision) for the period beginning with the Separation from Service Date through _____, 20__, provided the Executive elects to continue such coverage under COBRA. The Executive will assume the Executive's normal contribution to such insurance coverages and MetroHealth will pay the Executive's COBRA premium through _____, 20__.

d. Adequate Consideration. The Executive acknowledges and accepts the payments and other consideration under this Agreement as full, final and complete satisfaction of any and all claims or sums which are now and might hereafter become due and owing to the Executive for services rendered by the Executive to MetroHealth and for the Executive's Release of Claims.

e. Tax Reporting. MetroHealth shall report all income and deduct and withhold all federal, state, local, and employment taxes required by applicable law with respect to any payments and benefits made pursuant to the terms of this Agreement; and the Executive shall be responsible for the payment of all taxes on any payments and benefits made pursuant to the terms of this Agreement.

f. Section 409A. In compliance with Section 409A, notwithstanding any other provision of MetroHealth's plans in effect from time to time, to the extent an in-kind benefit or reimbursement, if any, under paragraph 2 of this Agreement is not exempt from Section 409A:

(I) The amount of expenses eligible for reimbursement and the provision of in-kind benefits during any calendar year shall not affect the amount of expenses eligible for reimbursement or the provision of in-kind benefits in any other calendar year;

(II) The reimbursement of an eligible expense shall be made on or before December 31 of the calendar year following the calendar year in which the expense was incurred; and

(III) The right to reimbursement or right to an in-kind benefit shall not be subject to liquidation or exchange for another benefit.

Notwithstanding the foregoing, in the event that any portion of the payments or benefits to the Executive pursuant to this Agreement are not excluded from the definition of nonqualified deferred compensation under Section 409A, such portion shall begin to be paid in the later of the taxable year in which such would otherwise be payable or the taxable year required under

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Internal Revenue Service Notice 2010-80 (or subsequently issued guidance) regarding operational compliance with Section 409A.

3. Acknowledgments.

a. The Executive hereby warrants and acknowledges that: (i) the Executive is of legal age and is legally competent to execute this Agreement; (ii) that the Executive is executing this Agreement voluntarily and with full knowledge and understanding of its contents; (iii) the Executive has been advised and is hereby advised by MetroHealth that the Executive should have an attorney of the Executive's choice, and at the Executive's expense, review this Agreement; (iv) the Executive has been and is hereby advised by MetroHealth that the Executive has twenty-one (21) days from the receipt of this Agreement to determine whether to execute it; and (v) the Executive has been advised by MetroHealth that the Executive may revoke this Agreement within seven (7) days following its execution and delivery to The MetroHealth System by sending written notice to the Senior Vice President, Chief Legal Officer, whereupon it shall be null and void and the Executive shall forfeit all payments and benefits under the Agreement.

b. The Executive further acknowledges that under this Agreement the Executive is still bound by the Executive's obligations and covenants contained in Sections 6, 7, 8, and 9 of the Employment Agreement related to Confidential Information, Non-Disclosure of Confidential Information, Work Product and Reasonableness of Restraints.

4. Duty to Cooperate. The Executive agrees 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 the Executive's employment. In the event the Executive is called upon to cooperate per this contingency, the Executive acknowledges MetroHealth's expectation that the Executive would truthfully testify in any legal proceedings in which the Executive may be a party or in which the Executive may be called as a witness.

5. Confidentiality. The Executive shall not reveal or disclose the terms of this Agreement to any person, except to the Executive's immediate family and to those necessary to effectuate the terms of this Agreement or to professionals rendering tax or legal advice, or as required by law, other than to state that the matter has been resolved to the mutual satisfaction of the parties.

6. Mutual Non-Disparagement. The Executive agrees that the Executive will not engage in any conduct or communication that may disparage or impugn the reputation or integrity of MetroHealth, any of its trustees, directors, officers, agents, Executives, or other representatives, or take any action or engage in any communication that could be detrimental to the reputation, operation or prospects of MetroHealth or its trustees, directors, officers, agents, Executives, or other representatives. In turn, MetroHealth and its trustees, directors, officers, agents, Executives, or other representatives agree that they will not engage in any conduct or communication that may disparate or impugn the Executive's reputation or integrity. Nothing herein shall prevent either party from testifying truthfully in connection with any litigation, arbitration or administrative proceeding when compelled by subpoena, regulation or court order to do so.

Executive understands and agrees that this Agreement is not intended to and does not interfere with any governmental agency's right, such as that of the Equal Employment Opportunity Commission, to enforce labor or employment laws and to seek relief that will benefit the general public. Executive is not prevented from initiating, assisting, or participating in that process. However, to the extent that Executive may participate directly or indirectly, Executive agrees that he waives any right personally to recover any additional compensation, damages, or other forms of relief. This Agreement shall serve as a complete defense to any such claims for relief. No other provisions in this Agreement, including the consideration, relief of claims, non-admission, non-disparagement, confidentiality, non-solicitation, duty to cooperate, or return of property provisions, are intended to limit Executive's ability to initiate, assist, or participate in any such process of a governmental agency.

7. Non-Admission of Liability. The Executive and MetroHealth agree that nothing contained within this Agreement shall be construed or interpreted as an admission by either party of any liability of whatsoever nature, including but not limited to, any violation of any law.

8. Materiality of All Conditions and Obligations, Recovery of Payments. The Executive understands and agrees that all of the conditions of this Agreement applicable to the Executive and all of his/her obligations under this Agreement are material and that the non-occurrence of any such condition or the breach of any such obligation by the Executive shall result in MetroHealth being entitled to terminate its obligations under this Agreement and assert any and all rights it may have in law or in equity, including the right to seek and obtain, in any court or competent jurisdiction, an injunction to restrain such breach or alleged breach. In addition, MetroHealth shall be entitled to recover any payments made under this Agreement, and shall have the right to seek damages at law, attorneys' fees and costs.

9. Ineligibility for Future Employment. In consideration of the mutual promises contained herein, Executive further acknowledges and agrees that Executive shall not be eligible for future employment with MetroHealth and agrees that Executive will not seek, apply for, or accept future employment with MetroHealth. If Executive breaches this Paragraph, Executive agrees that MetroHealth shall not incur any liability of any kind or nature whatsoever by virtue of its refusal to consider Executive's request for reinstatement, employment, or other relationship or affiliation with MetroHealth. Executive further agrees that in the event Executive breaches this Paragraph and is inadvertently hired without an express written waiver of this provision signed by the Board Chair, Executive will be terminated without any legal recourse and will reimburse MetroHealth for any compensation received as a result of such breach.

10. Modification of Agreement. Except as provided herein, this Agreement may only be modified or amended by a written instrument signed by the Executive and MetroHealth.

11. Non-Assignment. The Executive warrants and represents that, prior to and including the effective date of this Agreement, no claim, demand, cause of action or obligation which is the subject of this Agreement has been assigned or transferred to any other person or entity, and no other person or entity has or has had any interest in said claims, demands, causes of action or obligation, and that the Executive has the sole right to execute this Agreement.

12. Severability. In the event that any provision or term of this Agreement is found to be void or unenforceable to any extent for any reason, it is the agreed-upon intent of the parties that all remaining provisions or terms of this Agreement shall remain in full force and effect to

the maximum extent permitted and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.

13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein. Except for Sections 6, 7, 8, and 9 of the Employment Agreement, which shall survive the Executive's termination of employment, this Agreement supersedes the Employment Agreement. By signing this Agreement, the Executive acknowledges that no promise or inducement has been offered to the Executive to enter into this Agreement, except as expressly set forth above. The Executive further acknowledges that this Agreement is executed without reliance upon any statement or representation by MetroHealth except as expressly set forth above.

15. Governing Law. This Agreement shall be construed and interpreted under the laws of the State of Ohio.

IN WITNESS WHEREOF, The MetroHealth System and the Executive agree as set forth above:

THE METROHEALTH SYSTEM

By:_____ Executive:_____
Akram Boutros M.D., FACHE

Title:_____

Date:_____ Date:_____