

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL NOLAN,

Plaintiff,

**COMPLAINT**

v.

Civil Action No. 21-cv-922

WESTERN REGIONAL OFF TRACK BETTING  
CORPORATION, RICHARD D. BIANCHI,  
Individually and in his capacity as Chairman of the  
WROTB Board of Directors, and HENRY WOJTASZEK,  
Individually and as President of WROTB,

Defendant(s).

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Plaintiff MICHAEL NOLAN (“Plaintiff”), by and through his attorneys, HoganWillig, PLLC, as and for his Complaint herein respectfully alleges as follows:

**PARTIES**

1. Plaintiff MICHAEL NOLAN is a natural person residing at 14979 Horseshoe Trace, West Palm Beach, Florida 33414.

2. Defendant WESTERN REGIONAL OFF TRACK BETTING CORPORATION (“WROTB”) is a public benefit corporation organized and existing under the laws of the State of New York and established pursuant to Article 5 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law,<sup>1</sup> with its principal offices located at 8315 Park Drive, County of Genesee, City of Batavia, State of New York, and within the jurisdiction of the United States District Court for the Western District of New York.

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<sup>1</sup> Originally, New York Unconsolidated Laws § 8111, et seq.

3. Defendant RICHARD D. BIANCHI is a natural person residing at 1678 Edgemere Drive, County of Monroe, City of Rochester, State of New York, within the jurisdiction of the United States District Court for the Western District of New York, and at all relevant times herein was the Chairman of the Board of Directors of WROTB.

4. Defendant HENRY WOJTASZEK is a natural person residing at 620 E. Goundry Street, County of Niagara, City of North Tonawanda, State of New York, within the jurisdiction of the United States District Court for the Western District of New York, and at all relevant times herein was President and Chief Executive Officer of WROTB.

### JURISDICTION

5. Jurisdiction is proper in the United States District Court pursuant 28 U.S.C. §§ 1331 and 1343(a)(3) & (4) and 42 U.S.C § 1983, the Constitution of the United States and the Court's supplemental and pendent jurisdiction pursuant to 28 U.S.C. § 1367 for the Plaintiff's State claims herein.

6. A Notice of Claim was duly served on Defendant WROTB relative to all causes of action for which the service of a Notice of Claim is, or may be, a prerequisite, attached hereto, with Plaintiff's Verification, as **Exhibit A**.

7. Said Notice of Claim was served on Defendants on or about September 21, 2020.

8. More than thirty (30) days have elapsed from the date the Notice of Claim was served, and Defendant WROTB has neglected and refused to make payment of the claim.

### VENUE

9. Venue for this action is proper in the Western District of New York pursuant to 28 U.S.C. § 1391(b)(1) because Defendants reside within this District.

**FACTS GIVING RISE TO THIS ACTION**

**Plaintiff's Employment History with WROTB**

10. Plaintiff was first employed by WROTB on May 26, 2011, was promoted to Executive Vice President of Administration and Operations later in 2011 and was further promoted to Chief Operating Officer of WROTB in June of 2017.

11. As Chief Operating Officer, Plaintiff's duties included supervising the day-to-day operations of WROTB, supervising operational department directors within the WROTB, participating in Board Meetings and other management functions, and taking instructions from, and reporting to, President Wojtaszek and the other policymakers of WROTB consisting of the Board of Directors.

12. At present and at all times relevant herein, the WROTB Board of Directors consists of seventeen (17) seats, filled by individuals appointed by and representing the following fifteen (15) counties in addition to the City of Buffalo and the City of Rochester: Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne and Wyoming ("Board").

13. As part of his duties as WROTB's Chief Operating Officer, Plaintiff was also appointed to serve as, and considered, WROTB's "FOIL Officer," as well as WROTB's Director of Ordering and Purchasing.

14. Plaintiff, as WROTB's "FOIL Officer,"<sup>2</sup> was responsible for providing to the public, and responding to all lawful inquiries concerning, access to WROTB records and information within the scope of inquirers' entitlement.

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<sup>2</sup> New York Public Officers Law Article 6, § 87.

15. Reflective of Plaintiff's vigor and the high standards to which Plaintiff held himself in the performance of his various job duties, Plaintiff consistently received excellent annual Employee Performance Evaluations, until Defendant Wojtaszek scored him uncharacteristically low, for the first time, in Plaintiff's 2019 Employee Performance Evaluation, issued shortly before Plaintiff was terminated by WROTB.

16. Plaintiff remained employed as Chief Operating Officer and FOIL Officer of WROTB until on or about December 18, 2020, when he was formally terminated from employment.

#### **WROTB History of Investigations**

17. During Plaintiff's tenure as an employee of WROTB, there have been several investigations into WROTB's operations and the actions taken by several Board members—including investigations conducted by the Federal Bureau of Investigation ("FBI"), United States Attorney's Office for the Western District of New York, New York State Comptroller's Office, New York State Gaming Commission, and various District Attorneys' Offices, regarding the matters of concern enumerated herein.

18. Upon information and belief, the investigations by the above agencies concerned matters which include, but are not limited to: (1) the provision of benefit-rich health insurance benefits to WROTB Board members; (2) the awarding of lucrative contracts by WROTB to politically-connected entities associated with WROTB; (3) the appointment of a certain politically connected Board member for the sole purpose of providing said Board member with health insurance; (4) the improper use of video lottery terminal ("VLT") purse funds; and (5) the distribution and personal use of luxury box and event tickets purchased by WROTB to friends, family, and political associates.

19. Upon information and belief, at certain times relevant herein, several media inquiries were made into WROTB practices—including but not limited to trips taken by Defendant Wojtaszek with another WROTB officer to Phoenix, Arizona at WROTB expense to attend an industry conference wherein Defendant Wojtaszek and the other WROTB officer would allegedly drive to Las Vegas, Nevada for purely recreational purposes and not engage in the legitimate conference activities.

20. Upon information and belief, at certain times relevant herein, in or about February of 2019 former New York State Senator George Maziarz publicly voiced accusations of wrongdoing against WROTB and Defendant Wojtaszek.

21. Upon information and belief, at certain times relevant herein, there was a separate and distinct investigation into the conduct of Defendant Wojtaszek regarding bid-rigging in Niagara County, by the office of the Monroe County District Attorney, which involved certain vendors and contractors who do business with WROTB.

#### **Plaintiff's Concerns Over WROTB Actions**

22. During the course of the investigations by the above-mentioned agencies, media, and former political appointees, Plaintiff had significant concerns about the actions of WROTB and the named-Defendants, including but not limited to: WROTB board members receiving health insurance, the awarding of contracts by WROTB to politically connected entities; the appointment of certain WROTB board members for the sole purpose of receiving health insurance; improper use of the VLT purse funds; and the distribution of luxury box and event tickets to WROTB friends and family members.

23. In or around the same time of these investigations, in or around February and/or March of 2019, Plaintiff communicated and expressed concerns, both orally and in writing,

regarding the above-referenced actions and conduct to and with the WROTB Board, Defendant Wojtaszek, and Defendant Bianchi.

24. Specifically, at the February and/or March 2019 WROTB Board meeting(s), Plaintiff spoke, in Executive Session, to several WROTB Board members, including, but not limited to, Defendants Wojtaszek and Bianchi, concerning topics including, but not limited to: (1) the awarding of contracts to certain entities; (2) negative press against WROTB; and (3) WROTB Board members obtaining health insurance.

25. In addition, on or about March 1, 2019, Plaintiff sent an e-mail to an agent/representative of Defendant WROTB, and WROTB Board member, Philip Barnes, that detailed Plaintiff's concerns regarding Defendants' activities.

26. Following these discussions and disclosures, the WROTB Board directed Plaintiff and another WROTB Board member to retain outside counsel to determine the legalities of the insurance being provided to the part time WROTB board members.

27. Plaintiff retained and subsequently cooperated with—including but not limited to presenting for interviews—the law firm of Barclay Damon LLP (“Barclay”) to discuss the logistics of WROTB offering health insurance to its Board members.

28. After investigation, Barclay formally opined that the health insurance being provided to WROTB Board members was improper and should be discontinued.

29. Upon information and belief, however, Defendants did not, and have still not, discontinued health insurance to WROTB Board members.

30. In and around the same time, Plaintiff and another WROTB Board member, in the performance of their duties and satisfaction of their fiduciary obligations as ranking executives and Board members of WROTB, discussed the additional WROTB improprieties with additional

outside counsel separate from Barclay, which has been retained only to investigate WROTB's provision of health insurance benefits.

31. These discussions included, but were not limited to, the awarding of contracts by WROTB to politically connected entities; the appointment of WROTB Board members for the sole purpose of receiving health insurance; improper use of VLT purse funds; and distribution of luxury box and event tickets to friends and family members.

32. After engaging in the above discussions with counsel, Plaintiff again reported back to the WROTB Board of Directors—specifically Defendants Wojtaszek and Bianchi—concerning outside counsel's findings of illegality of these actions.

#### **WROTB's Failure to Respond to Plaintiff's Concerns**

33. Plaintiff's concerns in general were, upon information and belief, taken by Defendants Wojtaszek and Bianchi to be a threat, rather than an observation of policies and procedures that needed changing, and Defendants Wojtaszek and Bianchi's aggression toward and ostracism of Plaintiff became even more intense.

34. At all times herein, Defendants were unwilling to listen to, act on, and/or address irregularities, bad practices, and possible illegalities that were called to their attention by Plaintiff and another member of the Board of Directors.

35. Defendants, at all times relevant herein, did not have a mechanism or policy in place concerning "whistleblowers" and the protection of well-intentioned employees who were looking out for the best interests of the taxpayers and the public by calling irregularities to the attention of authorities.

**Plaintiff's Involvement in Third-Party Investigations Concerning WROTB**

36. After voicing his concerns over Defendants' actions directly to Defendants, Plaintiff was contacted by authorities, including, but not limited to, the FBI and the United States Attorney's Office for the Western District of New York.

37. Upon information and belief, various officers, directors, and employees of WROTB were also questioned by some or all of the aforementioned authorities, which authorities appear to have been (and continue to be) working together and collaboratively, at which time, some or all of the WROTB interviewees referenced Plaintiff as a person who had detailed operational knowledge of the workings of the WROTB, and who may have insights into the matters these agencies were and/or are investigating.

38. Upon information and belief, the WROTB interviewees who referred the authorities to Plaintiff, indicated that Plaintiff was not only well informed, but was also honest and would not lie.

39. Plaintiff did not initially contact the authorities; the FBI contacted Plaintiff based on what the FBI and other authorities learned from the WROTB interviewees.

40. In addition to being contacted by the FBI, Plaintiff was also served with a subpoena requiring him to appear before a grand jury on October 3, 2019, to provide testimony relative to the aforementioned investigations.

41. In and around this same time, Plaintiff retained personal independent counsel to protect his interests and to guide him in acting most appropriately.

42. Defendant WROTB was advised that Plaintiff sought personal independent counsel relative to the aforementioned investigations.



43. Plaintiff's attorneys' fees incurred with independent counsel are legally the responsibility of Defendant WROTB pursuant to the Public Officer's Law.

44. Plaintiff did not request or receive immunity before speaking with the authorities, only spoke the truth, and all truthful answers were consistent with Plaintiff's desire to correct flawed policies and improper practices for the good of the WROTB.

45. During these investigations and interviews, Plaintiff maintained at all times that certain practices at the WROTB engaged in by certain officers and directors were irregular, unethical, ill-advised, and contrary to official policies, legal opinions, and mandates.

46. Plaintiff did not form or convey any opinions as to whether the aforementioned practices were in violation of any criminal statutes.

47. Plaintiff was also concerned with improper use of WROTB owned cars and cell phones, and such concern was heightened by FOIL requests by certain media members for data on such car and cell phone usage.

48. Plaintiff cooperated with the FBI, United States Attorney's Office for the Western District of New York, and other collaborating investigative agencies and spoke to and met with the referenced agencies and answered the questions they had and gave direct and truthful answers to all questions posed by them.

**Plaintiff's Discussions with Defendants Concerning the Investigations**

49. Plaintiff did honestly and candidly communicate with Defendants that he was in communication with such investigative agencies, speaking with such agencies at the suggestion of other WROTB personnel.

50. Plaintiff was truthful with WROTB officers and directors regarding the contact by the FBI and collaborating agencies, and informed his superiors, directly and through WROTB

counsel, that he was contacted, and advised that he had answered all questions put to him by the collaborating authorities truthfully.

51. Even before Plaintiff substantively advised Defendants as to what Plaintiff told the investigative agencies, Defendants Wojtaszek and Bianchi reacted as though horror-stricken upon hearing the phrase from Plaintiff that “all I told them was the truth.”

52. Even before Plaintiff substantively advised Defendants as to what Plaintiff specifically told the investigative agencies, and only that all he told them “was the truth,” Defendants Bianchi and Wojtaszek reacted with what appeared to Plaintiff to be intense anger, hostility, hatred, and vitriol towards Plaintiff.

53. After his interviews with the FBI and other collaborating agencies, upon information and belief, outside counsel was engaged at the instance of Defendant Henry Wojtaszek, in consultation with Defendant Richard Bianchi, and allegedly on behalf of the WROTB Board of Directors.

54. Plaintiff was instructed that he was required to meet with this outside counsel and to disclose to this outside counsel everything that Plaintiff discussed with the FBI and other collaborating investigative agencies.

55. This outside counsel interviewed Plaintiff and Plaintiff’s attorneys and prepared a summary of interviews with Plaintiff and Plaintiff’s attorneys in a report.

56. Upon information and belief, access to the summary of interviews and report, which was in excess of 300 pages, prepared by outside counsel was restricted such that the members of the Board of Directors each had one hour to read and absorb the contents thereof, and needed to return the copies of the report they were given, to that outside counsel and were not permitted to make a copy for themselves.

57. Upon information and belief, the 300+ page report submitted by outside counsel and provided to the members of the WROTB Board of Directors on a limited basis was narrowly confined to the specific subject matter of the interviews by outside counsel with Plaintiff and Plaintiff's lawyers and the subjects that were discussed with the FBI and collaborating investigating agencies.

58. Plaintiff was thereafter advised by Defendants Bianchi and Wojtaszek that the legal fees generated by Plaintiff's retention of counsel for advice on how to carry out his duties amidst conflicting mandates, and how to truthfully respond to questions by the collaborating law enforcement agencies under these conflicting circumstances, would not be covered by WROTB—an amount totaling more than \$80,000.00.

**Defendant's Retaliation Against Plaintiff**

59. In direct response to Plaintiff's voicing concerns over Defendants' actions and disclosing that he was truthful when questioned by the FBI and collaborating authorities and speaking to their representatives and agents, Defendant WROTB—acting through Defendants Bianchi and Wojtaszek—swiftly, aggressively, and austerey retaliated against Plaintiff and engaged in an ongoing and continuous series of acts and course of conduct involving harassment, isolation, ostracism, belittling, adverse employment actions, and intimidation consisting of, but not limited to:

- a) Excluding Plaintiff from contact with Defendants Wojtaszek and Bianchi;
- b) Excluding and isolating Plaintiff from the ordinary operational decisions that he was previously responsible for making and thereby constructively terminating Plaintiff;
- c) Threatening Plaintiff with termination;
- d) Subordinating Plaintiff to other WROTB employees who used to answer to Plaintiff;

- e) Causing Plaintiff to be removed from the ordinary chain of command such that Plaintiff's subordinates, department directors, etc., now were directed by Defendants to go around Plaintiff and report directly to Defendant Wojtaszek;
- f) Directing adverse employment actions to the Plaintiff;
- g) Excluding Plaintiff from the ordinary meetings that used to be a regular part of Plaintiff's day-to-day routine;
- h) Manifesting outward hostility by Defendants Wojtaszek and Bianchi as evidenced by a total "silent treatment" by Defendant Bianchi, and a near total "silent treatment" by Defendant Wojtaszek;
- i) Providing poor performance ratings and evaluations that were knowingly false;
- j) Subjecting Plaintiff to a Personnel Improvement Plan ("PIP") imposing strict remediation goals that were entirely uncalled for and unnecessary, and in failing to follow up on the PIP remediation goals with Plaintiff;
- k) Discouraging Plaintiff from exploring what Plaintiff considered "bad policies" and shining lights on them;
- l) Cutting Plaintiff off from any data that Plaintiff was concerned could result in loss of pension for certain WROTB personnel, and which Plaintiff wanted to correct for the protection of those WROTB personnel who appeared to be engaging in the wrongful use of taxpayer money for their own entertainment;
- m) Encouraging Plaintiff to resign from his employment under intense pressure;
- n) Encouraging Plaintiff to resign just three (3) years short of the lucrative vesting of Plaintiff's pension and lifetime health insurance benefits;
- o) Wrongfully terminating Plaintiff;
- p) Causing Plaintiff great emotional distress; and
- q) Causing Plaintiff to endure great financial expenditures.

60. With respect to being isolated and excluded from WROTB management on a continuous basis in response to Plaintiff's above-described communications with the FBI, United States Attorney's Office and collaborating investigative agencies, acting through Defendants

Bianchi and Wojtaszek, both of whom influence policy, WROTB has wrongfully and intentionally subjected the Plaintiff to the following:

- a) Excluded the Plaintiff from Board Meetings, Executive Session Meetings, closed door meetings and other management events on various dates between June 2019 and the date on which Plaintiff was terminated from his employment by WROTB; prior to communicating with the FBI, as mentioned hereinabove, Plaintiff would have been a participant in such meetings and events;
- b) Beginning in April 2019, and continuing through the date on which Plaintiff was terminated from his employment by WROTB, Defendant Bianchi ceased all communication with Plaintiff despite the mutual management responsibilities of Bianchi as Chairman of the Board of WROTB and of the Plaintiff as Chief Operating Officer;
- c) Plaintiff was removed as FOIL officer and instructed that he may not respond to any requests by anyone for information about WROTB or the acts or actions of any officer or director thereof;
- d) Plaintiff had been removed as a recipient of management-related emails for which Plaintiff would have been a recipient prior to the above-described communications with the FBI;
- e) Plaintiff was excluded from an important management-related meeting with the Delaware North Companies; prior to Plaintiff's above-described communications with the FBI, Plaintiff would have been an active participant in such a meeting;
- f) Plaintiff had been excluded from WROTB office social events and community service work which the Plaintiff attended and was an active participant in prior to Plaintiff's communications with the FBI—e.g., a WROTB “Employee of the Month” celebration and donating turkeys to the Food Bank of Western New York—despite Plaintiff having initiated WROTB's involvement with that community service;
- g) Plaintiff was caused to endure great emotional distress; and
- h) Plaintiff was caused to expend large sums of money in legal fees.

61. With respect to being subjected to threats relative to Plaintiff's employment status, the following occurred in direct response to the Plaintiff's above-described communications with the collaborating law enforcement agencies:

- a) Defendant Bianchi made the statement “don’t let the door hit you on the way out” in reference to Plaintiff in a meeting between Bianchi and other WROTB officers and Directors;
- b) Following a Board of Directors meeting, a Board member who had personal knowledge of the adverse and retaliatory manner in which Defendants Bianchi and Wojtaszek reacted to the Plaintiff’s above-described communications with the FBI, United States Attorney’s Office and collaborating investigative agencies, stated to Plaintiff “watch your back” and further informed Plaintiff that Bianchi was “not happy” with Plaintiff and wanted to find a justification for firing Plaintiff from Plaintiff’s position as Chief Operating Officer;
- c) Defendant Wojtaszek made the written statement that all WROTB employees are “at will employees”, thereby threatening Plaintiff by referring to said Defendant’s authority to fire Plaintiff from Plaintiff’s position as Chief Operating Officer at WROTB;
- d) Plaintiff refused to voluntarily resign his position, but was ultimately wrongfully terminated;
- e) Plaintiff was caused to endure great emotional pain, suffering and distress; and
- f) Plaintiff was caused to expend large sums of money in legal fees.

62. Plaintiff was threatened with and subjected to adverse employment action, was ostracized and isolated, and refused to voluntarily resign.

63. With respect to adverse employment action of WROTB concerning Plaintiff, WROTB, acting through Defendants Bianchi and Wojtaszek, subjected Plaintiff to the following in response to Plaintiff’s above-described communications with the collaborating investigating law enforcement authorities:

- a) Plaintiff was removed from the Plaintiff’s positions of Purchasing Officer, Records Officer, and FOIL Officer and was prevented from responding to Freedom of Information Law (“FOIL”) and Open Meetings Law requests submitted to WROTB;
- b) A new WROTB human resources rule was implemented by Defendant Wojtaszek which required Plaintiff to work on weekends;

- c) Plaintiff was not given a raise in salary for 2020, and was given a poor employee evaluation score for 2019, despite having received a raise in salary and an above-average employee evaluation score for each of the prior eight (8) years at WROTB;
- d) Plaintiff's 2020 salary was reduced by 50% during COVID-19 while the 2020 salaries of other WROTB employees remained at 100%;
- e) Plaintiff was wrongfully terminated;
- f) Plaintiff was caused to endure great emotional distress, pain and suffering; and
- g) Plaintiff was caused to expend large sums of money in legal fees.

64. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**AGAINST ALL DEFENDANTS:**

**VIOLATION OF FIRST AMENDMENT TO UNITED STATES CONSTITUTION**

65. The Plaintiff repeats and realleges paragraphs "1" through "64" as if fully set forth herein.

66. Prior to the adverse employment actions set forth herein, Plaintiff, in his capacity as the Chief Operating Officer of Defendant WROTB, supervised the day-to-day operations of Defendant WROTB, and carried out (but did not formulate or set) policy for Defendant WROTB, as that function was reserved to, and performed by, the WROTB Board of Directors, and Defendant Wojtaszek.

67. In discussing with, and/or providing information to, the respective law enforcement agencies investigating Defendant WROTB concerning the matters raised hereinabove, Plaintiff was speaking as a private citizen on matters of public concern; by reason

thereof, Plaintiff's statements were and are protected by the First Amendment to the United States Constitution.

68. Plaintiff made no attempt to hide from Defendants the exercise of his First Amendment right; indeed, Plaintiff honestly and candidly communicated to Defendants that he had met with the law enforcement agencies, both directly and by and through counsel for Defendant WROTB.

69. However, as a direct result of, and in retaliation for, Plaintiff's exercise of his First Amendment right to speak as a private citizen on matters of public concern, Plaintiff was subjected to the adverse employment actions set forth herein, all of which ultimately culminated in Defendants' unlawful and improper termination of Plaintiff's employment on or about December 18, 2020.

70. Plaintiff's statements, which are protected under the First Amendment, were the direct motive for, and cause of, and/or were a substantial motivating factor for, the adverse employment actions and other severe workplace misconduct to which Plaintiff was subjected by Defendants.

71. Defendants' retaliatory conduct, which ultimately culminated in the termination of Plaintiff's employment on or about December 18, 2020, was committed in violation of Plaintiff's First Amendment rights, as applied to the States via the Fourteenth Amendment and 42 U.S.C. § 1983, and were taken in response to Defendant WROTB's custom and policy of deterring speech by an employee disclosing Defendants' wrongdoing, and to punish the cooperating and/or "whistle-blowing" employee with adverse employment actions, up to and including Plaintiff's termination.



72. By reason of the foregoing, Defendants' joint conduct in retaliating against Plaintiff, which ultimately culminated in the termination of Plaintiff's employment on or about December 18, 2020, was and is in direct violation of the First Amendment to the United States Constitution.

73. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein, and Plaintiff is entitled to relief, under and pursuant, including but not limited, to 42 U.S.C. §§ 1983 and 1988.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**VIOLATION OF CIVIL SERVICE LAW § 75-b(2)(a)**

74. The Plaintiff repeats and realleges paragraphs "1" through "73" as if fully set forth herein.

75. In disclosing and/or providing information to the collaborating investigative law enforcement agencies, including the FBI, New York State Gaming Commission, United States Attorney's Office, and New York State Comptroller that certain members of the Board of Directors of WROTB who are not employed on a daily basis by WROTB were receiving free health insurance at the expense of WROTB, and disclosing and confirming additional wrongdoing, Plaintiff was cooperatively imparting that which he reasonably believed to be improper governmental action by a Public Benefit Corporation taking place at WROTB with the knowledge and consent of Defendants.

76. Defendants were aware of the aforementioned issues, and the illegality and impropriety of same, by virtue of Plaintiff's efforts in reporting same as set forth in greater detail herein.

77. Defendants were given a reasonable time to investigate and correct the problems that Plaintiff and others brought to Defendants' attention prior to the interactions between Plaintiff and the law enforcement agencies set forth herein.

78. Similarly, although reported by Plaintiff to Defendants as stated above, reporting would have been, and ultimately was, futile as those receiving the reports were the Defendants engaged in the subject behavior.

79. By engaging in a continuing campaign of: (1) retaliation against Plaintiff by excluding the Plaintiff from Board and other management-related meetings; (2) otherwise isolating and constructively discharging the Plaintiff; (3) threatening Plaintiff with termination of employment and ultimately terminating Plaintiff's employment; and (4) taking adverse employment action against Plaintiff as set forth in greater detail herein, all in direct response to the Plaintiff's aforementioned disclosure to the collaborating investigating law enforcement agencies, concerning improper governmental and corporate (Public Benefit) action, WROTB violated Section 75-b(2)(a) of the New York Civil Service Law.

80. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein, and Plaintiff is entitled to relief in accordance with, including but not limited to, Section 740(5) of the New York Labor Law.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**AGAINST DEFENDANTS BIANCHI AND WOJTASZEK:**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

81. The Plaintiff repeats and realleges paragraphs "1" through "80" as if fully set forth herein.

82. In retaliating against Plaintiff in the manner described above in response to Plaintiff's disclosure and/or provision of information to the collaborating investigating law

enforcement agencies of what the Plaintiff reasonably believed to be improper governmental action taking place at the WROTB, Defendants Bianchi and Wojtaszek, individually and in their capacities with WROTB, engaged in a deliberate, relentless and malicious campaign of harassment and hostility toward Plaintiff.

83. Plaintiff was subjected to the aforesaid deliberate and malicious campaign of harassment by Defendants Bianchi and Wojtaszek on a continuing and ongoing basis from the time Plaintiff first informed Defendants of his contacts with the FBI and collaborating investigating agencies, through September 3, 2020 when Plaintiff's treating physician placed Plaintiff on medical leave for anxiety and depression caused by Defendants' actions, and continuing to at least December 18, 2020, the day Defendants wrongfully terminated Plaintiff.

84. In retaliating against Plaintiff through the aforesaid deliberate and malicious campaign of harassment, Defendants Bianchi and Wojtaszek acted outside the scope of their duties as Chairman of the Board of Directors of WROTB and WROTB's President and Chief Executive Officer, and knowingly abused their authority with the wrongful intent to injure the Plaintiff.

85. As a direct and proximate result of the aforesaid intentional tortious conduct of Defendants Bianchi and Wojtaszek, Plaintiff has been caused to suffer severe anxiety and emotional distress and, on the advice of Plaintiff's healthcare practitioners, to miss multiple days of employment at WROTB.

86. By reason of the aforesaid continuous and deliberate campaign of harassment through the wrongful conduct of Defendants Bianchi and Wojtaszek, both individually and in their capacities with WROTB, resulting in the infliction of severe emotional distress, Plaintiff is entitled to receive damages and relief from said Defendants.

87. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**INDEMNIFICATION OF AND REIMBURSEMENT FOR ATTORNEYS' FEES**

88. The Plaintiff repeats and realleges paragraphs “1” through “87” as if fully set forth herein.

89. At all times alleged herein, Plaintiff was acting within the scope of his public employment and duty on behalf of WROTB.

90. The legal fees incurred by Plaintiff’s retention of counsel was incident to Plaintiff’s public employment and the conduct of his duties associated therewith.

91. Plaintiff duly and properly submitted his bills and itemized billing statements to the WROTB designated legal counsel for payment.

92. Plaintiff’s retention of legal counsel was not for his own financial gain or benefit, but rather, to get guidance on how to respond to inquiries by investigative agencies, how to deal with fraudulent FOIL responses being given to the media and others by Defendants while Plaintiff was in the role of Chief Operating Officer, and how to reconcile his responsibilities to the WROTB Board of Directors with his duty of obedience to his direct supervisor, Defendant Wojtaszek, and Defendant Chairman Bianchi, and how to navigate the hostile employment environment.

93. Pursuant to New York Public Officers Law, §§ 18 and 19, *et seq.*, Defendant WROTB is required to reimburse Plaintiff for aforesaid legal fees.

94. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**VIOLATION OF LABOR LAW § 740**

95. The Plaintiff repeats and realleges paragraphs “1” through “94” as if fully set forth herein.

96. By the aforesaid WROTB Board Members and executives improperly procuring health care insurance free of charge as stated above, said WROTB Board Members and executives engaged in health care fraud as defined in Labor Law § 740(1)(g).

97. As a direct result of Plaintiff’s disclosure of such health care fraud to the appropriate investigative agencies, Defendant WROTB – acting through Defendants Bianchi and Wojtaszek – subjected Plaintiff to the above-described retaliatory personnel action in violation of Labor Law §§ 740(2)(a) and (b).

98. Due to the aforesaid violation of Labor Law §§ 740(2)(a) and (b) by Defendants WROTB, Plaintiff is entitled to relief under, including but not limited to, Section 740(5).

99. By reason of the foregoing, Plaintiff has been, and continues to be, injured and damaged as set forth herein

**WHEREFORE**, Plaintiff demands judgment as follows against the Defendants:

1. **For the First Cause of Action, against Defendant WROTB, for violation of the First Amendment and 42 USC §§ 1983 and 1988,**
  - a) Compensatory damages of not less than \$4,500,000, including all damages sustained by the Plaintiff due to the aforesaid violation including, without limitation, all wages, benefits or any other remuneration to which the Plaintiff is otherwise entitled;
  - b) Permanent injunctive relief preventing WROTB from continuing the aforesaid tortious and unconstitutional conduct; and
  - c) Appropriate interest, the costs of this action and attorneys’ fees incurred by the Plaintiff.

**2. For the Second Cause of Action, against Defendant WROTB, for violation of the NY Civil Service Law,**

- a) Compensatory damages of not less than \$4,500,000, including all damages sustained by the Plaintiff due to the aforesaid conduct and violations, including, without limitation, all wages, raises, benefits or any other remuneration to which the Plaintiff is otherwise entitled;
- b) Permanent injunctive relief preventing WROTB from continuing the aforesaid conduct and violations; and
- c) Appropriate interest, the costs of this action and the attorneys' fees incurred by the Plaintiff.

**3. For the Third Cause of Action, against Defendants Wojtaszek and Bianchi, both individually and in their capacities with WROTB, for Intentional Infliction of Emotional Distress,**

- a) Compensatory damages for emotional pain and suffering of not less than \$4,500,000;
- b) Punitive damages in an amount not less than \$1,000,000, as may be decided following the trial of this action; and
- c) Appropriate interest, the costs of this action and the attorneys' fees incurred by Plaintiff for the necessity of bringing this action.

**4. For the Fourth Cause of Action, against Defendant WROTB, for Indemnification and reimbursement for attorneys' fees,**

- a) Compensatory, indemnification and reimbursement damages in an amount to be determined at trial.
- b) Appropriate interest, the costs of this action, and the attorneys' fees incurred by the Plaintiff for the necessity of bringing this action.

**5. For the Fifth Cause of Action, against Defendant WROTB, for Violation of NY Labor Law §740,**

- a) An injunction to restrain continued violation of this section;

- b) The reinstatement of the Plaintiff to the same position held before the retaliatory personnel action, or to an equivalent position;
- c) The reinstatement of full fringe benefits and seniority rights;
- d) All damages sustained due to the violation including, without limitation, the compensation for lost wages, benefits and other remuneration; and
- e) The payment of all reasonable costs, disbursements, and attorney's fees.

6. **Such other and further relief as the Court and/or jury deems proper.**

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial of all issues so triable.

DATED: July 26, 2021  
Amherst, New York

HOGANWILLIG, PLLC



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Steven M. Cohen, Esq.  
Edward P. Yankelunas, Esq.  
*Attorneys for Plaintiff*  
2410 North Forest Road, Ste. 301  
Amherst, New York 14068  
(716) 636-7600

STATE OF NEW YORK: COUNTY OF GENESEE

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IN THE MATTER OF THE CLAIM OF:

MICHAEL NOLAN  
100 Schultz Road  
Elma, NY 14059

Claimant,

**NOTICE OF CLAIM**

v.

WESTERN REGIONAL OFF-TRACK BETTING CORPORATION  
8315 Park Road  
Batavia, NY 14020

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TO: WESTERN REGIONAL OFF-TRACK BETTING  
CORPORATION  
8315 Park Road  
Batavia, New York 14020

**PLEASE TAKE NOTICE**, that the undersigned, MICHAEL NOLAN (the "Claimant") hereby submits a Notice of Claim and demand against the WESTERN REGIONAL OFF-TRACK BETTING CORPORATION, pursuant to New York General Municipal Law § 50-e, and asserts the following:

**I. Names and post-office addresses of Claimant and their attorneys:**

**CLAIMANT**

Michael Nolan  
1100 Schultz Road  
Elma, NY 14059

**ATTORNEYS**

Steven M. Cohen, Esq.  
Edward P. Yankelunas, Esq.  
2410 North Forest Road, Suite 301  
Amherst, NY 14068



**II. Nature of the claim:**

The nature of the claim of Michael Nolan (hereinafter “Claimant”) is for economic damages and damages for emotional distress and for indemnification and injunctive relief for the wrongful tortious conduct described herein. The claim of the Claimant includes a claim for medical expenses, loss of income, indemnification and other damages including attorney’s fees and appropriate interest and is based on the following:

1. The violation of 42 U.S.C. § 1983 consisting of retaliating against the Claimant for exercising Claimant’s constitutional rights in disclosing the wrongful conduct of WROTB Board Members and executives to investigating law enforcement agencies, by engaging in tortious conduct by Defendants against Plaintiff;

2. The violation of Section 75-b (2) of the Civil Service Law consisting of retaliating against the Claimant for disclosing improper governmental actions of WROTB Board Members and executives to investigating law enforcement agencies;

3. The violation of Section 740 of the Labor Law consisting of retaliatory personnel action against the Claimant for disclosing health care fraud of WROTB Board Members and executives to investigating law enforcement agencies;

4. The intentional infliction of emotional distress through the deliberate, relentless and malicious campaign of harassment and hostility toward the Claimant by WROTB through WROTB Chairman of the Board of Directors Richard D. Bianchi (“Bianchi”) and WROTB President and Chief Executive Officer, Henry Wojtaszek (“Wojtaszek”);

5. The constructive termination of the Claimant from his employment by isolating and ostracizing the Claimant and excluding the Claimant from WROTB meetings, chain of command and management decisions;

6. Defamation by means of the false and defamatory statements concerning the Claimant by WROTB through Defendant Wojtaszek;

7. The improper withholding of wages payable to the Claimant by WROTB;

8. The failure to reimburse and indemnify the Claimant for attorneys fees incurred by the Claimant in performing Claimant's public duties as an employee of WROTB and contrary to the Public Officers Law.

**III. Time when, place where and manner in which the claim arose:**

1. The wrongful conduct giving rise to the claims for which notice is given herein began in April 2019 and is ongoing and said wrongful conduct and violations of law continue through the present date.

2. Upon information and belief, there are currently multiple investigations being conducted into the conduct of WROTB Board Members and executives and the operations of WROTB, including investigations that are being conducted by the Federal Bureau of Investigation ("FBI"), the United States Attorney's Office of the Western District of New York, the State Comptroller's Office and the New York State Gaming Commission.

3. Upon information and belief, some or all of the aforesaid investigating agencies are currently conducting an investigation of the WROTB with respect to (a) the awarding of lucrative contracts by WROTB to politically connected entities associated with WROTB, (b) the provisions of free health insurance to WROTB Board Members and executives and (c) the distribution of tickets purchases by WROTB to Buffalo Sabres and Buffalo Bills games to friends, family members and political associates of WROTB executives and Board Members.

4. The Claimant cooperated with the FBI and spoke to and met with an FBI agent concerning the FBI investigation of WROTB. In direct response to the Claimant cooperating

with the FBI, WROTB – acting through Bianchi and Wojtaszek– retaliated against the Claimant and engaged in an ongoing and continuous series of acts involving harassment and intimidation consisting of:

- a) Excluding the Claimant from management and isolating the Claimant;
- b) Threatening the Claimant with termination;
- c) Adverse employment actions directed to the Claimant.

5. With respect to being isolated and excluded from WROTB management on a continuous basis in response to Claimant’s above-described communications with the FBI, acting through Bianchi and Wojtaszek, WROTB has wrongfully and intentionally subjected the Claimant to the following:

- a) Excluded the Claimant from Board Meetings, Executive Session Meetings, closed door meetings and other management events on various dates between June, 2019 and the present; prior to communicating with the FBI, as aforesaid, the Claimant would have been a participant in such meetings and events;
- b) Beginning in April 2019, and continuing through the present, Bianchi has ceased all communication with the Claimant despite the mutual management responsibilities of Bianchi as Chairman of the Board of Directors of WROTB and of the Claimant as Chief Operating Officer;
- c) The Claimant has been removed as a recipient of management-related emails for which the Claimant would have been a recipient prior to the above-described communications with the FBI;
- d) The Claimant was excluded from an important management-related meeting with the Delaware North Companies; prior to the Claimant’s above-described communications with the FBI, the Claimant would have been an active participant in such a meeting;
- e) The Claimant has been excluded from WROTB office social events and community service work which the Claimant attended and was an active participant prior to the Claimant’s above-described communications with the FBI – i.e., a WROTB “Employee of the Month” celebration and donating turkeys to the Food Bank of Western New York, despite the Claimant having initiated the WROTB’s involvement with that community service.

6. With respect to being subjected to threats relative to the Claimant's employment status at WROTB, the following occurred in direct response to the Claimant's above-described communications with the collaborating law enforcement agencies:

- a) Bianchi made the statement "don't let the door hit you on the way out" in reference to the Claimant during a WROTB Board of Directors meeting between Bianchi and other WROTB officers in reference to the Claimant;
- b) Following a Board of Directors meeting, a Board member who had personal knowledge of the adverse and retaliatory manner in which Bianchi and Wojtaszek reacted to the Claimant's above-described communications with the FBI, US Attorney's Office and collaborating investigating agencies, stated to the Claimant "watch your back" and further informed the Claimant that Bianchi was "not happy" with the Claimant and wanted to find a justification for firing the Claimant from Claimant's position at WROTB;
- c) Wojtaszek made the written statement that all WROTB employees are "at will employees", thereby threatening the Claimant by referring to Wojtaszek's authority to fire the Claimant from the Claimant's position at WROTB.

7. With respect to adverse employment action of WROTB concerning the Claimant, acting through Bianchi and Wojtaszek, the Claimant was subjected to the following in response to the Claimant's above-described communications with the FBI:

- a) The Claimant was removed from the Claimant's position of Purchasing Officer and Records Office and was prevented from responding to Freedom of Information Law requests on behalf of WROTB;
- b) New WROTB human resources procedure was initiated which required the Claimant to work on weekends;
- c) The Claimant was not given a raise in salary for 2020 and was given a poor employee evaluation score for 2019 despite having received a raise in salary and an above-average employee evaluation score for each of the prior eight (8) years at WROTB;
- d) Purportedly due to COVID-19 pandemic, the Claimant's 2020 salary was reduced by 50% while the 2020 salaries of other WROTB employees remained at 100%.; and
- e) The facts as set forth in a draft complaint, not yet filed or served, annexed hereto, incorporated herein, and made a part hereof, as **Exhibit A**.

8. Items of damage and injuries claimed:

- a. Compensatory damages of not less than \$4,500,000;
- b. Loss of employability;
- c. Impairment of professional career;
- d. Lost wages;
- e. Unpaid attorney's fees;
- f. Public humiliation;
- g. Public degradation;
- h. Emotional injury; and
- i. Appropriate interest.

IV. This notice is made, and sworn, and served on behalf of Claimant in compliance with the provisions of 50-e of the General Municipal Law of New York State and such other laws and statutes that may apply.

**PLEASE TAKE FURTHER NOTICE** that Claimant demands payment of said claim and unless said claim is paid within a reasonable time, it is the intention of Claimant to commence suit against Western Regional Off-Track Betting Corporation.

DATED: Amherst, New York  
September 21, 2020.



Steven Cohen, Esq.  
Edward P. Yankelunas, Esq.  
HoganWillig, PLLC  
2410 North Forest Road, Suite 301  
Amherst, NY 14068

**VERIFICATION**

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS:  
CITY OF BUFFALO )

MICHAEL NOLAN, being duly sworn depose and say: that he is the Claimant in the above matter, that he has read the foregoing Notice of Claim and know the contents thereof; that the same is true to his knowledge except as to those matters alleged to be upon information and belief, as to those matters, he believes them to be true.

  
\_\_\_\_\_  
MICHAEL NOLAN

Sworn to before me this  
2/3<sup>rd</sup> day of September, 2020

  
\_\_\_\_\_  
NOTARY PUBLIC

Steven M. Cohen  
Notary Public – State of New York  
Certified in Erie County  
My Commission expires March 6 2023

# EXHIBIT A

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL NOLAN,

Plaintiff,

**COMPLAINT**

v.

Civil Action No. \_\_\_\_\_

WESTERN REGIONAL OFF TRACK BETTING  
CORPORATION, RICHARD D. BIANCHI and  
HENRY WOJTASZEK

Defendant(s).

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Plaintiff Michael Nolan, by his attorneys HoganWillig, PLLC, for his Complaint herein alleges as follows:

**PARTIES**

1. Plaintiff Michael Nolan is a natural person residing at 110 Schutlz Road, County of Erie, Township of Elma, State of New York, and within the jurisdiction of the United States Western District of New York.

2. Defendant Western Regional Off Track Betting Corporation (“WROTB”) is a public benefit corporation organized and existing under the laws of the State of New York and established pursuant to Article 5 of the NYS Racing, Pari-Mutuel Wagering and Breeding Law<sup>1</sup> with its principal offices located at 8315 Park Drive, County of Genesee, City of Batavia, State of New York, and within the jurisdiction of the United States Western District of New York.

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<sup>1</sup> Originally, NY Unconsolidated Laws §8111, et seq.



3. Defendant Richard D. Bianchi is a natural person residing at 1678 Edgemere Drive, County of Monroe, City of Rochester, State of New York, within the jurisdiction of the United States Western District of New York, and at all relevant times herein was the Chairman of the Board of Directors of WROTB.

4. Defendant Henry Wojtaszek is a natural person residing at 620 E. Goundry Street, County of Niagara, City of North Tonawanda, State of New York, within the jurisdiction of the United States Western District of New York, and at all relevant times herein was President and Chief Executive Officer of WROTB.

### **JURISDICTION**

5. Jurisdiction is in the United States District Court pursuant 28 U.S.C. §§ 1331 and 1343 (a)(3) & (4) and 42 U.S.C § 1983, the Constitution of the United States and the Court's supplemental and pendent jurisdiction pursuant to 28 U.S.C. § 1367 for the Plaintiff's State claims herein.

### **VENUE**

6. Venue for this action is proper in the Western District of New York pursuant to 28 U.S.C. 1391 (a)(1) because the defendants reside in the district.

### **FACTS GIVING RISE TO THIS ACTION**

7. A Notice of Claim was duly served on Defendant WROTB relative to all causes of action for which the service of a Notice of Claim is, or may be, prerequisite, attached hereto, with Plaintiff's Verification, as **Exhibit A**.

8. Plaintiff became employed by WROTB on May 26, 2011, was promoted to Executive Vice President of Administration and Operations later in 2011 and further promoted to Chief Operating Officer of WROTB in 2017.

9. Plaintiff remains employed as Chief Operating Officer of WROTB.

10. As Chief Operating Officer, Plaintiff's duties include supervising the day-to-day operations of WROTB, supervising operational department directors within the WROTB, participating in Board Meetings and other management functions and taking instructions from, and reporting to, President Wojtaszek and the policy-makers of WROTB consisting of the Board of Directors.

11. At present and at all times relevant herein, the WROTB Board of Directors consists of seventeen (17) seats, filled by individuals appointed by and representing each of the following fifteen (15) counties in addition to the City of Buffalo and the City of Rochester: Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, Oswego, Schuyler, Seneca, Steuben, Wayne and Wyoming.

12. Upon information and belief, at all times relevant herein, there have been multiple investigations into the conduct of WROTB operations, certain Board members and executives, including investigations conducted by the Federal Bureau of Investigation ("FBI"), United States Attorney's Office for the Western District of New York, New York State Comptroller's Office and the New York State Gaming Commission, regarding the matters of concern enumerated herein.

13. Upon information and belief, at certain times relevant herein, there was an investigation into the conduct of Defendant Wojtaszek regarding bid-rigging in Niagara

County, by the office of the Monroe County District Attorney, which involved certain vendors and contractors who do business with WROTB.

14. Upon information and belief, some or all of the aforementioned law enforcement agencies have conducted and/or are conducting investigations of the WROTB with respect to matters of concern including, but not limited to: (a) the awarding of lucrative contracts by WROTB to politically connected entities associated with WROTB without requisite process and mandated ethical protocols, (b) the provision of benefit-rich health insurance to WROTB Board members and executives free of charge to them that have been long determined to be improper, (c) the appointment of a certain politically connected director who is the ex-spouse of a prior director for the sole purpose of getting them access to free health care, rather than for gaining the benefit of that director's experience, input and wisdom; (d) the improper use of "purse fund" revenues deriving from video lottery terminals; and (e) the distribution of luxury box and event tickets purchased by WROTB and distributed to friends, family members and political associates of certain WROTB executives and Board members that are not intended to generate profitable business for WROTB, but rather to curry personal favor by Defendants Wojtaszek and Bianchi for their own benefit, with persons of influence.

15. Upon information and belief, various officers, directors and employees of WROTB were questioned by some or all of the aforementioned authorities, which authorities appear to be working together and collaboratively, at which time, some or all of the WROTB interviewees referred said authorities to Plaintiff, as a person who had detailed operational knowledge of the workings of the WROTB and who may have insights into the matters they are investigating.

16. All of the items of concern listed herein are known to Defendants Wojtaszek and Bianchi. Upon information and belief, some of the data relative to the items of concern have been withheld by Defendants Wojtaszek and Bianchi from other members of the WROTB board.

17. Upon information and belief, the WROTB interviewees who referred the authorities to Plaintiff, indicated that Plaintiff was not only well informed, but was also honest and would not lie.

18. Plaintiff did not initially contact the authorities; the FBI contacted Plaintiff based on what the FBI and collaborating authorities learned from other WROTB interviewees.

19. Plaintiff sought the advice of independent counsel in connection with the investigation conducted by the FBI and collaborating law enforcement agencies into the actions of Defendants.

20. Plaintiff's fees incurred with independent counsel are legally the responsibility of Defendant WROTB pursuant to Public Officer's Law.

21. Defendant WROTB was advised that Plaintiff sought independent counsel relative to the investigation.

22. Plaintiff did not request or receive immunity before speaking with the authorities, only spoke the truth, and all truthful answers were consistent with Plaintiff's desire to correct flawed policies and improper practices for the good of the WROTB.

23. Plaintiff maintained at all times with the collaborating investigative agencies that certain practices at the WROTB engaged in by certain officers and directors were irregular, unethical, ill-advised and contrary to official policies and mandates.

24. A federal grand jury has been empaneled concerning the aforementioned investigations.

25. Plaintiff was contacted by the FBI regarding the subject of the investigations by the collaborating agencies, some of which are set forth in paragraph 11 herein, and other issues as well, and Plaintiff was served with a subpoena requiring him to appear before the aforementioned grand jury on October 3, 2019 to provide testimony relative to the aforementioned investigations. Plaintiff retained private counsel for advice relative to the investigations against Defendants.

26. Plaintiff cooperated with the FBI, United States Attorney's Office for the Western District of New York and other collaborating investigative agencies and spoke to and met with the referenced agencies and answered the questions they had and gave direct and truthful answers to all questions posed by them.

27. Plaintiff consulted with counsel at first instance in or about January of 2019 upon being contacted by a member of the WROTB Board of Directors regarding that Director's efforts to correct improper, possibly illegal and certainly unethical acts/actions by Defendants.

28. At all times herein, Defendants were unwilling to listen to, act on and address irregularities, bad practices and illegalities that were called to their attention by Plaintiff and another member of the Board of Directors.

29. Upon information and belief, Defendants' refusal to address such conduct on the part of Defendants and to correct their policies and practices, and to refuse to come into legal compliance, compelled other employees and directors to speak with the FBI and other collaborating investigating law enforcement agencies about such, both to

try to correct those practices through the intervention of higher authorities, and to distance themselves from such conduct should criminal prosecution be commenced against WROTB.

30. Upon information and belief, those employees who came forward to the authorities for the reasons set forth above, advised the investigating agencies to contact Plaintiff who, as Chief Operating Officer, knew many details that could verify the concerns raised, and because those employees knew Plaintiff to be dedicated to compliance with all statutes, laws and proper regulations.

31. Defendants do not, and at all times relevant herein, did not have a mechanism or policy in place concerning “whistleblowers” and the protection of well-intentioned employees who were looking out for the best interests of the taxpayers and public by calling irregularities to the attention of authorities.

32. Plaintiff sought direction from counsel as to how to reconcile the instructions from a WROTB Board Member who was trying to correct what the Board Member perceived to be irregularities, illegalities and wrongdoing, with the instructions Plaintiff was getting from Defendants Wojtaszek and Bianchi regarding Plaintiff’s role as FOIL officer and Chief Operating Officer, which instructions from Wojtaszek and Bianchi Plaintiff perceived to be improper and unethical.

33. Plaintiff cooperated with the WROTB Board Member’s requests for data which Plaintiff’s independently retained counsel advised that Board Member had a lawful right to access and Plaintiff had a legal duty to provide.

34. Upon information and belief, the Board Member who came to Plaintiff was also in consultation with other members of the WROTB Board, and the data Plaintiff was providing was for the purpose of helping the WROTB come into compliance with the law.

35. Upon information and belief, the Board Member who came to Plaintiff was concerned about acts, actions and policies of and by Defendant Bianchi and Defendant Wojtaszek which ran afoul of statutory and administrative law and prior rulings and/or opinions of such authorities as the New York State Comptroller, and were otherwise unethical, ill-advised and contrary to the doctrine of transparency which Plaintiff believed was required of Defendant WROTB.

36. Upon information and belief, the Board Member who came to Plaintiff was voicing concerns of that member, plus other members, who feared that certain rules and regulations concerning contract bidding and awards, use of company benefits, health insurance packages, automobiles and telephones, etc., were being violated by Defendant Bianchi and Defendant Wojtaszek, and that disclosures made to the media and pursuant to FOIL requests by Defendants were false and/or misleading.

37. Upon information and belief, the Board Member who came to Plaintiff learned that certain other members of the WROTB Board were intimidated, and fearful of retaliation by, Defendants Wojtaszek and Bianchi, and were reluctant to make inquiries into the conduct of Defendants Wojtaszek and Bianchi in their own names, but did support the inquiries of the Board Member who approached Plaintiff as long as those inquiries were not known to Defendants Bianchi and Wojtaszek to have originated with those Board members who chose to remain anonymous.

38. The failure on the part of WROTB to have a whistleblower policy in place to protect such conduct, upon information and belief, caused other employees of WROTB who had spoken with the FBI and collaborating investigating law enforcement agencies to not tell Defendants they were in communication with such agencies.

39. Plaintiff did honestly communicate with Defendants that he was in communication with such agencies.

40. Plaintiff sought the advice of independent counsel as early as January of 2019 to clarify his duties as Chief Operating Officer of this Public Benefits Corporation, to his direct supervisor, Defendant President Henry Wojtaszek and Defendant Board Chairman Richard Bianchi, as well as his duties to other members of the WROTB Board who were seeking data from Plaintiff to try to bring the WROTB into lawful compliance.

41. Plaintiff sought the advice of independent counsel as early as January of 2019 to clarify his legal obligations and responsibility as a senior officer of the WROTB when the orders and directives from and the actions by his supervisors, namely Defendants Bianchi and Wojtaszek, appeared to Plaintiff to be in conflict with certain ethical standards, and certain legal requirements of the WROTB as Plaintiff understood them.

42. Plaintiff sought the advice of independent counsel as early as January of 2019 to clarify his legal obligations and responsibility as Freedom of Information (FOIL) Officer of WROTB in responding to requests through Articles 6 and 7 of the New York Public Officers Law (FOIL and Open Meetings Laws), and Plaintiff's obligations when others from WROTB responded to FOIL requests in a manner that Plaintiff considered to



be untruthful, fraudulent and contrary to the mandate of transparency to which Plaintiff believed WROTB to be subject.

43. Plaintiff was truthful with WROTB officers and directors regarding the contact by the FBI and collaborating agencies, and informed his superiors, directly and through WROTB counsel, that he was contacted, and he advised that Plaintiff answered all questions put to him by the collaborating authorities truthfully.

44. Even before Plaintiff substantively advised Defendants as to what Plaintiff told the collaborating law enforcement agencies, Defendants Wojtaszek and Bianchi reacted as though horror-stricken upon hearing the phrase from Plaintiff that "all I told them was the truth."

45. Even before Plaintiff substantively advised Defendants as to what specifically Plaintiff told the collaborating law enforcement agencies, and only that all he told them "was the truth," Defendants Bianchi and Wojtaszek reacted with what appeared to Plaintiff to be intense anger, hostility, hatred and vitriol towards Plaintiff.

46. Defendants were contacted by a news reporter who was seeking information on certain policies and practices that the reporter suggested were unlawful, unethical and contrary to the best interests of the Public Benefits Corporation.

47. As FOIL Officer, Plaintiff was responsible for truthfully and honestly processing requests for information. Defendants Wojtaszek and Bianchi would not permit that to happen.

48. Intense scrutiny into the policies and practices of the WROTB and Defendant Wojtaszek was brought by the media and others. Such inquiries included trips taken by Defendant Wojtaszek with another WROTB officer to Phoenix, AZ at WROTB

expense to attend and industry conference wherein they would allegedly drive to Las Vegas, Nevada for purely recreational purposes and not engage in the legitimate conference activities.

49. There was concern by Plaintiff that Defendant Wojtaszek could be putting his pension at risk if it were ever proven that Defendant Wojtaszek had misused and was misusing funds.

50. Plaintiff's concerns in general were, upon information and belief, taken by Defendant Wojtaszek to be a threat, rather than an observation of policies and procedures that needed changing, and Defendant Wojtaszek's aggression toward and ostracism of Plaintiff became even more intense.

51. Plaintiff was unable to discuss the details of Defendant Wojtaszek's trips to Phoenix, AZ with Defendant Wojtaszek because Defendant Wojtaszek wouldn't permit any communication between them. Plaintiff did not disclose this particular concern to the collaborating authorities, even as of the date of this pleading, for lack of information and the inability to get information to verify the concern, but Plaintiff verily believes that Defendant Wojtaszek has engaged in misuse of public funds.

52. Upon information and belief, Defendants Wojtaszek and Bianchi retained outside counsel who specifically advised that all contact between Defendants and Plaintiff cease, so that if questioned by the authorities, Defendants could plausibly deny knowing anything about Plaintiff's concerns.

53. The outside counsel hired by Defendants interviewed Plaintiff, and it became apparent to Plaintiff and Plaintiff's counsel that the outside counsel was focusing

on protecting Defendants Wojtaszek and Bianchi, rather than on informing the WROTB Board of Directors of the problems, illegalities and ill-advised policies that were ongoing.

54. Outside counsel prepared a summary of interviews with Plaintiff and Plaintiff's attorneys and, upon information and belief, restricted access to the resulting 300+ page report such that the Board of Directors each had one-hour to read and absorb the contents thereof, and needed to return the copies of the report they were given, to that outside counsel and were not permitted to make a copy for themselves.

55. Upon information and belief, the 300+ page report submitted by outside counsel was narrowly confined to the specific subject matter of the interviews by outside counsel with Plaintiff and Plaintiff's lawyers and the subjects that were discussed with the FBI and collaborating investigating agencies.

56. Plaintiff was advised by Defendants Bianchi and Wojtaszek that the legal fees generated by Plaintiff's retention of counsel for advice on how to carry out his duties amidst conflicting mandates and how to truthfully respond to questions by the collaborating law enforcement agencies under these conflicting circumstances, would not be covered by WROTB.

57. Other members of the WROTB Board of Directors caused a resolution to be passed to hire outside counsel to study the issue of Plaintiff's attorney's fees. Outside counsel opined that Public Officers Law did provide for reimbursement to Plaintiff under these circumstances. Separate outside counsel retained by WROTB opined that the health insurance being provided to the part time WROTB board members was improper.

58. To this date, Plaintiff's legal fees have not been reimbursed, and the health insurance continues to be provided, all contrary to the advice of WROTB's two sets of special counsel.

59. As of this time, Plaintiff has amassed a legal bill in excess of FORTY SIX THOUSAND (\$46,000) DOLLARS relative to helping Plaintiff, as COO of Defendant WROTB to legally function within the infrastructure that has been corrupted by Defendants Wojtaszek and Bianchi.

60. In direct and immediate response to the Plaintiff's disclosing that he was truthful when questioned by the FBI and collaborating authorities and speaking to their representatives and agents, Defendant WROTB – acting through Defendants Bianchi and Wojtaszek – swiftly, aggressively and austerely retaliated against Plaintiff and engaged in an ongoing and continuous series of acts and course of conduct involving harassment, isolation, ostracism, belittling, adverse employment actions and intimidation consisting of, but was and is not limited to:

- a) Excluding the Plaintiff from contact with Defendants Wojtaszek and Bianchi;
- b) Excluding and isolating the Plaintiff from the ordinary operational decisions that he was previously responsible for making and thereby constructively terminating the Plaintiff;
- c) Threatening Plaintiff with termination;
- d) Subordinating Plaintiff to other WROTB employees who used to answer to Plaintiff;
- e) Causing Plaintiff to be removed from the ordinary chain of command such that Plaintiff's subordinates, department directors, et al, now were directed by Defendants to go around Plaintiff and report directly to Defendant Wojtaszek;
- f) Directing adverse employment actions to the Plaintiff;
- g) Excluding Plaintiff from the ordinary meetings that used to be a regular part of Plaintiff's day to day routine; and
- h) Manifesting outward hostility by Defendants Wojtaszek and Bianchi as manifested by a total "silent treatment" by Defendant Bianchi, and a near total "silent treatment" by Defendant Wojtaszek;
- i) Providing poor performance ratings and evaluations;

- j) Subjecting Plaintiff to a Personnel Improvement Plan (PIP) imposing strict remediation goals that were entirely uncalled for and unnecessary, and in failing to follow up on the PIP remediation goals with Plaintiff;
- k) Discouraging Plaintiff from exploring what Plaintiff considered “bad policies” and shining lights on them;
- l) Cutting Plaintiff off from any data that Plaintiff was concerned could result in loss of pension for certain WROTB personnel, and which Plaintiff wanted to correct for the protection of those WROTB personnel who appeared to be engaging in the wrongful use of taxpayer money for their own entertainment;
- m) Encouraging Plaintiff to resign from his employment under intense pressure;
- n) Encouraging Plaintiff to resign just 3 years short of the lucrative vesting of Plaintiff’s pension and lifetime health insurance benefits.
- o) Causing Plaintiff great emotional distress
- p) Causing Plaintiff to endure great financial expenditures

61. With respect to being isolated and excluded from WROTB management on a continuous basis in response to Plaintiff’s above-described communications with the FBI, United States Attorney’s Office and collaborating investigating agencies, acting through Defendants Bianchi and Wojtaszek, both of whom influence policy, WROTB has wrongfully and intentionally subjected the Plaintiff to the following:

- a) Excluded the Plaintiff from Board Meetings, Executive Session Meetings, closed door meetings and other management events on various dates between June, 2019 and the present; prior to communicating with the FBI, as aforesaid, the Plaintiff would have been a participant in such meetings and events;
- b) Beginning in April 2019, and continuing through the present, Defendant Bianchi has ceased all communication with the Plaintiff despite the mutual management responsibilities of Bianchi as Chairman of the Board of Directors of WROTB and of the Plaintiff as Chief Operating Officer;
- c) Plaintiff was removed as FOIL officer and instructed that he may not respond to any requests by anyone for information about WROTB or the acts or actions of any officer or director thereof;
- d) The Plaintiff has been removed as a recipient of management-related emails for which the Plaintiff would have been a recipient prior to the above-described communications with the FBI;

- e) The Plaintiff was excluded from an important management-related meeting with the Delaware North Companies; prior to the Plaintiff's above-described communications with the FBI, the Plaintiff would have been an active participant in such a meeting;
  - f) The Plaintiff has been excluded from WROTB office social events and community service work which the Plaintiff attended and was an active participant prior to the Plaintiff's above-described communications with the FBI – i.e., a WROTB “Employee of the Month” celebration and donating turkeys to the Food Bank of Western New York, despite the Plaintiff having initiated the WROTB's involvement with that community service;
  - g) The Plaintiff has been caused to endure great emotional distress; and
  - h) The Plaintiff has been caused to expend large sums of money in legal fees.
62. With respect to being subjected to threats relative to the Plaintiff's employment status at WROTB, the following occurred in direct response to the Plaintiff's above-described communications with the collaborating law enforcement agencies:
- a) Defendant Bianchi made the statement “don't let the door hit you on the way out” in reference to the Plaintiff in a meeting between Bianchi and other WROTB officers;
  - b) Following a Board of Directors meeting, a Board member who had personal knowledge of the adverse and retaliatory manner in which Defendants Bianchi and Wojtaszek reacted to the Plaintiff's above-described communications with the FBI, US Attorney's Office and collaborating investigating agencies, stated to the Plaintiff “watch your back” and further informed the Plaintiff that Bianchi was “not happy” with the Plaintiff and wanted to find a justification for firing the Plaintiff from Plaintiff's position at WROTB;
  - c) Defendant Wojtaszek made the written statement that all WROTB employees are “at will employees”, thereby threatening the Plaintiff by referring to said Defendant's authority to fire the Plaintiff from the Plaintiff's position at WROTB.
  - d) Plaintiff has refused to voluntarily resign his position.

- e) Plaintiff has been caused to endure great emotional pain, suffering and distress.
- f) Plaintiff has been caused to expend large sums of money in legal fees.

63. Plaintiff was threatened with and subjected to adverse employment action, was ostracized and isolated, and refused to voluntarily resign.

64. Plaintiff's home burned to the ground.

65. With respect to adverse employment action of WROTB concerning the Plaintiff, acting through Defendants Bianchi and Wojtaszek, the Plaintiff was subjected to the following in response to the Plaintiff's above-described communications with the collaborating investigating law enforcement authorities:

- a) The Plaintiff was removed from the Plaintiff's positions of Purchasing Officer and Records Officer and FOIL Officer and was prevented from responding to Freedom of Information Law and Open Meetings Law requests submitted to the WROTB;
- b) A new WROTB human resources rule was initiated by Defendant Wojtaszek which required the Plaintiff to work on weekends;
- c) The Plaintiff was not given a raise in salary for 2020 and was given a poor employee evaluation score for 2019 despite having received a raise in salary and an above-average employee evaluation score for each of the prior eight (8) years at WROTB;
- d) Purportedly due to the COVID-19 pandemic, the Plaintiff's 2020 salary was reduced by 50% while the 2020 salaries of other WROTB employees remained at 100%.
- e) Plaintiff has been caused to endure great emotional distress, pain and suffering.
- f) Plaintiff has been caused to expend large sums of money in legal fees.

**FIRST CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**VIOLATION OF 42 U.S.C. § 1983**

66. The Plaintiff repeats and realleges paragraphs “1” through “65” as if fully set forth herein.

67. Prior to the adverse employment actions referenced herein, as Chief Operating Officer the Plaintiff supervised day-to-day operations of the WROTB and carried out but did not formulate or set policy for WROTB, as that function was performed by the WROTB Board of Directors and Defendant President Wojtaszek. Plaintiff was not and is not a policymaker for WROTB.

68. In cooperating with the collaborating law enforcement authorities concerning the matters raised herein, including, but not limited to the free health insurance improperly provided to WROTB Board members and executives and other matters relative to improper conduct by WROTB officials, the Plaintiff was speaking as a non-policymaker citizen on matters of public concern and, therefore, the Plaintiff’s aforesaid speech to the collaborating agencies was and is protected by the First Amendment to the United States Constitution.

69. Due to Plaintiff’s exercise of his Constitutional rights in speaking to the investigating collaborating law enforcement agencies, Plaintiff was subjected to the above-described adverse employment actions and other workplace misconduct in direct retaliation for Plaintiff’s protected speech.

70. Plaintiff’s aforesaid protected speech to the investigating collaborating law enforcement agencies was the direct motive and cause of the adverse employment action and retaliatory and workplace misconduct the Plaintiff was subjected to by Defendants,



and the Plaintiff's aforesaid protected speech was a substantial motivating factor in the adverse employment action and workplace misconduct the Plaintiff was subjected to by WROTB.

71. The aforesaid actions undertaken by WROTB in violation of the Plaintiff's Constitutional rights as applied to the states by the 14<sup>th</sup> Amendment and 42 U.S.C. § 1983, and in contravention thereof, were taken in response to a WROTB policy to deter speech by an employee disclosing WROTB wrongdoing concerning public authorities, and to punish the cooperating and/or "whistle-blowing" employee with adverse employment actions and to constructively discharge the Plaintiff and encourage and compel the voluntary resignation of employment by said employee from WROTB.

72. As President and Chief Executive Officer of WROTB, Defendant Wojtaszek – in conjunction with Defendant Bianchi as Chairman of the Board of Directors – have policymaking power and authority for WROTB at all times stated herein, and used that authority to implement the aforesaid policy directed at Plaintiff to retaliate against the Plaintiff for engaging in protected speech with the collaborating law enforcement agencies.

73. By reason of the foregoing, in violation to the Unites States Constitution and 42 U.S.C. §1983, the Plaintiff is entitled to relief.

**SECOND CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**VIOLATION OF SECTION 75-b(2)(a) OF THE CIVIL SERVICE LAW**

74. The Plaintiff repeats and realleges paragraphs “1” through “73” as if fully set forth herein.

75. In disclosing and confirming to the collaborating investigative law enforcement agencies, including the FBI, NYS Gaming Commission, United States Attorney’s Office and New York State Comptroller that certain members of the Board of Directors of WROTB who are not employed on a daily basis by the WROTB were receiving free health insurance at the expense of WROTB, and disclosing and confirming additional wrongdoing, the Plaintiff was cooperatively imparting that which he reasonably believed to be improper governmental action by a Public Benefit Corporation taking place at WROTB with the knowledge and consent of Defendants.

76. By engaging in a continuing campaign of (1) retaliation against Plaintiff by excluding the Plaintiff from Board and other management-related meetings; (2) otherwise isolating and constructively discharging the Plaintiff; (3) threatening Plaintiff with termination of employment; (4) taking adverse employment action against Plaintiff, all in direct response to the Plaintiff’s aforementioned disclosure to the collaborating investigating law enforcement agencies, concerning improper governmental and corporate (Public Benefit) action, WROTB violated Section 75-b(2)(a) of the New York Civil Service Law.

77. By reason of the foregoing, and in accordance with Section 740(5) of the New York Labor Law, the Plaintiff is entitled to relief.

**THIRD CAUSE OF ACTION**  
**AGAINST DEFENDANTS BIANCHI AND WOJTASZEK:**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

78. The Plaintiff repeats and realleges paragraphs “1” through “77” as if fully set forth herein again.

79. In retaliating against Plaintiff in the manner described above in response to Plaintiff’s disclosure to the collaborating investigating law enforcement agencies of what the Plaintiff reasonably believed to be improper governmental action taking place at the WROTB, Defendants Bianchi and Wojtaszek engaged in a deliberate, relentless and malicious campaign of harassment and hostility toward Plaintiff.

80. Plaintiff was subjected to the aforesaid deliberate and malicious campaign of harassment by Defendants Bianchi and Wojtaszek on a continuing and ongoing basis from the time Plaintiff first informed Defendants of his contacts with the FBI and collaborating investigating agencies, through September, 2020 and continuing to this present day.

81. In retaliating against Plaintiff through the aforesaid deliberate and malicious campaign of harassment, Defendants Bianchi and Wojtaszek acted outside the scope of their duties as Chairman of the Board of Directors of WROTB and WROTB’s President and Chief Executive Officer, and knowingly abused their authority with the wrongful intent to injure the Plaintiff.

82. As a direct and proximate result of the aforesaid intentional tortious conduct of Defendants Bianchi and Wojtaszek, Plaintiff has been caused to suffer severe anxiety and emotional distress and, on the advice of Plaintiff’s healthcare practitioners, to miss multiple days of employment at WROTB.

83. By reason of the aforesaid continuous and deliberate campaign of harassment through the wrongful conduct of Defendants Bianchi and Wojtaszek resulting in the infliction of severe emotional distress, Plaintiff is entitled to receive damages and relief from said Defendants.

**FOURTH CAUSE OF ACTION**  
**AGAINST DEFENDANTS WROTB AND WOJTASZEK:**

**DEFAMATION**

84. The Plaintiff repeats and realleges paragraphs “1” through “83” as if fully set forth herein.

85. In connection with the above-described WROTB employee evaluation of the Plaintiff for 2019, presumably as part of his duties as President and Chief Executive Officer of the WROTB, Defendant Wojtaszek prepared a written “Confidential Employee Performance Evaluation” for the Plaintiff for calendar year 2019 (hereinafter the “Evaluation”).

86. In preparing the Evaluation relative to the Plaintiff, and knowing the ratings set forth therein were false and directly contradicted by Plaintiff’s job performance ratings at WROTB for prior years, and entirely inconsistent with Plaintiff’s actual job performance, Defendant Wojtaszek wrongfully and intentionally gave Plaintiff a “poor” employee performance evaluation for 2019 in the following categories: “Attendance/Dependability”, “Communication/Listening Skills”, “Contribution to Group”, “Problem Solving” and “Leadership Ability”.

87. In addition to the aforementioned false employee performance ratings, Defendant Wojtaszek made the following false statements in the Evaluation concerning the Plaintiff: "He does the bare minimum" and "The employee has set no known goals for employment. He shows no initiative to go the extra mile."

88. The aforesaid false statements were made intentionally and maliciously in order to wrongfully portray the Plaintiff as an incompetent employee and subject the Plaintiff to ridicule in his place of employment.

89. Upon information and belief, the above-described false and defamatory statements in the Evaluation were published to third parties upon the Evaluation being distributed to members of the Board of Directors of the WROTB, and other officers and staff of the WROTB.

90. As a result of the above-described false and defamatory statements in the Evaluation, Plaintiff has suffered special damages consisting of the loss of a salary increase, a reduction of wages, medical expenses and other pecuniary losses.

91. By reason of the above-described defamation per se, the Plaintiff is entitled to recover damages from Defendants WROTB and Wojtaszek.

**FIFTH CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**  
**IMPROPER WITHHOLDING OF WAGES**

92. Plaintiff repeats and realleges paragraphs "1 through 91" as if fully set forth herein.

93. Plaintiff at all times relevant herein was and is an employee of Defendant WROTB.

94. Plaintiff has rendered and performed services to Defendant WROTB in accordance with his responsibilities as Chief Operating Officer of WROTB, and until the retaliatory and vindictive conduct by Defendants, had always earned excellent evaluations.

95. Plaintiff has not been compensated by WROTB for the full value of the services performed by him and continues to be deprived of the full value of the services performed by Plaintiff.

**SIXTH CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**

**INDEMNIFICATION OF AND REIMBURSEMENT FOR ATTORNEYS' FEES**

96. Plaintiff repeats and realleges paragraphs "1 through 95" as if fully set forth herein once again.

97. At all times alleged herein, Plaintiff was acting within the scope of his public employment and duty on behalf of WROTB.

98. The legal fees incurred by Plaintiff's retention of counsel was incident to Plaintiff's public employment and the conduct of his duties associated therewith.

99. Plaintiff duly and properly submitted his bills and itemized billing statements to the WROTB designated legal counsel for payment.

100. Plaintiff's retention of legal counsel was not for his own financial gain or benefit, but rather, to get guidance on how to respond to inquiries by investigative agencies, how to deal with fraudulent FOIL responses being given to the media and

others by Defendants while Plaintiff was in the role of Chief Operating Officer, and how to reconcile his responsibilities to the WROTB Board of Directors with his duty of obedience to his direct supervisor, Defendant Wojtaszek,

101. Pursuant to New York Public Officers Law, §§18 and 19, et seq., Defendant WROTB is required to reimburse Plaintiff for aforesaid legal fees.

**SEVENTH CAUSE OF ACTION**  
**AGAINST DEFENDANT WROTB:**  
**VIOLATION OF LABOR LAW 740**

102. Plaintiff repeats and realleges paragraphs “1” through “101” as if fully set forth herein.

103. By the aforesaid WROTB Board Members and executives improperly procuring health care insurance free of charge as stated above, said WROTB Board Members and executives engaged in health care fraud as defined in Section 740 (1)(g) of the Labor Law.

104. As a direct result of Plaintiff’s disclosure of such health care fraud to the appropriate investigative agencies, Defendant WROTB – acting through Defendants Bianchi and Wojtaszek – subjected Plaintiff to the above-described retaliatory personnel action in violation of Section 740 (2)(a) and (b) of the Labor Law.

105. Due to the aforesaid violation of Section 740(2)(a) and (b) of the Labor Law by Defendants WROTB, the Plaintiff is entitled to relief.

WHEREFORE, Plaintiff demands judgment as follows against the Defendants:

1. **For the First Cause of Action,**

- a) Compensatory damages of not less than \$4,500,000, including all damages sustained by the Plaintiff due to the aforesaid violation including, without limitation, all wages, benefits or any other remuneration to which the Plaintiff is otherwise entitled;
- b) Permanent injunctive relief preventing WROTB from continuing the aforesaid tortious and unconstitutional conduct; and
- c) Appropriate interest, the costs of this action and attorneys' fees incurred by the Plaintiff.

**2. For the Second Cause of Action,**

- a) Compensatory damages of not less than \$4,500,000, including all damages sustained by the Plaintiff due to the aforesaid conduct and violations, including, without limitation, all wages, raises, benefits or any other remuneration to which the Plaintiff is otherwise entitled;
- b) Permanent injunctive relief preventing WROTB from continuing the aforesaid conduct and violations; and
- c) Appropriate interest, the costs of this action and the attorneys' fees incurred by the Plaintiff.

**3. For the Third Cause of Action,**

- a) Compensatory damages for emotional pain and suffering of not less than \$4,500,000;
- b) Punitive damages in an amount not less than \$1,000,000, as may be decided following the trial of this action; and
- c) Appropriate interest, the costs of this action and the attorneys fees incurred by Plaintiff for the necessity of bringing this action.

**4. For the Fourth Cause of Action,**

- a) Compensatory damages of not less than \$1,000,000, and
- b) Appropriate interest, the costs of this action and the attorneys fees incurred by Plaintiff for the necessity of bringing this action.

**5. For the Fifth Cause of Action,**

- a) Compensatory damages in an amount to be determined after trial.
- b) Appropriate interest, the costs of this action, and the attorney's fees incurred by the Plaintiff for the necessity of bringing this action.



6. **For the Sixth Cause of Action,**

- a) Compensatory, indemnification and reimbursement damages of not less than \$65,000.
- b) Appropriate interest, the costs of this action, and the attorney's fees incurred by the Plaintiff for the necessity of bringing this action.

7. **For the Seventh Cause of Action,**

- (a) An injunction to restrain continued violation of this section;
- (b) The reinstatement of the Plaintiff to the same position held before the retaliatory personnel action, or to an equivalent position;
- (c) The reinstatement of full fringe benefits and seniority rights;
- (d) All damages sustained due to the violation including, without limitation, the compensation for lost wages, benefits and other remuneration; and
- (e) The payment of all reasonable costs, disbursements, and attorney's fees.

- 8. Such other and further relief as the Court and/or jury deems proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial of all issues so triable.

DATED: September \_\_\_\_, 2020  
Amherst, New York

HOGANWILLIG, PLLC

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Steven M. Cohen, Esq.  
Edward P. Yankelunas, Esq.  
*Attorneys for Plaintiff*  
2410 North Forest Road, Ste. 301  
Amherst, New York 14068  
(716) 636-7600

JS 44 (Rev. 08/18)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

**I. (a) PLAINTIFFS**

Michael Nolan

(b) County of Residence of First Listed Plaintiff Palm Beach  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

HoganWillig, PLLC, 2410 N. Forest Road, Suite 301, Amherst, NY 14068,716-636-7600

**DEFENDANTS**

Western Regional Off Track Betting Corporation, Richard D. Bianchi, et al

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 42 U.S.C. 1983  
 Brief description of cause:  
 Violation of First Amendment to United States Constitution

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE 07/26/2021 SIGNATURE OF ATTORNEY OF RECORD 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_