

IN THE SUPREME COURT OF OHIO

Prasad Bikkani Appellant, Plaintiff) Case No. **2006-2073**
) From Cuyahoga County Court of Appeals,
v.) **Eighth Appellate District**
Rotan Lee, et al Defendants-Appellees) **Case No. CA-06-088650**
)

MOTION 1) to Oppose 4/9/2007 filed Board of Trustee cum Attorney Matthew Fitzsimmons of NEON/THCP (included amended leave of court request) motion in an effort to strike Plaintiff's filing but **to concur with him to get additional time** as per his response per page 3 last paragraph request of 4/9/2007 filing, which states in the pertinent part:

“Alternatively, NEON and THCP ask the Court to set another **response** date so that they may file their Reply Brief in support of their application for attorneys' fees, ...”

2) sanction trustee cum attorney for concealed violations with the courts; with the support of sample **243 COUNTS** of professional misconduct, about 3 Dozen Disciplinary Rule violations, and over two dozen Parties of conflicts and also Mr. Fitzsimmons filed Appeal **CA-07-089312** with continued self-dealings to continue to unjustly enrich, and to continue with severe judicial and constitutional violations

3) Justice should be served by sanctioning Trustee cum attorney Fitzsimmons who covered his tracks throughout the case process with severe conflicts, continue maintaining CA07-089312, with severe concealment and conflicts seeking sanctions in 2006-2302, represented dozens of conflicts of parties not including co-trustee, obtained protective order in violation of Attorney-client fraud exception to conceal the evidence, acting as true vexatious attorney yet blamed Plaintiff on procedural grounds to cover-up his tracks, blocked discovery and other violations were detailed in various sections and he deserves sanctions, disqualification, and disbarment to serve justice to judiciary process

THCP/NEON - Appellees
%Matthew Fitzsimmons
25 West Prospect Ave, Suite 1400
Cleveland, OH 44115

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SUPREME COURT OF OHIO

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<p>IV) Conclusion:</p> <p>A) Whether a board of trustee of a nonprofit corporation, as a General counsel</p> <ul style="list-style-type: none"> i) can continue to violate IRC 4941(d)(1)(B) self dealings, and with severe conflicts of interest filed Appeal CA-07-089312 with continued self-dealings to further unjustly enrich ii) can materially participate in conspiracy for pecuniary benefit against corporation/client, iii) can materially participate in unlawful termination of employees in conspiracy with third parties iv) can materially participate in submission of wrong information/financial statements to corporation through third parties, v) can participate in conversion of corporation against board of trustees, vi) can materially participate in the conversion of funds; and still can represent in the subsequent lawsuit against a victim/Plaintiff not only with conflicts of interests but also with further pecuniary benefit and to suppress/alter facts 	<p>81</p>

<p>B) Whether an attorney in conjunction with the above violations/characteristics can submit to the court</p> <ul style="list-style-type: none"> i) materially falsified affidavit, (in September 2005 itself, perjury) ii) half truth pleadings, iii) Can blame victim for frivolous conduct in an effort to hide evade deposition/discovery, commit mal practice iv) obtain protective order, for further pecuniary benefit and to protect all his past clients who happened to be over a dozen defendants in the instant case and attorney being a party to the lawsuit can refuse the summons and can represent in the case. <p>C) Whether an attorney in conjunction with the above violations/characteristics can participate in hundreds of corrupt activities; when sought help from Appellate court then can present half truth to the court to obtain sanctions against victim/Plaintiff then continue to represent in Supreme court with half truths as if the Plaintiff is vexatious</p> <p>D) Whether the parties can be represented by an attorney of the above violations/characteristics along with an attorney/group of another attorney's extension</p> <p>E) Whether an attorney in conjunction with the above violations/characteristics can participate in hundreds of corrupt activities; when sought help from Appellate court then can present half truth to the court to obtain sanctions against victim/Plaintiff then continue to represent in Supreme court with half truths as if the Plaintiff is vexatious</p> <p>F) Whether the impressive credentials of working as clerk with Ohio Supreme Court's Chief Justice even decades ago, like Mr. Fitzsimmons's affidavit suggested, prevents to serve justice from disqualification/disbarment/disciplinary action to protect community and or victims and the judiciary system</p> <p>G) Whether Appeal court lacks jurisdiction/appealable matter to review even when the same court considered Mr. Fitzsimmons/NEON/THCP's motion to impose sanctions against Plaintiff/victim when sought justice within the existing law, or to modify the existing law to protect community</p>	
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Note:

Exhibits referred to filed pleadings and also **some attached and such exhibits** referred without prefix.

J2206: Exhibit X refers to corresponding Exhibit of June 22, 2006 filing

JL606: Exhibit X refers to corresponding Exhibit of July 06, 2006 filing

S1205: Exhibit X refers to corresponding Exhibit of September 12, 2005 filing

S1506: Exhibit X refers to corresponding Exhibit of September 15, 2006 filing

D0506: Exhibit X refers to corresponding Exhibit of on or around December 5, 2006 filing

Holders: Parties who concerted from time to time with NEON Trustee cum Attorney Matthew Fitzsimmons in a series of violations to convert a healthy THCP corporation into NEON through pecuniary acts of Mr. Fitzsimmons and others which lead to ouster of THCP board of Trustees, including the ouster of Plaintiff, etc.

Now comes Plaintiff, Prasad Bikkani, and states that the 4/16/2007 filing was late by less than a 1 minute on 4/16/2007 thus the next day delivery was not accepted in opposition to 4/4/2007 filing in 2006-2302. The instant Motion in 2006-2073 concurs with Attorney Fitzsimmons to respond for the listed violations, Attorney Matthew Fitzsimmons involved **personally** against Plaintiff related to underlying case issues, already caused **perjury** through material falsification in September 2005 affidavit in trial court and in such cases the attorney issue resolution appeared to be priority to help all parties. This opposition evidences that infact Trustee cum Attorney Fitzsimmons is vexatious and judgment against Plaintiff/Victim should be reversed and should not be punished to plead for modification of law if existing law does not adequately support.

Unfortunately, Trustee cum Attorney Fitzsimmons continue to misrepresent against Plaintiff and inserting below Fitzsimmons' April 4, 2007 filing under the name of in the Supreme court to get his bills paid in 2006-2302, and some how Trustee Fitzsimmons who blocked depositions including Evelyn Armstrong, Vito DeCore, Lee Jacks and MT Miller who is a Trustee meaning Trustee cum Attorney Fitzsimmons represented all sections of people and continue to accuse the Plaintiff for coming to appeal even after filing multiple requests. Following the content of Fitzsimmons's filing about Plaintiff's pleadings, Plaintiff details other facts in different sections about Trustee Fitzsimmon's malicious and malpractice acts, privity, etc:

"I. PRELIMINARY STATEMENT

In this appeal, pro se appellant Prasad Bikkani was trying to appeal an Order sanctioning him for filing a frivolous appeal and an Order denying his request to strike certain filings of appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP") This was pro se appellant's second appeal of an Order of the Eighth District Court of Appeals with regard to Case No. CA-06-088650. The Supreme Court previously declined to accept jurisdiction in the other appeal, Case No. 2006-2073, determined that the appeal was frivolous, sanctioned pro se appellant for filing it, and classified pro se appellant as a vexatious litigator. See Exhibits A and B. Even after the Supreme Court classified pro se appellant as a vexatious litigator, he continued to try to file more frivolous papers, but the Supreme Court refused to grant him leave to do so.

This case involves an out-of-control pro se plaintiff-appellant who has refused to comply with the trial court's Orders, the Eighth District's Orders, the Ohio Rules of Civil Procedure, the Ohio Rules of Appellate Procedure, the Supreme Court Practice Rules, and Ohio law. Appellant repeatedly has thumbed his nose at the judicial process since the day he filed his frivolous Complaint.

Appellant initiated this lawsuit twenty-one months ago by filing a 30-page, 107-paragraph, six-count Complaint against fifteen defendants, including NEON¹ and THCP,² seeking \$54 million in damages. The Complaint was largely incomprehensible and lodged a plethora of claims against the defendants, including fraud, Ohio RICO violations, federal and Ohio discrimination claims based upon race, sex, national origin, and age, wrongful termination, loss of consortium, and a purported shareholder's derivative action. NEON and THCP filed various Motions to Dismiss appellant's claims, and the trial court dismissed all of them except for his Ohio employment claims.³

On four occasions, appellant unsuccessfully moved the trial court to disqualify and to disbar NEON's and THCP's attorney, Matthew T. Fitzsimmons. The trial court denied the third Motion¹ NEON was formerly known as Cleveland Neighborhood Health Services, Inc. dba the Hough Norwood Clinics. NEON has been serving the medically underserved of our community for the last forty years. NEON operates six community health centers in Cleveland and East Cleveland which provide primary medical and dental care to those less fortunate among us, i.e., primarily Cuyahoga County's Medicaid families. NEON is a non-profit, charitable 501(c) (3) organization. It is not a Johnny-come-lately to the mission of health care to the poor.

² At all times relevant hereto, THCP was a non-profit Medicaid HMO and appellant's employer. THCP is no longer an operating HMO.

³ The trial court dismissed plaintiff's claims for a variety of reasons including the bar of the applicable statutes of limitations, lack of standing, and failure to comply with Ohio R. Civ. P. 9(B).to Disqualify on July 25, 2006.⁹ On August 24, 2006, appellant filed a Notice of Appeal with the Eighth District Court of Appeals, seeking to appeal the Order denying his third Motion to Disqualify Attorney Fitzsimmons. Four days later, the Eighth District dismissed the appeal, sua sponte, for lack of a final appealable order. Appellant refused to accept that ruling and filed a Motion for Reconsideration which was nothing more than an incomprehensible defamatory rant. On September 26, 2006, the Eighth District denied the Motion for Reconsideration and entered a final Judgment Entry dismissing the appeal for lack of a final appealable order. Despite that ruling, appellant continued to file frivolous papers with the Eighth District. On October 30, 2006, the Eighth District entered an Order granting, in part, NEON's and THCP's Motion for Sanctions. The Eighth District ordered appellant to pay NEON and THCP \$1,400 and

\$1,360 respectively, to cover, in part, the legal fees incurred by them defending the frivolous appeal. After the Eighth District dismissed the appeal, the case was returned to the trial court. On October 3, 2006, appellant filed a fourth Motion to Disqualify Attorney Fitzsimmons. That 9 Appellant has a history of harassing opposing counsel with motions to disqualify and to disbar. This is the way that he litigates. He employed the same strategy in Miles Landing Homeowners Ass'n v. Vihaya Bikkani, et al., Case No. CV-04-519870 in the Court of Common Pleas of Cuyahoga County, by filing similar motions requesting the disqualification, disbarment, and deposition of opposing counsel. same day, the trial court dismissed all of appellant's remaining claims due to his repeated discovery misconduct and refusal to comply with the trial court's orders to provide discovery. On November 9, 2006, appellant initiated the first proceeding in the Supreme Court of Ohio by filing a Notice of Appeal (Case No. 2006-2073). Appellant sought to appeal the Eighth District's September 26th Judgment Entry dismissing, for lack of a final appealable order, appellant's appeal of the trial court's Order denying the Motion to Disqualify. Appellant also personally named attorney Fitzsimmons as a defendant-appellee, even though he was never a party in the case. NEON and THCP opposed appellant's Memorandum in Support of Jurisdiction, on the grounds that the Eighth District properly dismissed the appeal because the Order denying the Motion to Disqualify was not a final appealable order, and attorney Fitzsimmons moved the Court to remove him as a personally named defendant-appellee. NEON and THCP also moved the Court to sanction appellant for his frivolous conduct and to classify him as a vexatious litigator. On February 28 and March 5, 2007, the Court declined to accept jurisdiction and dismissed the appeal, removed attorney Fitzsimmons as a personally named defendant-appellee, determined that the appeal was frivolous, sanctioned pro se appellant for filing it, and classified pro se appellant as a vexatious litigator. See Exhibits A and B. On March 26, 2007, NEON and THCP filed an Application for Attorneys' Fees, Costs, and Expenses, which is pending before the Court. On December 14, 2006, pro se appellant initiated this second proceeding in the Supreme Court of Ohio (Case No. 2006-2302) by filing another Notice of Appeal. Appellant sought to appeal two October 30, 2006 Orders of the Eighth District: (1) the Order awarding NEON and THCP sanctions against appellant for filing the frivolous appeal; and (2) the Order denying appellant's request to strike certain filings of NEON and THCP. Once again, appellant personally named attorney Fitzsimmons as a defendant-appellee, despite the fact that he was never a party in the case. NEON and THCP opposed appellant's Memorandum in Support of Jurisdiction, and attorney Fitzsimmons moved the Court to remove him as a personally named defendant-appellee. On March 28, 2007, the Court declined to accept jurisdiction and dismissed the appeal, and removed attorney Fitzsimmons as a personally named defendant-appellee. See Exhibit C. This appeal to the Supreme Court was the latest in a long list of pro se appellant's frivolous filings. At every stage of the case, appellant has refused to accept and to respect the orders of the trial court and Eighth District telling him he cannot do what he is trying to do. Appellant just continues to churn out more and more frivolous papers, including this appeal and the related appeal in Case No. 2006-2073. If someone must bear the costs of pro se appellant's frivolous conduct, it should be him. Accordingly, NEON and THCP urge the Court to sanction pro se appellant, and to order him to pay the expenses and attorneys' fees incurred by NEON and THCP in responding to this frivolous appeal."

Pertinent section from 2006-2302 of 4/4/2007 filing, format/spacing are as it came to clipboard.

From the above type of introduction to coverup Mr. Fitzsimmons's tracks and the following facts in various sections, court can understand that Trustee cum Attorney Fitzsimmons, Board of Trustee, who is representing with self dealings refused to comply with any laws, Procedure, or practices at the judicial process since decades ago with his self dealings and by harassing opponet attorneys and continued to file false affidavits in the court. For example, Attorney Fitzsimmons filed false affidavit in 1997 in *Shuder vs. Total Health Care Plan, Inc et al* (8th Dist CV-97-324073) and attempted to disqualify Plaintiff's attorney BLAIR HODGMAN (0023388) with a frivolous affidavit claiming as if she represented similar matters with THCP, knowing that it is not true but to harass her and upon filing for sanctions on 4/17/1977 by Blair Hodgman he withdrew the motion on 4/21/1977 as shows the pertinent docket entry:

05/02/1997	D	JE	AS DEFT NORTHEAST OHIO HAS WITHDRAWN ITS MTN TO DISQUALIFY PLTF'S COUNSEL. THE MTN TO DISQUALIFY FILE 4/15/97 IS MOOT AND PLTF'S MTN TO STRIKE MTN TO DISQUALIFY FILED. 4/29/97 IS DENIED AS MOOT. VOL 2081 PG 998. NOTICE ISSUED.
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04/21/1997	D	OT	NOTICE OF WITHDRAWAL OF MOTION TO DISQUALIFY COUNSEL FOR PLTF.....MATTHEW T. FITZSIMMONS 621-7227...
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04/17/1997	P	MO	PLTF'S MOTION FOR SANCTIONS...BLAIR HODGMAN/ 04/30/97-DENIED
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04/15/1997	D	MO	MOTION OF NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES INC. TO DISQUALIFY MS HODGMAN AND HER FIRM AS COUNSEL FOR BRADLEY SHUDER. MATTHEW FITZSIMMONS..... 04/30/97-MOOT
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It is not unusual for Mr. Fitzsimmons keep on filing 4 to 5 motions a day like about 6 motions on 3/31/1997 followed with protective order and Plaintiff's attorney struggling to respond, Unfortunately, per the case history, Plaintiff gave complete discovery including depositions and Trustee Fitzsimmons evaded everything through protective order etc.

04/04/1997	P	MO	PLAINTIFF'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTIONS TO DISMISS... 04/30/97-GRANTED
04/01/1997	D	MO	MOTION OF DEFTS FOR PROTECTIVE ORDER FILED.. MATTHEW T. FITZSIMMONS 621-7227... 04/30/97-GRANTED
03/31/1997	D	MO	DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES 06/18/97-MOOT
03/31/1997	D	MO	MOTION TO DISMISS ALL CLAIMS AGAINST CLEVELAND NEIGHBORHOOD HEALTH SERVICES, INC. ... 04/30/97-DENIED
03/31/1997	D	MO	DEFTS MOTION TO DISMISS RACE DISCRIMINATION CLAIM OR ALTERNATIVE FOR A MORE DEFINITE STATEMENT. MATTHEW T. FITZSIMMONS 621-7227 06/18/97-MOOT
03/31/1997	D	MO	DEFTS MOTION TO DISMISS RACE DISCRIMINATION CLAIM OR ALTERNATIVELY FOR A MORE DEFINITE STATEMENT FILED..... 06/18/97-MOOT
03/31/1997	D	MO	MOTION OF INDIVIDUAL DEFT, JAMES G. TURNER TO DISMISS... MATTHEW T. FITZSIMMONS 621-7227 ... 06/18/97-MOOT

Board of Trustee cum attorney Fitzsimmons keep saying as if NEON/THCP filed various Motions but he is not disclosing what type of scheme he used to convert THCP into NEON fold in an unconscionable way and continued to represent with his self dealings. In the recent Supreme court filings Trustee cum Attorney Fitzsimmons stated as if Plaintiff requested the trial court at four occasions to unsuccessfully move the trial court to disqualify and to disbar purported NEON's and THCP's purported attorney but he is representing at very serious unethics and violation of laws, being trustee, with violating dozens of Disciplinary rules, representing diversified sides of the case and involved with malpractice and with malicious intents representation against his client/Appellant and other defendants. Board of Trustee Fitzsimmons not stating that how many repetitive motions he filed and for his repetitive flings he is taking credit and blaming the Plaintiff. Similarly, only the repetitive reconsideration motions by Scheur et al at least at Louisiana District court lead their criminal charges dismissed on constitutional and or original indictment language compared to second superseding indictment language etc, **Exhibit A.** Trustee cum Attorney Fitzsimmons knew that the multiple filings by him considered

as beneficial but accusing Plaintiff for any reconsideration motions and or for review and reconsideration of law to protect victims for sanctions and with accusations of frivolous conduct or vexatious litigation conduct is unfortunate and it should not lead to his further pecuniary benefit.

Attorney Fitzsimmons repeatedly filed materially false and or fabricated affidavits in the courts over a decade continuously. For example, in Shuder v. Total Health Care Plan Inc etal (8th Dist CV-97-324073)

04/04/1997	P	MO	PLAINTIFF'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO MOTIONS TO DISMISS ... 04/30/97-GRANTED
04/01/1997	D	MO	MOTION OF DEFTS FOR PROTECTIVE ORDER FILED... MATTHEW T. FITZSIMMONS 621-7227... 04/30/97-GRANTED
03/31/1997	D	MO	DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES..... 06/18/97-MOOT
03/31/1997	D	MO	MOTION TO DISMISS ALL CLAIMS AGAINST CLEVELAND NEIGHBORHOOD HEALTH SERVICES, INC. 04/30/97-DENIED
03/31/1997	D	MO	DEFTS MOTION TO DISMISS RACE DISCRIMINATION CLAIM OR ALTERNATIVE FOR A MORE DEFINITE STATEMENT. MATTHEW T. FITZSIMMONS 621-7227 06/18/97-MOOT
03/31/1997	D	MO	DEFTS MOTION TO DISMISS RACE DISCRIMINATION CLAIM OR ALTERNATIVELY FOR A MORE DEFINITE STATEMENT FILED... 06/18/97-MOOT
03/31/1997	D	MO	MOTION OF INDIVIDUAL DEFT. JAMES G. TURNER TO DISMISS... MATTHEW T. FITZSIMMONS 621-7227 .. 06/18/97-MOOT

Trustee cum Attorney Fitzsimmons filed in the trial court stating as if Plaintiff was never an employee of NEON and to dismiss the case and such materially false information was well documented in September 2005 and that will not be the last one without sanctions to him. With such falsification of material facts, with hundreds of listed sample counts and dozens of Disciplinary Rule violations and dozens of conflicting parties/issues any victim should have a right to plead with the court to review and or modify the law. It should be up to the court to

review and or reconsider or not but should not punish with sanctions to have confidence in the judiciary system and no matter how few attorneys try to misrepresent the facts and blame the victims. To make more money with his self-serving forbidden self-dealings, to make more money with either from his conflicting clients, or from past clients including from Plaintiff, Trustee cum Attorney Fitzsimmon's maintaining CASE No. CA 07-089312 in further violations and the subsequent sections highlighten the facts.

Plaintiff came to Appeal with good faith following *Miles Landing Homeowners Association (MLHOA) v. Bikkani* (cv04-519870) in which the facts came to light that MLHOA attorneys with pecuniary interest went to great extent to modify/alter facts even in front of court to win the case, and influenced to Appeal in the instant case, as pecuniary benefit involved to attorney(s) in the instant case, already submitted falsified affidavit in September 2005 by Attorney Fitzsimmons, blocked depositions including from co-trustee MT Miller, Evelyn Armstrong etc, personally involved, representing multiple parties, infact all the parties:

In addition to many others of some NEON/THCP employees, Mr. Fitzsimmons had Attorney-Client relationship with instant case Plaintiff as well as Defendants and some of the involved key parties/issues includes:

- 1 Paula Phelps: Mr. Fitzsimmons was Confident/counsel to THCP officers such as Paula Phelps; with whom involved to oust Plaintiff and with tortuous interference **JB-Exhibit U, V** which lead to exhaust THCP assets, **JB22: Exhibit U-AR**, and get it announced as if whole department was eliminated **JB22-Exhibit Y3**, etc.
- 2 Plaintiff/Prasad Bikkani (as explained in relevant section with Ram Technologies and Tingly System litigations of THCP and other parties)
- 3 Robert McMillan: in a method to avoid \$6,500 reimbursement to Plaintiff, with other retaliations related instant case, exchanged communications through Paula Phelps to Mr. Fitzsimmons,
- 4 Rotan Lee: In several efforts to benefit NEON with millions of dollars through getting waived/deferred THCP note at critical time in an effort to help to unlawfully discharge Plaintiff, show artificial savings through SlimFast with fabricated information so Barry Scheur can get finder fee, release from promised obligations to THCP, and many other related methods,
- 5-7 **5) Barry Scheur/6) Ruth Aaron/7) SMG**: Retained for NEON's and THCP's insider information along with Attorney Dennis Roth (whom later replaced by his attorney Brian Green) to make it appear settlements with hospitals to make it appear as if met requirements but conceal flaws with Rotan Lee to THCP Board etc,

- 8-12 8) Brenda Marshall/9) Moreno Miller/10) Frank Kimber/11) Joseph Davis, 12) Mr. Arnold Pinkney: As Board of Trustees of THCP shared with Attorney Fitzsimmons and relied on him including at the issue of making Rotan Lee as CEO of THCP against the wishes of NEON **JB22-Exhibit K5**, but acted in converting THCP into NEON in concert with SMG, etc.
- 13-15 13) NEON board members collectively as one for now, 14) NEON, 15) THCP: Attorney Fitzsimmons pretended as if he is representing all of them while NEON and THCP has it's own conflicts of interests and with his self interests ahead and in conflicts with as a Board of Trustee of NEON (if not for THCP at any time), and as pleaded in detail with severe conflicts which is a record. Confidential/counsel to current trustees of THCP (whoever may be) and to current NEON Trustees to plead that there is no relationship between NEON and THCP, in contrary to **JL06: Exhibit B, C**, and acting as an owner of both with the way he feels fit with self-dealings and with all the above conflicts.
- 16 Trustee cum Attorney Fitzsimmons (in concert with Dennis Roth as co-attorney to achieve Holders including Rotan Lee, etc goals at the expense of THCP, but Attorney Dennis Roth submitted for disqualification in the instant case when Plaintiff gave a notice to Attorney Fitzsimmons and to Attorney Dennis Roth with potential party to the case, but continued to violate disciplinary rules by using his attorney Brian Green's representation to his client(s) in the instant case.
- 17 Obligated to avoid conflicts if same attorney/firm claimed a different relationship between NEON-THCP while acting as Agent of THCP, and a different relationship while representing NEON to claim THCP assets including improper conveyance through \$1 million note at the most critical time of THCP, **JB22: Exhibit AL-AQ**.
- 18 Attorney Matthew Fitzsimmons/NEON Board of Trustee Obligated to avoid statutorily forbidden self-dealings Internal Revenue Code **4941(d)**, Doc ID 200236401634 p2, **JL06: Exhibit B**, to maintain non-profit status to NEON and THCP-violated corporate formalities thus mandating enjoinder/disqualification.
- 19 Attorney Matthew Fitzsimmons/NEON's Trustee Obligated to uphold Attorney Disciplinary Rules by Profession- but totally and willfully disregarded by attempting to represent/and by representing about twenty entities/persons of conflicting interests/roles simultaneously to benefit himself against his clients.
- 20 Attorney Brian Green: DR 5-105 forbids Attorney Brian Green's representation to any party in the instant case, as he is a partner/Attorney-client relationship with Attorney Dennis Roth who is forbidden through conflicts of interest in the instant case, and also extends restrictions to Brian Green's continuance through Attorney Fitzsimmons's working relationship.
- 21 Attorney Fitzsimmons: Mr. Fitzsimmons knew that he himself is a necessary party to the lawsuit and he and Attorney Dennis Roth were identified as a parties upon verifying related information though November 2005 service was not perfected on Attorney Fitzsimmons and or on Attorney Dennis Roth but June 2006 initiated Sheriff's personal service on 6/27/2006 for Attorney Fitzsimmons though he refused the tendered service.

06/27/2006

D18

SR

06/27/2006 8614346 THE WITHIN NAMED FITZSIMMONS/MATTHEW/T 06/26/2006 SHERIFF DEPUTY SERV. REFUSED IN MY COUNTY.

Whatever 7/5/2006 filed Motion by Attorney Fitzsimmons's Motion reflecting future filings as if "Purporting to name their counsel as a defendant or, in the alternative, to bar

Plaintiff from filing and serving” is/should be moot as it was already tendered on 6/27/2006 itself. The absence of a necessary party constitutes a jurisdictional defect. Dismissal due to a party's failure to join a necessary party is warranted where the defect cannot be cured. *State, ex rel. Bush, v. Spurlock*, 42 Ohio St.3d 77, 537 N.E.2d 641 (1989). Therefore, court may grant order Mr. Fitzsimmons to join as parties if tendered summons strike is final.

22 In addition Attorney Matthew Fitzsimmons and Attorney Dennis Roth are necessary witnesses in the instant case related to employment discharge, and in absence of Robert McMillan, Paula Phelps, Jimmy Dee and Rotan Lee these two witnesses are essential followed by Ruth Aaron, THCP/NEON and Mr. Fitzsimmons’s and Roth’s testimony won’t be in the best interests of their clients with divided loyalty.

23 Trustee cum Attorney Fitzsimmons represented co-trustee in the instant case in 2005 and blocked discovery to protect his pecuniary interests and the falsification of September 2005 affidavit that was submitted to the court.

24 Trustee cum Attorney Fitzsimmons represented NEON officer Evelyn Armstrong etc to whom coerced to provide materially false affidavit in September 2005 and these are further conflicts of interests.

Besides the above conflicts and many violations listed in subsequent sections, Plaintiff believed that law supports the appeal at least under the contest to modify the law, and with the experience of MLHOA case and as difficult to safeguard the integrity of process as many key facts are being altered by involved attorneys and in good faith believed that Disciplinary Rules and pertinent laws supports the appeal. **The 8/11/2006 second superseding indictment, N3006: Exhibit B, of Defendants/holders in *U. S. v. Scheur* et al (2005, Louisiana 05-304) including Barry Scheur, Robert McMillan, etc included Mail/Wire fraud counts with Ohio attorneys and the 14 counts involved with the 18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2, and as of 4/3/2007, Exhibit A, at least Louisiana District court dismissed on grand jury/constitutional related grounds following reconsideration motions, which highlights that Plaintiff’s reconsideration motions are also should be for good faith effort and Mr. Fitzsimmons also failed several reconsideration motions and the current unsuccessful attempts by Plaintiff should not be considered as frivolous. Attorney Fitzsimmons involved with many violations in the instant case and his self interests ahead at the expense of constitution, clients, Plaintiff and others. Some of the Matthew Fitzsimmons involvement issues namely are with the supporting hundreds of paragraphs, including:**

As the evidence is in front of court, Matthew Fitzsimmons in collaboration with other Holders personally selected and ousted Plaintiff unlawfully, as he stated please see D0506: Exhibit Q2, "...[he] identified personnel for the reduction-in-force..." Thus he acted in operational duties and not as an attorney for a company as many of the hundreds of paragraphs highlighted to it, D0506: Exhibit R. Matthew Fitzsimmons is a trustee of a corporation, NEON, D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons" [emphasis added] and the NEON board/officers expected him to be interacted with THCP as a trustee of NEON and without self-dealings and there are no disclosures from him to NEON's board as if he had a self business with THCP to oust Plaintiff from THCP payroll and or from NEON payroll, but he did without corporate formalities either. Mr. Fitzsimmons engineered a materially false affidavit in September 2005 and submitted to court and caused perjury, in an effort to dismiss the case then stating Plaintiff was never an employee of NEON/formerly known as CNHSI, because he had pecuniary benefit in ousting Plaintiff and decided to discredit to cause perjury in the court; when in fact hired by NEON, formerly known as CNHSI. While ousting plaintiff improperly, Matthew Fitzsimmons withheld over \$20,000 unused vacation pay for over a year with a black mail, to sign a separation agreement to cover his illegal activities, and too by claiming as if the waiver requirement is mandatory even to pay unused vacation for a 40+ age category. Mr. Fitzsimmons engineered to change name of the department from MIS to BIS and caused to tell inquiring agencies as if the department was eliminated. Ultimately, NEON trustee, attorney Fitzsimmons converted THCP Corporation from THCP trustees to his/NEON fold.

The instant Motion summarizes some of the pertinent issues caused by NEON Trustee, Attorney Fitzsimmons and concern about the justice coupled with resultant emotional effect caused to Appeal and Plaintiff had very high regards to the court system. Attorney Fitzsimmons/Defendants should not be rewarded for concealing the facts should not be rewarded for hundreds of counts of professional misconduct and for wrongdoing through bill/sanctions against innocent victim/Plaintiff. Without an opportunity to bring a sound appealable order to court's jurisdiction against wrongdoers, many more victims will suffer. Plaintiff is not perfect in knowing exactly which way to bring to the court's notice, and even many appeals filed by

attorneys also not get perfected. But with Attorney Fitzsimmons's altered facts, appeared to the court as if Plaintiff is vexatious, but infact he is one of the few attorneys ever violated so many laws and Disciplinary Rules. Attorney Fitzsimmons is the number one in altering the facts out of all attorneys and too in front of court as evidenced in January 2007 motion and as listed below:

I. NEON Trustee cum Attorney Matthew Fitzsimmons's Professional Conduct violations in terms of Disciplinary Rules – About 32 – Professional conduct violations:

Attorney Fitzsimmons simultaneously representing clients with over a dozen adverse interests without the clients' informed consent, and that attorney also charged improper fees being fiduciary/board of trustee with self-dealings, or no fees from co-wrongdoers to cover-up tracks, and or without contracts to conceal the improper dealings. Attorney Fitzsimmons violated dozens of disciplinary Rules and unfortunately working against the clients.

Attorney Fitzsimmons's professional conduct violations include the following 34 DR violations:

- 1) DR1-102 (Intentional and continuous negligent misrepresentation, Malice actions etc),
- 2) DR1-102 (A)(3) (prohibiting illegal conduct involving moral turpitude),
- 3) DR1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); **DR1-102(A)(3)(4):** Engaging in illegal conduct involving moral turpitude, participated in, also knowingly failing to disclose what he is required to reveal- Repeatedly ignoring the facts, fraudulently misrepresented, in concert with conspirators/co-conspirators.
- 4) DR 1-102(A)(5) (prohibiting conduct that is prejudicial to the administration of justice-obstruction of justice by interfering improperly);
- 5) DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law, *Cleveland Bar Association v. Kodish*, 110 Ohio St.3d 162, 2006 -Ohio- 4090 (2006).
- 6) **DR 1-103(A):** Mr. Fitzsimmons Barton failed to report any violation of DR 1-102 to an authority, one of such examples is his September 2005, knowingly creating a materially false affidavit and submission to court to influence.
- 7) DR2-106(A) (a lawyer shall not charge or collect an illegal or clearly excessive fee); Mr. Fitzsimmons collected well over \$100,000 and often without contract or a bill as it is part payment without any service but as a kickback and or for improper services to pick and improperly discharge Plaintiff.

- 8) DR 2-110(A)(3) (requiring a lawyer to promptly return unearned fees upon withdrawal from employment);
- 9) **DR 5-101(A)(1)**: Mr. Fitzsimmons, a board of trustee of a non-profit corporation/NEON accepted/solicited employment in a conflict of interest without many of the client's/parties consent after full disclosure – By conspiring with others who are defrauding, working against own past/current client with conflicts of interest.
- 10) **DR 5-101(B)**: Mr. Fitzsimmons accepted employment through forbidden self-dealings knowing it is clear that he will be called as a witness
- 11) **DR 5-102(A)**: Some egregious misconduct of attorney Fitzsimmons's were explained in several pleadings since 2005, but continuously violating honest services and fiduciary duties, to be prejudicial to victim and to judiciary system.
- 12) **DR 5-102(B)**: Mr. Fitzsimmons knew he was personally involved in choosing an ousting Plaintiff, working against clients as all the parties in the instant case are his clients though officially representing few, by having self-interests ahead of corporation and in favor of other parties and Mr. Fitzsimmons's testimony would be prejudicial to his clients thus obtained protective order. Corporations act through officers, as he is a board of Trustee of NEON, who are appointed as a board of Trustee, it was clear from the relationship of the parties, and the positions in this lawsuit that there was a conflict of interest violating many Disciplinary Rules.
- 13) **DR 5-103(A)**: Acquiring an improper proprietary interest in a client's case – Using it for self serving-purposes: Being as a Trustee of NEON and representing Plaintiff with THCP in RAM Technology, Tignley Systems etc having fiduciary relationship with Plaintiff and with Defendants but participating in this case with his financial interests ahead of his clients to cover his tracks.
- 14) & 15) **DR 5-105(A) & (B)**: Mr. Fitzsimmons representing conflicting interests with self-dealings, obtained proffered employment and adversely affecting all of his clients with whom he had fiduciary duty in the instant case.
- 16) **DR 6-101(A)(1)** (prohibiting a lawyer from accepting a case that the lawyer is not competent to handle); Since Mr. Fitzsimmons involved with over a Dozen parties (all the parties) and as he materially involved in underlying case, he is not competent to handle and it was evidenced through materially false affidavit submission by him in September 2005 as a means of deceptive practice. In addition, without disclosing these conflicts in any case Mr. Fitzsimmons pleading with half truths and no truth like he did in his January 2007 pleading to blast innocent victim, Plaintiff, with fabricated information including with the use of MLHOA case.
- 17) **DR 6-101(A)(3)** (prohibiting the neglect of an entrusted legal matter - neglecting the fiduciary duty, neglect to client, and serving with conflicts of interest and with divided loyalty to adversaries and with self-serving purpose); Mr. Fitzsimmons had divided loyalty to Plaintiff and all the defendants.

- 18) DR 6-(102) (barring efforts by a lawyer to exonerate himself from or limit his liability to a client for malpractice), Attorney Fitzsimmons knowingly violated all kind of standards, including in materially falsifying affidavit and filing in the court, working against client/plaintiff to avoid his liability by covering tracks, ie may be indirectly limiting liability to a client for malpractice by representing against client as if never a client.
- 19) DR 7-101(A)(1) (barring an attorney from intentionally failing to seek the lawful objectives of a client - Mr. Fitzsimmons failed to seek a past/current client's lawful objective – Violated fiduciary responsibilities and serving for others' interest as involved with many parties and further implicating the client.)
- 20) DR 7-101(A)(2) (prohibiting an attorney from intentionally failing to carry out a contract of professional employment - Mr. Fitzsimmons failed to carry out a contract of employment – self-interest and the interests of conspirators. Disguising the services, not meeting the Client's welfare contract with serving self-interest and the interests of conspirators.) – implicated other clients by blurring his self-dealings with dealings as a Trustee and helping other conspirators, working against his own clients including Plaintiff.
- 21) DR 7-101(A)(3) (barring an attorney from intentionally prejudicing or damaging a client during the course of the professional relationship – for self-serving purposes), - Attorney Matthew Fitzsimmons intentional prejudicing/damaging clients with multiple representations, false affidavit submission, to cover his tracks pleading in January 2007 with half truths and no truth in a way of making accusations against Plaintiff.
- 22) DR 7-102(A)(3) (barring an attorney from concealing or knowingly failing to disclose that which he is required by law to reveal including conflicts); Attorney Fitzsimmons concealed his Board of Trustee position, his conflicts of interest with over dozen parties, conflicts of interest in representing against Plaintiff, conflicts of interest to administration of justice and did not disclose these to the Highest court of Ohio either, where Disciplinary action has the original jurisdiction.
- 23) DR 7-102(A)(4): Knowingly using perjured or false evidence. Attorney Fitzsimmons pleaded throughout with half-truth to no truth including in January 2007 pleading and even submitted materially false affidavit in September 2005 to the court.
- 24) DR 7-102(A)(5) (barring an attorney from making a false statement of law or fact); Attorney Fitzsimmons continuing with commingled acts, with self-dealings, against over a dozen parties, knowing that he had severe conflicts of interest.
- 25) DR 7-102(A)(6): Creating or preserving evidence the attorney knows or should know is false – used materially false affidavit knowingly in September 2005 and continued to represent with half truth and in severe conflicts.
- 26) DR 7-102(A)(7): Counseling a client in conduct the attorney knows is illegal or fraudulent and trying to defend under the name of client to cover up own violations. Acting against client and to the institution for which as a Trustee while making it appears as if defending the client. Acting on behalf of other innocent board members by concealing facts to them and without any disclosures to them and or with conflicts of

interest. Counseling NEON/THCP under the name of a client upon Conversion of millions of dollars and conversion of THCP is an example.

- 27) DR 7-102(A)(8) (Barring an attorney from knowingly engaging in illegal conduct or conduct that violates a Disciplinary Rule); Attorney Fitzsimmons knowingly violated the above and continued with half-truth to no truth to cover his tracks at to harm plaintiff at any length of unethical acts.
- 28) & 29) DR 7-102(B)(1) &(2): To the extent Mr. Fitzsimmons clearly establishing that with his clients violated by not disclosing facts which affected person or tribunal and to the extent involved with schemes against THCP board and converted THCP from the board to NEON also before converting THCP obtained unauthorized 1/14/2000 letter from one of the unauthorized clients to avoid about a million dollars from THCP, against his client THCP/THCP Board.
- 30) DR 9-101(C) (prohibiting a lawyer from stating or implying the ability to influence improperly a tribunal, legislative body, or public official – along with co-wrongdoers Attorney Lee and others claimed to THCP board as if they can influence but didn't disclose dozens of conflicts of interests, influencing Courts with materially falsified affidavits, and by concealing the facts and half truths)
- 31) DR 9-102(A) (requiring lawyers to maintain client funds in a separate, identifiable bank account); Mr. Fitzsimmons received funds without contracts, without bill, without performance, without disclosures even to NEON board of Trustees and did not maintain separate identifiable account.
- 32) DR 9-102(B)(3) (requiring a lawyer to maintain complete records of all client funds in the lawyer's possession and to render appropriate counts regarding them), Mr. Fitzsimmons had all these parties as his clients/fiduciary, per his own letter but continued to represent officially under few name but to influence as he feels fit and against one clients interest against the other. Mr. Fitzsimmons should not be representing even both THCP and NEON as THCP was converted and have diversified interests and he should not be representing NEON either with his self dealings as a trustee of nonprofit corporation, NEON. In addition concealed these conflicts from the court where disclosures are mandatory and even didn't submit waivers might be, as such waivers are not allowed. On the other hand, Mr. Fitzsimmons is a fiduciary to all and represented as attorney all the parties directly and or as implied attorney but in the instant case continue to represent with fundamental violations.

Attorneys Fitzsimmons and his co-wrongdoers have misappropriated large sums of money, millions of dollars, from a nonprofit corporation/THCP, or obtained improperly a million dollar note related letter, concealed from client/THCP board, and even influenced trial court in September 2005 with materially false affidavit and violated multiple times the DR 1-102(A)(3) (prohibiting illegal conduct involving moral turpitude), 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation), 1-102(A)(5) (prohibiting conduct prejudicial to the administration of justice), DR 1-102(A)(6) (prohibiting conduct that adversely

reflects on a lawyer's fitness to practice law), DR 9-102(B)(3) (requiring a lawyer to maintain complete records of all client funds in the lawyer's possession and to render appropriate counts), and DR 9-102(B)(4) (requiring a lawyer to promptly pay or deliver requested funds in the lawyer's possession that the client is entitled to receive); DR 9-101(C) (prohibiting a lawyer from stating or implying the ability to influence improperly a tribunal, legislative body, or public official); DR 9-102(A) (requiring lawyers to maintain client funds in a separate, identifiable bank account); DR 9-102(B)(3) (requiring a lawyer to maintain complete records of all client funds and to render appropriate accounts regarding them); DR 9-102(B)(4) (requiring a lawyer to promptly repay funds that the client is entitled to receive, requiring prompt payment of the client's funds or other property in the lawyer's possession). Some of these explained in detail with exhibits in the pertinent sections.

Attorney Fitzsimmons had multiple conflicting relationships and the professional responsibility violations includes **DR 1-102(A)(6) and 5-101(A)(1) (prohibiting a lawyer, except with client consent after full disclosure, from accepting employment where the lawyer's and client's interests may reasonably conflict and compromise the lawyer's independent judgment on the client's behalf)**. Attorney Fitzsimmons is acting out of **self-interest** in trying to exonerate himself from any possible liability, also engaged in a pattern of neglect involving numerous clients and committed multiple offenses. Attorney Fitzsimmons accepted money without any contract and or earned fee without any service performance. Thus Attorney could not offer anything to suggest that he acted contrary to his agent's representation by earning any part of the fee, violation of DR 9-102(B)(4). In the previous sections, Defendant listed samples of 200+ Counts and 30+ Professional misconduct Disciplinary Rules of Attorney Matthew Fitzsimmons.

The primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204 (2004), 815 N.E.2d 286, ¶ 53; *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 322 N.E.2d 665. As Ohio Supreme

Court stated in *Weaver*, the purpose of the disciplinary sanctions "is to protect the public against members of the bar who are unworthy of the trust and confidence essential to the relationship of attorney and client; it is to ascertain whether the conduct of the attorney involved has demonstrated his unfitness to practice law, and if so to deprive him of his previously acquired privilege to serve as an officer of the court. ", quoting *In re Pennica* (1962), 36 N.J. 401, 418-419, 177 A.2d 721.

Attorney Matthew Fitzsimmons had acted improperly for his own profit by concealing from NEON where he is a board of trustee but by joining hands with other Holders for their mutual benefit but not to the client, there by misappropriating the Client's funds and that he had done so repeatedly, demonstrating a pattern of misconduct without a contract, bill, or service. Attorney Fitzsimmons misappropriated funds intended by THCP and then ignored his duty along with other Holders. And apparently violated DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(B)(3), and 9-102(B)(4). The presumptive disciplinary measure for such acts is disbarment. *Columbus Bar Assn. v. Moushey*, 104 Ohio St.3d 427, 2004-Ohio-6897, 819 N.E.2d 1112, ¶ 16; *Disciplinary Counsel v. Millonig*, 108 Ohio St.3d 154, 2006-Ohio-420, 841 N.E.2d 779, ¶ 14. Attorney Fitzsimmons did not show any remorse for his crimes and or tried to downplay the role that he played with other Holders leading the THCP to no operational through reflecting selfish motive actions, engaging in a pattern of misconduct and by committing multiple offenses. It is not unusual that even attorneys who involved in criminal acts did not even admit facts to relator during the official investigations. Under those circumstances honorable Supreme Court considered the relator's response to the Attorney's/respondent's objections, *In re Bein*, 97 Ohio St.3d 1497 (2002), 780 N.E.2d 602. Attorney Fitzsimmons may contend that he was not solely responsible for the financial losses incurred by the clients/victims that were the victims of his acts, but he cannot

deny that he continued to participate in those acts with other Holders and that the total losses from those acts is in millions of dollars.

A lawyer who engages in the kind of conduct apparently committed by current attorney violates the duty to maintain personal honesty and integrity, which is one of the most basic professional obligations owed by lawyers to the public. Attorney's misconduct is harmful not only to the businesses affected but also to the legal profession, which is and ought to be a high calling dedicated to the service of clients and the public good. When an attorney engages in a course of conduct that violates DR 1-102(A)(4), the attorney will be actually suspended from the practice of law for an appropriate period of time." *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 191, 658 N.E.2d 237 (imposing a six-month suspension on an attorney who falsely claimed that he had filed a paternity action for a client). In that case, the misconduct lasted for several months. In this case, a longer suspension is warranted because respondent engaged in dishonest conduct for years. Attorney Fitzsimmons filed falsified documents in September 2005 itself in court and In *Disciplinary Counsel v. Insley*, 104 Ohio St.3d 424, 2004-Ohio-6564, 819 N.E.2d 1109, Honorable Supreme court indefinitely suspended an attorney who violated with various misconducts including for **filing falsified documents**. Unfortunately, Attorney Fitzsimmons continued to choose that path despite countless opportunities to do so, and his misconduct warrants sanctions. Moreover, Attorney Fitzsimmons's related conduct is designed to "mislead a court or client" like in *Akron Bar Assn. v. Holder*, 102 Ohio St.3d 307, 2004-Ohio-2835, 810 N.E.2d 426, ¶ 43 (imposing a two-year suspension, with 18 months stayed). A violation of DR 1-102(A)(4) calls for the actual suspension of an attorney's license. *Disciplinary Counsel v. Beeler*, 105 Ohio St.3d 188 (2005), 824 N.E.2d 78, ¶ 44. In addition, an actual suspension is particularly appropriate when an attorney's dishonesty has been directed toward a client. " Dishonesty toward a client/employer, whose interests are the attorney's duty to

protect, is reprehensible.' " *Disciplinary Counsel v. King* (1996), 74 Ohio St.3d 612, 614, 660 N.E.2d 1160, quoting *Lake Cty. Bar Assn. v. Speros* (1995), 73 Ohio St.3d 101, 104, 652 N.E.2d 681. Attorney Fitzsimmons knew that he did violate and continue to violate the provisions recited above, and an indefinite suspension is appropriate. The Ohio Supreme court consistently held that neglect of legal matters and serious professional violations warrant an indefinite suspension from the practice of law. *Disciplinary Counsel v. Treneff*, 104 Ohio St.3d 336, 2004-Ohio-6562, 819 N.E.2d 695, ¶ 16.

Mr. Fitzsimmons obligated to maintain at least above dozens of multiple role duties without violating the expected fiduciary and Disciplinary roles due to his willful and commingled involvement with self-serving purposes. Besides involving such conflicting roles as illustrated with hundreds of sample COUNTS, Attorney Fitzsimmons grossly violated and continue to violate willfully those duties, ethics in the instant case, often representing one party against another party/client and causing severe harm. Mr. Fitzsimmons should be disqualified immediately, as enough evidence is in front of court and if so a hearing is not required, *Abadir v. Fanous* 71871 (Ohio App. Dist.8 1997) to save time, and new and separate attorney should be ordered for THCP and NEON as both have conflicting interests. As summarized 243 professional misconduct of Attorney Matthew Fitzsimmons, based upon the following conflicts and prejudice alone he should be sanctioned:

- Mr. Fitzsimmons's disqualification through DR 5-102(A) & DR 5-102(B) violations:
- Mr. Fitzsimmons's disqualification pursuant to D.R. 5-105(A) & DR 5-105(B):
- Mr. Fitzsimmon's disqualification through affect by lawyer's financial, business, property or personal interest, DR 5-103(A):
- Mr. Fitzsimmons's disqualification due to risk of a tainted trial, can not take part with a reasonable degree of propriety:
- Mr. Fitzsimmons's should be disqualified and disbarred under DR 7-102(A), 1-102(A), 7-102(B) and other Disciplinary Rules:

Based upon the sample hundreds of counts listed above with 30+ Disciplinary Rule violations, and dozens of Fiduciary violations, sanctions should be imposed against Attorney

Matthew Fitzsimmons immediately, reasonable costs and expenses should be awarded to Plaintiff, as court feels appropriate. This case deserves appropriate treatment as one of the great importance of public interest and involved with substantial constitutional issue, Due process violations, prejudice, and constitutional amendment violations. With a good faith Plaintiff brought to the court's attention for justice and Attorney Fitzsimmons should not be rewarded for wrongdoing with bill/sanctions against Plaintiff and judgments should be in Plaintiff's favor.

II. Listed sample 243 Professional misconduct of Attorney Matthew Fitzsimmons highlighting the intensity of involvement by NEON Board of trustee cum Attorney Matthew Fitzsimmons with his pecuniary benefit and with his personal involvement in the underlying cause/act, ousted plaintiff, etc. and represented in the instant case through perjury (with a falsified affidavit as early as in September 2005) under the name of representing multiple parties and he concealed all these facts from this honorable court, with half truth to no truth made-up his allegations in his January 2007 through April 2007 motions:

1.	As a part of misconduct and in violation of many Disciplinary Rules, NEON trustee cum Attorney Mr. Fitzsimmons disguised as board of trustee to NEON and infiltrated THCP through SMG Holders, collected money from THCP over \$100,000 starting from SMG arrival, without disclosures to NEON but in violation of conflicts of interests and IRS/Attorney General forbidden self-dealings of a nonprofit corporation and instead of acting as Trustee, as claimed, D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons " [emphasis added], personally selected and ousted plaintiff, D0506: Exhibit Q2, "...[he] identified personnel for the reduction-in-force...." and gave position with discrimination and concealed and even filed false affidavit in September 2005 to the court to further commit perjury. In addition, Attorney Fitzsimmons did not disclose to this honorable supreme court or to any court about his self-dealings, conflicts of interests.
2.	As a part of misconduct and in violation of many Disciplinary Rules, NEON trustee cum Attorney Mr. Fitzsimmons disguised as board of trustee to NEON and infiltrated THCP through SMG Holders, with/without disclosures to NEON and tortuously interfered with THCP's affairs in violation of conflicts of interests and IRS/Attorney General forbidden self-dealings of a nonprofit corporation, violation of corporate governing documents and upon conspiring with SMG Holders, knowing weak spots of THCP board; NEON deceived THCP board first approaching to forgive \$1 million dollars note debt forgiveness D0506: Exhibit A Para IV (3) of John Campbell's July 21, 1999 letter under Financial Commitments from THCP to NEON then did opposite of what stated in D0506: Exhibit A Para III last sentence <u>"...in short, any notation that NEON would wish to eliminate, disrupt, or abate the role of current and future THCP Trustees should be dispelled...."</u>
3.	Mr. Fitzsimmons acted against other NEON board members by conveying through Rotan Lee [while responding to Frank Kimber's question] in May 1999 J2206: Exhibit K5 as if

	Mr. Fitzsimmons does not share with NEON's wish of D0506: Exhibit A Para II (3) of John Campbell's July 21, 1999 which states that NEON's CEO and the COO represent in NEON's view, a natural progression that the THCP Governance should seriously consider in appointing a CEO for THCP.
4.	As a pattern of misconduct, Mr. Fitzsimmons disguised as board of trustee to NEON and infiltrated THCP through SMG Holders, and D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons " [emphasis added], and by May 25, 2000 Mr. Fitzsimmons caused NEON to write and or extort, and or silence, D0506: Exhibit C Page 2 Para 3 and 4 , [upon <i>spying/finding THCP board of director's weak position, conspiring-colluding with SMG Holders, following illegal solicitation of unauthorized/improper 1/14/2000 letter from Rotan Lee, S1506: Exhibit Q, to postpone loan obligation payment, D0506: Exhibit C Page 2 Para 1 beyond 6/30/2000 upon abandoning THCP by him and his co-SMG holders into death situation by the way mismanaged willfully and negligently</i>]; through materially falsified facts against THCP knowingly and willfully by concealing the millions of dollars forgiven by THCP irrespective of any NEON free services to THCP for Ohio Medicaid/Federal originated money, from Hough Health Center to for the purpose of executing the scheme and artifice to defraud, and obtain/get waived debt, money and property by means of materially false and fraudulent pretenses, representations and promises in an attempt to mislead THCP board of trustees into believing that THCP owes/indebted when infact in 1994 and 1996 alone THCP forgave over \$4 million dollars debt, and knowing that unlawfully attempting to enrich themselves through wrong/fraudulently, did knowingly transmitted and cause to be transmitted, by means of wire communications in interstate commerce, certain writings, signs, signals and sounds, fax information pretending to be indebted debt in exchange for \$1 million note outstanding from the office of NEON-Hough Norwood on 5/25/2000 at or around 17:51 , Cleveland to the offices of Dr. Brenda Marshall, CSU, Ohio through interstate wires/lines and followed by interstate Mail carrier in violation of laws.
5.	As a pattern of misconduct Mr. Fitzsimmons disguised as board of trustee to NEON and infiltrated THCP through SMG Holders, and D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons " [emphasis added], and by May 25, 2000 Mr. Fitzsimmons caused NEON to write and or extort, and or silence, D0506: Exhibit C Page 2 Para 3 and 4 , through materially falsified facts against THCP knowingly and willfully by knowing that THCP forgave loans and accrued interest totaled \$3,210,313 at December 31, 1994 alone , D0506: Exhibit D Para under 1994 , and conspired and concealed facts from THCP Board and demanded for waiver of \$1 million dollar note payment that was due to THCP by end of June 2000, claiming as if NEON never got benefited for any voluntary service or other things they might have contributed and too when THCP is at critical survival stage and these acts are further IRS forbidden transactions/demands/blackmail/concealment, white collar corporate crime and for Ohio Medicaid/Federal originated money, from Hough Health Center to for the purpose of executing the scheme and artifice to defraud, and obtain/get waived debt, money and property by means of materially false and fraudulent pretenses, representations and promises in an attempt to mislead THCP board of trustees into believing that THCP owes/indebted and knowing that unlawfully attempting to enrich themselves through wrong/fraudulently, did knowingly transmitted and cause to be transmitted, by means of wire

	communications in interstate commerce, certain writings, signs, signals and sounds, fax information pretending to be indebted debt in exchange for \$1 million note outstanding from the office of NEON-Hough Norwood on <u>5/25/2000 at or around 17:51</u> , Cleveland to the offices of Dr. Brenda Marshall, CSU, Ohio through interstate wires/lines and followed by interstate Mail carrier in violation of pertinent laws.
6.	As a pattern of misconduct, Mr. Fitzsimmons disguised as board of trustee to NEON and infiltrated THCP through SMG Holders, and D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons " [emphasis added], and by May 25, 2000 Mr. Fitzsimmons caused NEON to write and or extort, and or silence, D0506: Exhibit C Page 2 Para 3 and 4 , through materially falsified facts against THCP knowingly and willfully by knowing that THCP forgave loans and accrued interest totaled \$1,118,080 during 1996 alone, D0506: Exhibit D last Para under 1996 , yet conspired and concealed facts from THCP Board and demanded for waiver of \$1 million dollar note payment that was due to THCP by end of June 2000, claiming as if NEON never got benefited for any voluntary service or other things they might have contributed and too when THCP is at critical survival stage and these acts are further IRS forbidden transactions/demands/blackmail/concealment.
7.	As a pattern of misconduct, Paula Phelps, NEON's board member Matthew Fitzsimmons, and others conspired even for course reimbursement that was promised, denied for Plaintiff but paid to a different class individuals as a further discrimination and further corrupt activity and further conspired on or around 5/26/1999 to transmit a 4/20/1999 dated Robert McMillan's memo through Fax from THCP to Matthew Fitzsimmons in Cleveland to..." add, change or delete any information contained herein... " D0506: Exhibit P , through interstate wires and or through mail and further conspired on 6/25/1999 to inform plaintiff as if they already gave 4/20/1999 dated Robert McMillan memo on 4/20/1999 itself and through mail in early 2000 claimed by Paula Phelps with a copy to Mr. Fitzsimmons in a way of evading several thousands of dollars along with numerous other violations, and with IRS /Attorney General forbidden self-dealings of a nonprofit corporation besides baseless claims by Mr. Fitzsimmons stating as if he represented THCP without conflicts of interests and D0506: Exhibit A Para I (3) of John Campbell's July 21, 1999 letter is further evidence which states in part "that an "alliance document" was to result from discussions between Mr. Lee and our Trustee, Mr. Fitzsimmons " [emphasis added], etc.
8.	As a pattern of misconduct with the help of NEON trustee Mr. Fitzsimmons with conflicts of interest with THCP [which against each other at that time until Holders's acts caused severe harm to THCP and later taken over by NEON], deception, Holders explored for the weak spots of THCP by controlling key spots to extort more funds even while failing to perform services and such methods included through email such as April 14, 1999 about 6:31 pm e-mailed, D0506: Exhibit B and or by US Mail submissions and or receiving checks and or carrying them across interstate, and even charged to THCP American Express card in tens of thousands of dollars per month, bringing-in their subcontractors or no-work but pay contractors and paying hundreds of thousands of dollars per month at the end terminating them and showing their expense as cost reduction for future as if savings to the company, including the NEON employees they added upon their arrival as if savings to company through materially falsified Matthew Fitzsimmons's Project Slim Fast to further sabotage THCP as NEON's board member when they felt that they lost the control over THCP from THCP Board and at the end claiming even as if NEON obtained \$1 million note waiver, D0506: Exhibit D , when in fact 1/12/2000 big memo to Board does not refer about intended

	1/14/2000 signature with any intention of loan payment waiver when gets matured on 6/30/2000 but emphasized outside political strategy/lobbyist and Attorney Dennis Roth's involvement, D0506: Exhibit E , as additional IRS forbidden non-profit corporation violations to set/corrupt THCP Board with additional violations and as pattern of Further corrupt activity Attorney Matthew Fitzsimmons/NEON/THCP Board member, Attorney Dennis Roth and or his extension Brian Green as his attorney appeared as attorneys in the instant case and or continuing in violation of many forbidden conflicts of interest.
9.	As a pattern of misconduct, discrimination, retaliation, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, in his own admission "... <u>identified personnel for the reduction-in-force...</u> " D0506: Exhibit Q2 , by infiltrating THCP under the disguise as NEON Board of Trustee, D0506: Exhibit A , and with pecuniary benefits to him directly and through NEON as alleged before, and further As a pattern of misconduct, Mr. Fitzsimmons selected Plaintiff to let go and promote an high-school graduate, and who does not know even basic Information technology information to takeover, J2705: Exhibit C , but intentionally weakened THCP by Mr. Fitzsimmons to takeover and with severe conflicts, concealment, without disclosures to court, representing in the case and in furtherance of retaliatory, obtaining sanctions against Plaintiff to cover his tracks.
10.	As a pattern of misconduct, discrimination, retaliation, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, in his own admission of selecting people to let go, D0506: Exhibit A , and knowing that Paula Phelps is in a client capacity using those confidences and similarly board members and others confidences against them representing in the instant case under the name of some entities THCP/NEON, with severe conflicts of interest, with pecuniary benefits to him directly and through NEON as alleged before, and further As a pattern of misconduct, Mr. Fitzsimmons selected Plaintiff to let go and promote an high-school graduate, D0506: Exhibit B , and who does not know even basic Information technology information to takeover, J2705: Exhibit C .
11.	As a pattern of misconduct, discrimination, retaliation, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, maintained forbidden self-dealings and being a rivalry to THCP at that time, D0506: Exhibit A-R , under the name Project Slim Fast sneaked-in to tortuously interfere with the affairs of THCP and caused irreparable harm to Plaintiff, THCP, and others in similar class by dismantling and or causing to in the manner it was operated and violated many laws..
12.	As a pattern of misconduct, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, maintained forbidden self-dealings and being a rivalry to THCP at that time sneaked-in through other Holders to tortuously interfere with the affairs of THCP and caused irreparable harm to Plaintiff, THCP, and others in similar class by dismantling and or causing to in the manner it was operated and reducing the staff under the name of Project Slim Fast arbitrarily, D0506: Exhibit A-R , with fictitious savings,
13.	As a pattern of misconduct, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, maintained forbidden self-dealings and being a rivalry to THCP at that time sneaked-in through other Holders to tortuously interfere with the affairs of THCP and caused irreparable harm to Plaintiff, THCP, and others in similar class by dismantling and or causing to in the manner it was operated and reducing the staff under the name of Project Slim Fast arbitrarily, with fictitious savings by eliminating the nonexisting positions, eliminating important people/positions, eliminating the position/person they brought in but claiming the savings, D0506: Exhibit A-R , and violated many laws.

14.	As a pattern of misconduct, malice, bad faith, in conspiracy with Holders and others NEON's Board of Trustee, Attorney Fitzsimmons, maintained forbidden self-dealings and being a rivalry to THCP at that time sneaked-in through other Holders to tortuously interfere with the affairs of THCP and caused irreparable harm to Plaintiff, THCP, and others in similar class by dismantling and or causing to in the manner it was operated and by eliminating Plaintiff from THCP/NEON as unrelated to so called "Project Slim Fast" and with retaliation, discrimination, as a rivalry and hostile takeover discussions are taking place against the interests of THCP and too without the board's resolution and even with/without NEON's board knowledge and or authorization/permission, D0506: Exhibit Q2 and violated laws including honest services.
15.	As a pattern of misconduct as Plante & Moran auditing firm was gathered preliminary information by on or September 28, 1999, J2705: Exhibit A Para 1 , which listed the engagement stating, among other things, "... <u>This engagement was predicated by certain allegations of inappropriate disbursements authorized by Mr. Rotan Lee, Chief Executive Officer of Total Health Care Plan, Inc. ("Company"), which had come to the attention of board members of the Company.</u> The scope of our investigation was limited, at your request, to spending three days reviewing documentation and interviewing Mr. Lee and Mr. Robert McMillan, employee of Scheur Management Group ("SMG") and interim Chief Financial Officer of the Company...", D0506: Exhibit Q.
16.	As a pattern of misconduct as the Plante & Moran report of September 28, 1999, J2705: Exhibit A Page 2 , based upon Board authorized audit of <u>inappropriate disbursements authorized by SMG consultants Mr. Rotan Lee (Acting CEO) and Mr. Robert McMillan (Acting CFO) controlled, managed with the manner and or without authority, disbursed in hundreds of thousands of dollars</u> to millions of dollars even without contract/performance/work, by the way for their subcontractors to the work the original consultants promised to do but while they are concentrating in other states like in Alabama, Louisiana , and to increase Company liability yet to claim as credit at the end to get additional fraudulent bonus by pretending as if savings under cost reduction for future and by fabricating the performance while covering up failures and by hiding the facts with deception, (like got paid \$99,000 in August 1999 as performance bonus), even charging additional, as much as, <u>\$23,000 per month</u> from executive checking account with largest disbursements to American Express towards consultants expenses which are supposed to be the expenses under their bill and violated many laws.
17.	As a pattern of misconduct, as the Plante & Moran report of September 28, 1999, J2705: Exhibit A Page 3 , based upon Board authorized audit of <u>inappropriate disbursements authorized by SMG consultants Mr. Rotan Lee (Acting CEO) and Mr. Robert McMillan (Acting CFO) controlled, authorized, disbursed, and or for personal purposes in hundreds of thousands of dollars</u> and when get caught claiming as if silent in part of the contract is the license to exercise the right.
18.	As a pattern of misconduct, as the Plante & Moran report of September 28, 1999, J2705: Exhibit A Page 3 last paragraph , based upon Board authorized audit of <u>inappropriate disbursements authorized by SMG consultants Mr. Rotan Lee (Acting CEO) and Mr. Robert McMillan (Acting CFO) controlled with irregularities and manipulations concealed in the tasks taken, financial information, additional fraud existed than the Plante & Moran was able to summarize within the 3 days of their quick summary with limited assignment and fraud manipulated under project slim fast that was steered by NEON employees/board of director Matthew Fitzsimmons, including the way concealed performance on which the Company</u>

	board/employees, ODJFS/ODI relied upon, J2705: Exhibit email dated 3/27/1999 etc.
19.	As a pattern of negligence activity or due to corruption through Holders arranged payment missed to identify facts from deception, missed knowing the things should have known and or neglected the fiduciary duty to act and or resigned [Moreno Miller] and or gave-up upon knowing that the facts are coming out and or knowing the collusion between Scheur Group Holders and NEON Holders including Matthew Fitzsimmons through which even Rotan Lee without authority and in a deceptive way signed in favor of NEON against the receivable \$1 million note.
20.	As a pattern of misconduct, Attorney Fitzsimmons submitted materially false affidavit for his pecuniary benefit in September 2005 in the instant case, he is a material witness and involved in operations, D0506: Exhibit Q2 , selectively targeted Plaintiff to harm and others but to benefit NEON and or to himself to get control out of THCP Board, misconduct involved with others who got indicted in Louisiana, <i>U. S. v. Scheur et al</i> (2005, Louisiana 05-304), and with 14 Felony counts per August 2006 second indictment, D0506: Exhibit R , which includes against Barry Scheur, Robert McMillan and others some Mail/Wire fraud counts involved with Ohio attorneys and the 14 counts involved with the 18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2; and at least dismissed on 4/3/2007 upon repeated reconsideration motions for a flaw or on constitutional issues, Exhibit A , but Attorney Fitzsimmons involved with many violations in the instant case and his self interests ahead at the expense of constitution, clients, and Mr. Fitzsimmons failed to disclose the conflicts, involvement etc in front of court.
21.	As a pattern of misconduct, using a non profit corporation NEON's Board of Trustee, Attorney Fitzsimmons, <u>representing all the Trustees for his pecuniary benefit</u> , along with 30 conflicts of interests, IRC 4941 forbidden self-dealing transactions, violating Attorney General's guidelines for nonprofit Corporation Board of Directors, over 34 DR Rule violations, being a party to a lawsuit representing others there by manipulation evidence and everything and taking away victim's rights and further draining emotionally.
22.	As a pattern of misconduct, a non profit corporation's NEON/THCP Board of Trustee, Attorney Fitzsimmons, who involved for origination of instant case representing in the case on behalf of multiple clients with materially false affidavit submissions in September 2005 itself to court to conceal his role, getting stricken summons against him, representing against over a dozen of his past clients/fiduciaries in the case who are defendants As a pattern of misconduct, an attorney, Dennis Roth co-counsel of Attorney Mathew Fitzsimmons, who involved for origination of instant case <u>honestly</u> disqualified from representing his clients for conflicts of interest but replaced with his own attorney Bryant Green in violation of DR 5-105, etc. a) Attorney Matthew Fitzsimmons, Attorney Dennis Roth (honestly who got disqualified on his own later), and Attorney Bryant Green violated Fourteenth Amendment and Sixth Amendment besides Canon 5, Canon 4, Canon 9, and many DR violations: b) Mr. Fitzsimmons caused deprivation without due process of law and the deprivation without due process of law is unconstitutional: c) Effect of co-counsel relationship of Matthew Fitzsimmons with Attorney Dennis Roth in Holders, i) Attorney Dennis Roth's disqualification extension to Attorney Matthew Fitzsimmons's disqualification, ii) Attorney Dennis Roth's disqualification and Attorney Matthew Fitzsimmons's disqualification extension to Attorney Bryant Green to whom Attorney Dennis Roth is a client and vice versa.
23.	As a pattern of misconduct, a non profit corporation NEON's Board of Trustee, Attorney Fitzsimmons, <u>representing all the Trustees for his pecuniary benefit</u> , along with 30 conflicts

	of interests, IRC 4941 forbidden self-dealing transactions, violating Attorney general guidelines for nonprofit Corporation Board of Directors, over 34 DR Rule violations, being a party to a lawsuit representing others there by manipulation evidence like he submitted materially false affidavit and taking away victim's rights and further draining emotionally.
24.	As a pattern of misconduct, Attorney Fitzsimmons submitted materially false affidavit for his pecuniary benefit in September 2005 in the instant case, he is a material witness, disqualification/enjoinment got denied, the Protective order obtained, some of the defendants/clients got indicted in Louisiana, <i>U. S. v. Scheur et al</i> (2005, Louisiana 05-304), and with 14 Felony counts per August 2006 second indictment, D0506: Exhibit R , which includes against Barry Scheur, Robert McMillan and others some Mail/Wire fraud counts involved with Ohio attorneys and the 14 counts involved with the 18 U.S.C. § 371, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 2; and at least dismissed by Louisiana district court on 4/3/2007 on constitutional/deficiency in the original indictment etc, Exhibit A , Attorney Fitzsimmons's self interests are ahead at the expense of constitution, clients, Plaintiff etc.
25.	Attorney Fitzsimmons repeatedly quoted MLHOA cases by concealing the facts to his advantage and to pound on Plaintiff. As a pattern of misconduct, Attorney's involvement in wrongdoing, representing under the names of clients and trying to cover-up with fraudulent affidavits to obstruct justice is becoming common like in <i>Miles Landing Homeowners Association v. Bikkani</i> (8 th Dist., CV04-519870), attorney groups stayed until their involved fraud get exposed by Bikkani's even with their ex parte communications to judge, influenced the courts with fraudulent affidavits, <u>like attorney Matthew Fitzsimmons produced fraudulent affidavit in the instant case</u> , by then hundreds of unit/homeowners lost their units for the scheme but only restarted fighting by few homeowners in the crime <i>Miles Landing Homeowners Association v. Harris</i> (CV03-501112), <i>Miles Landing Homeowners Association v. Harris</i> (CV03-507970), <i>Miles Landing Homeowners Association v. Davis</i> (CV03-501107), <i>Miles Landing Homeowners Association v. Harris</i> (CV03-507970), <i>Miles Landing Homeowners Association v. Davis</i> (CV03-501108), etc. and without containing the attorney fraud at the initial stage it further ruins the life of Plaintiff.
26.	As a pattern of misconduct, Mr. Fitzsimmons caused deprivation without due process of law, <i>Baker v. McCollan</i> , 443 U. S. 137, 146 (1979), and the deprivation without due process of law is unconstitutional , <i>Zinermon v. Burch</i> , 484 U. S. 113 (1990), <i>Sorrell v. Thevenir</i> (1994), 69 Ohio St.3d 415, 422; and Mr. Fitzsimmons knowingly involved with conflicting and forbidden pecuniary benefiting transactions affecting the instant case and to the extent to which civil corporate defendants', NEON/THCP, right under the <u>Sixth Amendment</u> is qualified the chosen attorney or Attorney self-imposed upon the corporation(s) through control to cover-up his wrongdoings to circumvent to his purported <u>Fifth Amendment</u> pleading, 1) the Civil Corporate defendant THCP's right under Sixth Amendment is compromised by imposing on it in violation of Fourteenth Amendment, 2) Over a dozen civil defendants' rights under Sixth Amendment were compromised by imposing on them without a waiver from them and without appropriate disclosure to court and or with concealment of facts, 3) Civil Plaintiff's right under the Sixth Amendment with fiduciary and past representation relationship, Fourteenth Amendment violation without pertinent Due process violation by forcing to deal with Attorney Fitzsimmons is in unconscionable status as if submitting a rape victim to the wrongdoer to further cause the emotional distress/trauma instead of putting the wrongdoer in appropriate place to serve justice and to reduce effect on the victim(s).
27.	As a pattern of misconduct, Attorney Dennis Roth is a client of Attorney Brian Green, for

	<p>example <i>Roth v. Schwartz</i> (Ohio 8th Dist CV-05-567944), <i>Schwartz v. Roth et al</i> (Ohio 8th Dist CV-05-567781) and while disqualifying himself, Attorney Dennis Roth, inserted his attorney Brian Green in further violations of Disciplinary Rules, DR5-105 (D) etc; and Attorney Brian Green's client (Attorney Dennis Roth) is a key witness and detrimental to the parties; and Attorney Roth's testimony includes the key Plaintiff's termination area and testimony would be detrimental to his former clients including to THCP, Barry Scheur, SMG, Ruth Aaron, his co attorney, Attorney Matthew Fitzsimmons. Attorney Brian Green should not have taken representation and or should be disqualified, <i>State v. Williams</i>, Ohio-2533 (App. Dist.6 2003). Dennis Roth disqualified among other conflicts of interests with breach of its duty of undivided loyalty to clients in the instant case, under Canon 5, and that, under Canon 4, Brian Green is the extension of Dennis Roth violation of Canon 9 that an attorney must avoid even the appearance of impropriety. The issue under Canon 5, simply put, is whether, by permitting Brian Green to pursue the underlying action, like allowing Dennis Roth to violate by indirection those very strictures it cannot directly contravene, <i>Hafter v. Farkas</i>, 498 F.2d 587, 589 (2d Cir. 1974). The determination that Brian Green should be disqualified under Canon 5 is further underpinned by the restraints imposed by Canon 9. While <i>Cinema 5 v. Cinerama Inc.</i>, 528 F.2d 1384 (2nd Cir. 1976) relied on the nexus of partnership; Courts have also held that disqualification extension to individuals associated with a firm in a lesser capacity, for example, a law clerk, <i>Consolidated Theatres v. Warner Bros. Cir. Man. Corp.</i>, 216 F.2d 920, 927 (2d Cir. 1954).</p>
28.	<p>As a pattern of misconduct, Matthew Fitzsimmons himself has a competing attorney-client privilege with THCP, NEON, THCP Board, NEON Board, Plaintiff, other defendants of the instant case, and even breaching the fiduciary relationship he had with Plaintiff, to continue to cover his violations. Matthew Fitzsimmons's fiduciary duties for many parties, to THCP past trustees who are parties, SMG, Barry Scheur, Ruth Aaron who hired during their control of THCP. About a dozen of the parties in the instant case are Attorney Fitzsimmons' clients/ex-clients/ or express attorney-client relation and with whom he had direct Fiduciary duty including Plaintiff, thus strict standards of Canon 5 is applicable. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Plaintiff's; confidences, thus violation under Canon 4 and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case. In the course of the former representation Mr. Fitzsimmons acquired information related to the subject matter of his subsequent representation, and Mr. Fitzsimmons should be disqualified under Canon 9 of the Code of Professional Responsibility, <i>Emle Industries Inc. v. Patentex Inc.</i>, 478 F.2d 562 (2nd Cir. 1973), <i>Kala v. Aluminum Smelting & Refining Co., Inc.</i> (1998), 81 Ohio St.3d 1 at 5. Under Ethical Consideration ("E-C") 9-6, an attorney should "strive to avoid not only professional impropriety but also the appearance of impropriety." As a matter of fact, attorney Mr. Fitzsimmons, Attorney Dennis Roth, Attorney Brian Green violated Canon 4, Canon 5 and Canon 9. Attorney Brian Green is an attorney of disqualified Attorney Dennis Roth. It is clear that under Canon 9 as well as Canons 4 and 5, Matthew Fitzsimmons should be disqualified. Similarly the Canon 4 of the Ohio Code of Professional Responsibility imposes a duty on Matthew Fitzsimmons, and on Dennis Roth to protect THCP's, Plaintiff's, THCP Board of Trustees, NEON's, and SMG defendants as all of them have privy with them confidences and secrets including to related to Plaintiff's wrongful termination claim, <i>State ex rel. Leslie v. Ohio Hous. Fin. Agency</i>, 105 Ohio St.3d 261, (2005); DR 4-101(A); <i>Kala v. Aluminum Smelting & Refining Co., Inc.</i> (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule 5-105(D) and by Canon 9's warning</p>

	that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" but getting violated in all aspects.
29.	As a pattern of misconduct, the type of violations reported at NEON/THCP for which Plaintiff was retaliated through unlawful termination to continue the acts and ultimately THCP got collapsed and which lead to he control of NEON without the knowledge of THCP board and some of the involved individuals went through the August 11, 2006 second superceding indictment in Louisiana, D0506: Exhibit R , and through repeated reconsideration motions on constitutionality related to first indictment and later on multiple charges indictments, at least Louisiana district court dismissed, Exhibit A . Thus, Trustee cum Attorney, Fitzsimmons should not conceal these facts and Plaintiff's multiple requests/reconsideration requests should not be considered as frivolous as reconsideration motions in Barry Scheur et al case lead the results at least in the District court into their favor. <u>The obtained sanctions against Plaintiff should be reversed.</u>
30.	As a pattern of misconduct, prepared and caused to be prepared and submitted to the LDOI materially false and misleading documents and correspondence which characterized cash payments to The Oath from its parent companies as capital contributions when, in truth and in fact, such cash payments were loans or non-existent, D0506: Exhibit R , and through repeated reconsideration motions on constitutionality related to first indictment and later on multiple charges indictments, at least Louisiana district court dismissed, Exhibit A .
31.	As a pattern of misconduct per the 14 count Louisiana indictment, Holders including Barry Scheur, Robert McMillan, conspired and on or about December 10, 2001 faxed the September 2001 created with back date of April 25, 2001 the materially false and misleading Promissory note and corporate resolution created documents, from the office of the Oath in New Orleans, Louisiana to the office of a law firm in Ohio , for the purpose of executing the scheme and artifice to defraud, and obtain money and property by means of material false and fraudulent pretenses, representations and promises by misleading the LDOI into believing that The Oath was meeting the statutorily required minimum net worth of \$ 3 million, and thereby unlawfully enriching themselves through continued operation of The Oath, during a time when The Oath was not meeting that statutorily required minimum net worth, and attempting to do so, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate commerce, certain writings, signs, signals and sounds, fax of the September 2001 created with back date of April 25, 2001 the materially false and misleading Promissory note and corporate resolution created documents, from the office of the Oath in New Orleans, Louisiana to the office of a law firm in Ohio , in violation of 18 USC §371, 18 USC § 1343, 18 USC § 2, D0506: Exhibit R , and through repeated reconsideration motions on constitutionality related to first indictment and later on multiple charges indictments, at least Louisiana district court dismissed, Exhibit A .
32.	As a part Attorney Fitzsimmons's litigation support recruitment by SMG, he abused attorney-client privilege and some of the recruitment goals include: http://www.scheur.com/scheur.nsf/smg/servicesconlitigation.htm on November 27, 2006 : LITIGATION SUPPORT Managed care on trial; the lawsuits are mounting. What can you do and what can Scheur & Associates do to help you? When you've got to put someone on the witness stand, you need a professional who can clearly and forcefully articulate and defend your organization. Scheur & Associates can provide the expertise you and your legal team need. We've been there - as experts in every aspect of plan management and operations, proven by an enviable track record in litigation support.

	<p><u>When lawyers who are also experts in the operation of health plans are your witnesses, you know that they understand what needs to be said and how to get your points across to judges and juries.</u></p> <p>Our team of industry specialists has been at the forefront of the managed care industry across the country. We have dealt with regulatory issues and precedent setting cases that reflect current legal, legislative, regulatory and public opinions.</p> <p>We can explain the complexities of managed care to you and your legal team, in deposition and on the stand, so that they can represent your company. We have served as expert witnesses and behind-the-scenes advisors, helping to establish and defend legal standards on a wide variety of issues. To find out more, contact us at webmaster@scheur.com, and as part of it Board trustee/Attorney Fitzsimmons became part got paid over \$100,000 from THCP without the disclosures including severe conflicts being trustee of NEON, rivalry between NEON and THCP at that time, lead to collapse of THCP, and without the knowledge of THCP's board converted into NEON, now with further severe conflicts pretending to be representing THCP too and other /all clients, and even without court disclosures or waivers were not submitted.</p>
33.	<p>As a pattern of misconduct, NEON trustee Matthew Fitzsimmons, and Denise Roth by using THCP funds, involved with conflicts of interest by being hired by SMG group and as claimed on the web "with the concept that as consultants When lawyers who are also experts ... witnesses, ... they understand what needs to be said and how to get ... points across to judges and juries" they proved their point in Louisiana court to get dismissed, Exhibit A, with the repeated reconsideration motions but Trustee cum Attorney Fitzsimmons pounding on Plaintiff is inappropriately and should not be continuing with continued misrepresentations and conflicts with further pecuniary gains.</p>
34.	<p>The THCP's financial condition continued to deteriorate when Trustee cum Attorney Fitzsimmons involved with controlled damage under various plans including ProjectSlimFast and by concealing the facts from board and by boosting the status/progress to THCP by sending the required reports to THCP Board, regulators by mail and some THCP/NEON board members relied on the truthfulness, completeness and accuracy of these financial reports in order to regulate, monitor and assess the financial health of THCP operating which misrepresentations lead to conversion of THCP. Board trustee cum attorney Fitzsimmons did not disclose these conflicts to court nor produced waivers but continuing to represent with concealment and with his interests ahead with half-truth to no truth for allegations and getting imposed sanctions and his request should be denied but he should be sanctioned as the court deems fit.</p>
35.	<p>As a part of misconduct, attorney consultants altered information wrote letters to cover-up the failure appears to outside world or to the new client as if failure belongs to past client employees such as THCP's. It is a miss-use of law degrees by attorneys or using law degrees as a weapon to do misconduct and without required disclosures in the instant case including severe conflicts, trustee cum Attorney Matthew Fitzsimmons is in center of controversy to represent all parties who are current/past clients but under the name of defending THCP/NEON.</p>
36.	<p>As a pattern of misconduct and hostile work environment, Holders repeatedly, couple of times in alternate days to a week, starting April 1999, in overhead announcement asked MIS employees to come to 2nd floor and left's plaintiff's name out.</p>
37.	<p>As a part of misconduct, Holders collected performance bonus from THCP by black mailing Mr. Rotan Lee by stating to Mr. Lee in 1999 similar to "You got your cut in violation of non-solicitation clause, I want mine including release, bonus, finder fee to compensate future</p>

	receivables beyond the contract time” etc. In return, Mr. Rotan Lee aggressively fabricated success performance of SMG in conspiracy with Mr. Roth and Mr. Fitzsimmons, others in concert, with deception, in violation of fiduciary and in violation of honest services, and Trustee cum attorney Fitzsimmons did not disclose these conflicts yet represented his past clients in the instant case without proper disclosures or waivers and without appearing as if representing them.
38.	As a pattern of misconduct NEON/THCP’s (Employer) submitted materially false affidavit prepared/submitted by Attorney Fitzsimmons/board member to court in September 2005 and as the situation seems fit during September 2005 and during November 2005 NEON/THCP/Mr. Fitzsimmons/Trustee cum attorney claimed as if there was no relationship between NEON and THCP, to get benefited about \$2.4 million dollars through note waiver and cash receipt in 2001 and 2003. In addition, Mr. Fitzsimmons conspired with others in September 2005 by falsifying employment record of Plaintiff with NEON stating as if plaintiff never an employee of NEON... which are fabricated misrepresentations to obstruct the justice. Then submitted that affidavit to influence the judicial decision thus it was a perjury.
39.	As a pattern of misconduct, Matthew Fitzsimmons in a capacity of NEON board member and on behalf of NEON board qualified as a principle and participated with Paula Phelps, Rotan Lee etc to oust Plaintiff from April 1999 through June 25, 1999. Post ouster of Plaintiff the enterprise participants concealed the facts of the MIS department existence in a pattern of corrupted activity and continues to obstruct justice, hinder evidence. As a pattern of further corrupt activity and in a continued effort Matthew Fitzsimmons prepared a falsified affidavit in September 2005 and with conflicting role concealed the facts, failure to disclose information where duty exists, making half-truths and or for affirmative misrepresentation, <i>Katzman v. Victoria's Secret Catalogue</i> , S.D.N.Y.1996, 167 F.R.D. 649.
40.	As a pattern of misconduct NEON along with board member Mr. Matthew T. Fitzsimmons in the instant case stated as if no relationship between NEON and THCP. In 2001, NEON and Matthew T. Fitzsimmons as a board member of NEON submitted series of claims stating a parent relationship with THCP to get excessive Federal Government funds upon medical claims payment. Based upon those false claims, Ohio State government/Federal Government originated funds/transferred about \$1.4 million in year 2002 to NEON. In September and or in November 2005, NEON along with board member Matthew T. Fitzsimmons, and others in concert repeatedly claimed in the pleadings as if there was no relationship between NEON and THCP. THCP board members Ms. Marshall and Mr. Kimber adopted through Joinder for “Motion to Stay Discovery”, NEON’s pleading of November 10, 2005 thus by reiterating that there is no relationship to NEON and THCP. Thereby, NEON/Mr. Fitzsimmons, and others in concert filed series of false claims to get about \$1.4 million dollars in 2002 and subject to violations.
41.	As a pattern of misconduct a corrupt board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON staff/board/officers/directors in early September 2005 and submitted a fraudulent affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that since Jim Turner’s unexpected death in November 1998, NEON became rivalry to THCP’s Board and NEON’s board member, Mr. Fitzsimmons joined in conspiracy with others without such disclosure to THCP’s board, and ultimately NEON achieved \$1 million dollar note waiver on 1/14/2000 in a concealed way without the knowledge of THCP Board by getting SMG member, Rotan Lee’s signature as if payment will be deferred S1506: Exhibit Q , when THCP is in critical junction S1506:

	<p>Exhibit R, S and converted THCP under NEON, and during that process, NEON and Matthew Fitzsimmons concealed the previously received several millions of dollars from THCP, and tried to justify as if THCP owes that money to NEON for decades of services S1506: Exhibit T-W in violation of all known laws and in violation of fiduciary and other legal violations, the Scheur Group joined with Mr. Fitzsimmons due to the fact that Mr. Fitzsimmons helped Holders to oust Plaintiff, to conspire and pretend as if Holders fulfilled the obligation to get released and to obtain bonus S1506: Exhibit X, Y, when in fact ruined THCP and Plaintiff became victim and including the Plant Moran's auditing fraud report and other exhibits S1506: Exhibit Z, are evidence to the misconduct.</p>
42.	<p>As a part of misconduct, Mr. Matthew Fitzsimmons being a NEON board member in violation of many fiduciary duties conspired with others to eliminate Plaintiff, S1506: Exhibit AA, AB. and to change department name to state whole department was eliminated and let Rotan Lee's intimate friend to takeover, S1506: Exhibit AI, AJ and hired others. NEON's Board member violated confidences with Plaintiff and others and conspired with Scheur Group to avoid reimbursing \$6,500 course fee that relied upon promises and informed on 6/25/1999 as if denied the decision was informed on 4/20/1999 in contrary to many facts, S1506: Exhibit AC-AG when in fact that document is still being reviewed by Mr. Fitzsimmons on May 26, 1999. More over, in a discriminatory way to a different class and younger individuals got paid for same courses much higher amount.</p>
43.	<p>As a part of misconduct, NEON's board member, Mr. Fitzsimmons conspired with Scheur Group and THCP's by maliciously altering the facts to corrupt THCP board members' mind through Rotan Lee, other means and prepared a unique again discriminatory separation agreement to withhold even unused vacation of about \$20,000, S1506: Exhibit AN, in an effort to blackmail, to withhold usually given severance pay without conditions, S1506: Exhibit AH, and ignored about reimbursable amount and further knowing that, he, Mr. Fitzsimmons discriminated with a language used in separation agreement about non-complaining etc, Further discriminated to claim as if position was eliminated knowing that it was not true, S1506: Exhibit AI-M and knowing that he involved in a scheme and to self-serve, and still effecting in the instant case due to his nondisclosures, half truths to no truth.</p>
44.	<p>As a pattern of misconduct the board member of NEON/CNHHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON staff/board/officers/directors in early September 2005 and submitted a fraudulent affidavit stating as if Plaintiff was never an employee of NEON/CNHHSI and <u>caused prejudice</u> while knowing that on or around October 10, 1994, S1205: Exhibit C, Plaintiff began working for North East Ohio Neighborhood Services (NEON) formerly knows as Cleveland Neighborhood Services (CNHHSI) as Programmer/Analyst. And knowing that Plaintiff held a variety of positions with NEON and Total Health Care Plain Inc (THCP) being same CEO James G. Turner for both of them at that time and in the succeeding years and knowing that during the first 6 months of the so called probation <u>under CNHHSI/NEON</u> the company policy does not allow to be paid during the regular holidays such as Thanks Giving day, Christmas, New Years eve etc, yet due to the projects demand and assignments that were entrusted to Mr. Bikkani/Plaintiff, he worked long hours every day ranging at least 15 to 16 hours, JB22: Exhibit W p9 middle, to 24 hours at times, JB22: Exhibit p8 1st Para, and almost all weekend including Saturday and Sunday and holidays such as Thanks giving even during the unpaid probation period.</p>
45.	<p>As a part of misconduct, Mr. Fitzsimmons/NEON's board member un-duly influenced Scheur Group and or through conspiracy due to the help provided to oust Plaintiff for their</p>

	<p>mutual benefit, and obtained a letter signed by another Scheur Holder [Rotan Lee] on behalf of THCP without board's authority/knowledge knowing his imminent departure/ouster as enrollment was frozen by state and THCP is struggling to survive through cash crunch due to over/duplicate payments, S1506: Exhibit R, S and Mr. Fitzsimmons's influence get waived/postponed over a million dollars note that is being matured on or around June 30, 2000 by depriving THCP's right, S1506: Exhibit Q, when THCP is looking for cash infuser through any kind of alliance to survive, S1506: Exhibit S and on or around 1/14/2000 dated Scheur Holder [Lee] letter on THCP's letter head or through backdated without giving a copy to the stated people or supposed to involve people who are also in rivalry with NEON, S1506: Exhibit Q. NEON's board member Mr. Fitzsimmons's multiple roles and acts as if confident of THCP's board while there was a rivalry between THCP board and NEON board is another serious dubious behavior of an attorney title. The rivalry between THCP and NEON is evident through NEON's refusal to pay or take responsibility citing THCP is at life and death and THCP officer [Scheur Holder]'s unauthorized colluded/deceptive letter when THCP board demanded the payment S1506: Exhibit T-W. Similarly, Attorney Fitzsimmons influenced court in September 2005 through a materially false affidavit submission to totally discredit Plaintiff. I.e. one of the areas a party does not expect a falsification as it supposed to be a corporation's responsibility to supervise their officers, board members, and attorneys from falsifying information. Since, in the instant case, Mr. Fitzsimmons controls many things and he acts as a board and stakes are high due to his personal involvement, close relationship with Attorney Dennis Roth and Holders, he defrauded court, defrauded Plaintiff by submitting September 2005 materially falsified affidavit to which <u>undermined the integrity of judiciary system</u>. Yet by further concealing the facts and without disclosures and conflicting interests, Attorney Fitzsimmons/Board Trustee pleaded with half-truth to no truth to implicate Plaintiff. Mr. Fitzsimmons should not be rewarded by punishing the innocent victim/plaintiff and this honorable court should deny Mr. Fitzsimmons's requested bill/sanctions and with great loss to Plaintiff tried to bring facts in front of court as other efforts failed.</p>
46.	<p>As a pattern of misconduct, Mr. Fitzsimmons knowing that he is an implied attorney to Plaintiff there by Attorney-client relationship and Fiduciary relationship to Plaintiff exists and knowing that during the course of relationship with Plaintiff's relationship with NEON/THCP since 1994, and for the deals such as with Tingly Systems and RAM Technologies and as a Board member of NEON and as Fiduciary, Attorney Fitzsimmons had privy to Plaintiff's information, confidential or otherwise that, if revealed, would have been adverse or detrimental to the Plaintiff's cause and knowing that by communicating directly and or indirectly, representing THCP as an attorney, Representing RAM Technology and other on behalf of Plaintiff, others and Companies, as a board member of NEON, and through employee relationship Mr. Fitzsimmons obtained, to Plaintiff's detriment, improper access to Plaintiff's confidential information still acting as an attorney of record to some clients in the instant case with divided loyalty and concealment and without disclosures in this court or in any court.</p>
47.	<p>As a pattern of misconduct and knowing that Matthew Fitzsimmons being a board member, an attorney, involved in a deep affairs of SMG enterprise, and disregarded fiduciary and attorney-client privilege to benefit/cover himself but against Plaintiff, his current clients, and his past clients who are defendants in the instant case with his claimed privileges and hide the conduct, and knowing that Plaintiff has little ability to verify that plaintiff's privilege or his other clients' privileges are being honored, Mr. Fitzsimmons continued as an attorney in the instant case which is very unfair and unworkable, <i>Perin v. Spurney, 2005 -Ohio- 6811</i></p>

	(Ohio App. Dist.10 12/22/2005).
48.	As a pattern of misconduct, Mr. Fitzsimmons acted with truly egregious misconduct, including September 2005 falsified affidavit stating Plaintiff is never an employee of NEON/CNHSI, claimed no relationship between NEON & THCP when expected liability, claimed parent-child relationship when expected millions of dollars available, converted several millions of dollars prior to blocking "\$1 million note " of THCP, being a party but evading, getting served summons personally (though refused the tendered summons) but filed with court as if being served and to get protection, conspired with other Holders and eliminated Plaintiff, claimed millions to offset from THCP by stating as if helped THCP since 1986 but without admitting to IRS the millions converted, with statutory forbidden self-dealings through which nonprofit corporation loss, mixing profit and nonprofit corporations, in an effort to cover up predicate acts and to cover himself currently acting as an attorney and trying to cover-up in each step which is infecting the proceedings.
49.	As a pattern of misconduct and Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendant Paula Phelps who is a Confident/counsel to THCP officers such as Paula Phelps; with whom conspired to oust Plaintiff to succeed in schemes of Holders and with tortuous interference J2206: Exhibit U, V which lead to exhaust THCP assets, J2206: Exhibit U-AR , and fabricated as if whole department was eliminated J2206: Exhibit Y3 , etc. and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.
50.	As a pattern of misconduct and Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendant Robert McMillan in a scheme to evade \$6,500 reimbursement to Plaintiff, along with related t instant case, sent through Paula Phelps to Mr. Fitzsimmons communications by including his 4/20/1999 drafted memo in May 1999 and conspired in ousting Plaintiff, etc and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.
51.	As a pattern of misconduct and Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendant Rotan Lee in scheme to benefit NEON with millions of dollars through getting waived/deferred THCP note at critical time in an effort to help to unlawfully discharge Plaintiff, show artificial savings through SlimFast with fabricated information so Barry Scheur can get finder fee, release from promised obligations to THCP, and many other related schemes, and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.
52.	As a pattern of misconduct and Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants Barry Scheur, Ruth Aaron, SMG (retained for NEON's and THCP's insider information along with Attorney Dennis Roth to make it appear settlements with hospitals to meet requirements but conceal flaws with Rotan Lee to THCP Board etc, and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.
53.	As a pattern of misconduct and Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants Brenda Marshall, Moreno Miller, Frank Kimber, Joseph Davis, Mr. Arnold Pinkney, and as Board of Trustees of THCP shared with Attorney. Fitzsimmons and relied on him including at the issue of making Rotan Lee as CEO of THCP against the wishes of NEON J2206: Exhibit K5 , but acted in converting THCP into NEON in concert with others, etc. and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.

54.	As a pattern of misconduct, Board knew and has information stating Plaintiff's was hired by CNHSI/NEON but took a ride through board member cum attorney Mr. Fitzsimmons's false pleadings/filings instead of stating the facts and through being a Board member of NEON and easy access to Human Resources and to conspiracy to falsify information, NEON participated in corruptive practices and Quo Warranto is applicable to initiate action by appropriate agency, along with cancelled corporation and reactivation without following the needed steps.
55.	As a pattern of misconduct, NEON's board of Trustee Mr. Matthew Fitzsimmons being instrumental in many underlying acts, acted as NEON/THCP record of attorney in the instant case to cover-up his involvement and to protect his past clients who are also defendants/Holders and knowing that if any of his past clients feel unsatisfied with his cover-up to shield them as they expected, then they would have filed for his disqualification to create hurdle to the case and such parties are numerous in the instant case due to his complex attorney-client involvement, acting adversely in detrimental of his past-clients with divided loyalty, without waivers and without disclosures in the court.
56.	As a pattern of misconduct, a corrupt board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to discredit Plaintiff he conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice. Trustee/Attorney Fitzsimmons knew that there is no overtime concept to CNHSI/NEON or the payment for holidays during the probation, technically salary would be deducted even for the holidays worked, but plaintiff worked during those holidays and very extended hours and within about four months while on probation, voluntarily by the company the Plaintiff was promoted to Manager of MIS, by the choice of company they choose from which account to fund any ones' salary irrespective of duties/assigned tasks, at anytime or switched payrolls from time to time including to current CEO of NEON, Willie Austin, and same payroll person/department for both the companies as the given employee bulletin cover implied with different companies including profit and non-profit corporation names, J2206: Exhibit T , they are integrated companies in those years, <i>Ahern v. Ameritech Corporation</i> , (CA75807, 75808, 75809, Ohio App. Dist.8 05/11/2000).
57.	As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON staff/board/officers/directors in early September 2005 and submitted a fraudulent affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that By the 1 st Anniversary, i.e. during October 1995, Plaintiff was promoted to Director of MIS voluntarily by company and by January 2006, voluntarily company promoted Plaintiff to Vice president of MIS, J2206: Exhibit O , S1205: Exhibit D and knowing that each time company automatically increased salary on its own and never discussed about those or even for the years company provided bonuses due to the level of Senior Management and Plaintiff's responsibilities spanned to not only NEON and also to THCP and as January 2006 memo described, J2206: Exhibit O-R , JL0606: Exhibit F .
58.	As a pattern of misconduct a corrupt board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that he conspired in Plaintiff's ouster with Holders/Enterprise, Rotan Lee, Paula Phelps who generated separation letter without following company policies

	<p>of any Personal Action plan paper work, NEON's Board member, Mr. Matthew Fitzsimmons while deliberately creating the 40+ years old separation letter to Plaintiff in further discrimination and retaliatory way by withholding \$20,000+ unused vacation [earned money] as part of separation agreement to get signed the agreement, generally given severance pay and even without listing the promised course reimbursement fee of \$6,500.00 on which Plaintiff relied upon promise that was made and later to learn that portion also discriminated by paying to others of a different class and too falsified information on when, if any denied letter was provided.</p>
59.	<p>As a pattern of misconduct a corrupt board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that he, Matthew Fitzsimmons, is a material witness including on termination, discrimination, trustee, fiduciary irrespective of whether he had a legal hat or not and knowing that he should not be hiding under legal hat, he is extremely prejudicing Plaintiff and testifies against his clients thus prejudicing them too, and concealed facts from the court even without basic disclosures.</p>
60.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON staff/board/officers/directors in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that he, NEON's Board of trustee, Mr. Fitzsimmons drafted the 40+ year termination that uniquely provided only for Plaintiff specifically in an attempt to cover up wrongdoings by black mailing unused vacation payment, type of clauses inserting and not given to any other employee and yet to cover himself Mr. Matthew Fitzsimmons acting as an attorney of record for NEON, THCP, and protected evidence under attorney-client privilege and extremely prejudiced especially being a core witness of the case and Discriminatory intent is evidentiary by direct evidence of age discrimination, and was motivated by discriminatory intent, <i>Mauzy v. Kelly Services Inc.</i> (1996), 75 Ohio St.3d 578, <i>Kohmescher v. Kroger Co.</i> (1991), 61 Ohio St.3d 501.</p>
61.	<p>As a pattern of misconduct a corrupt board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON staff/board/officers/directors in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that he, NEON's Board of trustee cum Attorney Fitzsimmons's continuous representation as an attorney of record for THCP or NEON or many others with seriously affecting the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. On one side Holders created hostile and discriminatory employment work place and on the other hand, promised continued employment in April 1999 and sent to Birmingham, Alabama along with Dr. Walter Clark (NEON's Medical Director) and along with Stephen Eugene for a Txen System vendor facility checkup, in a similar way paid for training attendance by promising the \$6,500.00 course fee which was denied later to Plaintiff but paid to others of a different class against promised reliance, Holders communicated with Board of Trustees with a negative tone and in May 2005, when Board of Trustees asked if any IT staff changes are required answer was not implied other than stating as if they do not know, where as keep planning with NEON's Board of Trustee Mr. Matthew Fitzsimmons to eliminate Plaintiff.</p>

62.	As a pattern of misconduct, board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his tracks through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that he conspired in Plaintiff's ouster with Holders knowing that As a pattern of misconduct he was hired by SMG consultants who became Interim Management to control for their advantage and Mr. Fitzsimmons a board member of NEON joined in Holders conspiracy in furtherance of various schemes for the pecuniary benefits, with purported long term plan to control THCP, discrimination, retaliation, Holders who eliminated Plaintiff with malice on 6/25/1999 stating position was eliminated.
63.	<p>Just to name a few, as a pattern of misconduct Mr. Fitzsimmons involved as</p> <ul style="list-style-type: none"> a) NEON's Trustee in conspiracy including in the area of unlawfully discharging Plaintiff, b) Concealment of MIS department under a different name of BIS, to state to Federal and other inquiry as if whole department was eliminated, c) SlimFast scheme to fabricate financial status to payoff bonus/finder fee to SMG, d) Concealing the Plante & Moran fraud report/embezzlement/misconduct e) preparing improper separation agreement by withholding payable amounts in tens of thousands of dollars in an effort to get release f) concealing the disclosable information even through the separation agreement g) fabricating the memo/distribution when still reviewing, h) getting released from obligations through fabricated success by concealing the about \$10 million dollars depletions just to crumble the company as the facts unraveled including illegal \$1 million dollars note waiver/delay payment from NEON without the authority of such collusion from Holders to NEON but as a way of gesture for NEON's board member, i) materially false affidavit submission to court in September 2005 to influence court and to discredit plaintiff j) making up relationship or no-relationship where benefit was anticipated: about \$2.4 million through claims of NEON-THCP parent-child relationship to state/federal controlled excessive funds but denying any relationship in court between NEON-THCP when liability appeared k) Mr. Fitzsimmons's Trustee relationship concealment from courts and to conceal facts obtaining protective orders l) Mr. Fitzsimmons's concealment of his involvement in the underlying facts and continuing in the case as an attorney of record m) Mr. Fitzsimmons's concealment of his divided loyalty as all the defendants including Plaintiff are his clients/implied clients and he had fiduciary duty to all, yet with half truth to no truth covered his tracks improperly to label innocent victim/Plaintiff as vexatious litigator to cover-up further and Mr. Fitzsimmons requests including bill/sanctions should be denied. n) Mr. Fitzsimmons's conspiracy through which he is benefiting in the instant case with continued illegal representation in furtherance of misconduct, it should be stopped, he should be disciplined to serve justice to all.
64.	As a pattern of misconduct Holders including Mr. Fitzsimmons conspired and involved as NEON's Trustee in conspiracy including Plaintiff's title was given to CB by modifying it to VP of BIS on or around August 11, 1999, who is younger than Plaintiff, different race, under concealed department under [Office of] Business and Information Services and stated as if MIS department was eliminated, under Matthew Fitzsimmons's plan and distributed other responsibilities of Plaintiff to others by promoting them into Assistant Vice President of OBIS OBIS, JB22: Exhibit Y3.

65.	As a pattern of misconduct, Mr. Fitzsimmons involved as NEON's Trustee and with Robert McMillan and Rotan Lee and promised to reimburse the \$6,500.00 Training fee stating, Company paid for courses attending time but while inquiring on 6/25/1999, during the exit interview, Paula Phelps gave 4/20/1999 dated Robert McMillan's letter claiming as if they gave on 4/20/1999 itself and stating such training is not needed to company employees, but in fact that letter was sent by Paula Phelps/SMG/THCP in May 1999 to NEON's Board of Trustee Matthew Fitzsimmons for his review suggesting the claim as if they informed in April itself that training is needed is foundationless, and too such alteration upon paying salary for training, and besides improper treatments, in the following months others of different class and younger age were promoted into OBIS to take some responsibilities and for the same training company paid as much as about \$9,500 and Board trustee/Matthew Fitzsimmons continue to conceal facts.
66.	On October 10, 1994, S1205: Exhibit C , Prasad Bikkani, Mr. Bikkani, Plaintiff, began working for North East Ohio Neighborhood Services (NEON) formerly knows as Cleveland Neighborhood Health Services (CNHSI) or aka Hough Norwood Family Health Care Center as Programmer/Analyst S1506: Exhibit D . Since Attorney Matthew Fitzsimmons submitted an affidavit-stating Plaintiff was never employed by CNHSI/NEON and also he stated during September conference hearing that appointment letter on letterhead is not a valid proof, Plaintiff submitted Vito DeCore's Affidavit and other pertinent facts. Attorney Matthew prejudiced through false affidavits in a supposedly straightforward situation by improperly extending his misconduct into courtroom to undermine the credibility of Plaintiff and to cover-up the facts with materially false affidavit in an effort to unjustly cause credibility damage.
67.	As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that CNHSI/NEON's Human Resources mailed August 18, 1994 letter acknowledging receipt of employment opportunity inquiry S1506: Exhibit A , and knowing that <u>on or around 9/12/1994</u> Cleveland Neighborhood Health Services (CNHSI) nka NEON received back communications related to employment verification on CNHSI letterhead/name S1506: Exhibit B .
68.	As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that on or around 9/21/1994 CNHSI/NEON's Chief Information Officer communicated to Human Resources Director (Robert James supervisor of Evelyn Armstrong) offering a Programmer Analyst position to stating Amir Farahani for THCP side and for Prasad Bikkani, Plaintiff, on CNHSI side S1506: Exhibit C , and salary amount matched to employment offer letter and to the pay-stub and the memo states: <p style="text-align: center;">CLEVELAND NEIGHBORHOOD HEALTH SERVICES MEMORANDUM</p> <p>Date: September 21, 1994 To: Robert James, Personnel Director From: Lateefah Hafeez, Chief Information Officer Re: Vacancies – Programmer/Analyst for THCP & CNSHI</p>

	<p>Two (2) candidates have been chosen for the position of Programmer/Analyst for THCP and CNHSI. Amir Farahani has been chosen for the Programmer/Analyst position for THCP and Prasad Bikkani has been chosen for the programmer/Analysts position for CNHSI. Please send letters of offer to both individuals. The starting salary for both will be \$35,000.</p> <p>If you have any questions, please contact me. /mb</p> <p>And further knowing that Amir Farahani chose not to join [but a year later joined as temporary programmer under Plaintiff's supervision] and at that time MIS/Manager Paul Kucil left the company on the day of Plaintiff's joining there by leaving those responsibilities onto Plaintiff's shoulder from day one and handled very successfully all their workload and much more.</p>
69.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI and caused prejudice knowing that CNHSI/NEON's Human Resources faxed the employment offer letter dated 9/27/1994 and specifying the position was for CNHSI S1506: Exhibit D, and stating the tentative date to start 10/17/1994, and further knowing that on or around 9/29/1994 Plaintiff sent acceptance letter to CNHSI/NEON Human Resources by thanking for offer and indicated early availability if needed S1506: Exhibit E, and CNHSI requested to join n 10/10/1994.</p>
70.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that Cleveland Neighborhood Health Services on 10/10/1994 signed form for Plaintiff regarding Procedure to Follow In Case Of Fire or Hazardous Emergency" by Robert James S1506: Exhibit F, (Director Human Resources), Supervisor of Evelyn Armstrong.</p>
71.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that they do have 10/22/1994 ending 1st Timecard fill-up which shows from 10/10/1994 and using straight 8 hours S1506: Exhibit P, irrespective of 16 or 24 hour working days and knowing 10/22/1994 ending 1st paycheck stub (back and forth) of Cleveland Neighborhood Health Services (CNHI) check number 404936 S1506: Exhibit G, pay from 10/10/1994 and pay rate matching to offer was issued by CNHSI/NEON.</p>
72.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that 1/6/1995 Pay Date 1st 1995 year paycheck stub of Cleveland Neighborhood Health Services (CNHI) check number 4771833 S1506: Exhibit H and knowing that irrespective of from what source the funds were paid, the management decided from time to time whom to place under what payroll irrespective of duties from multiple companies, and due to the projects demand and assignments that were entrusted to plaintiff he worked long hours every day ranging at least 15 to 16 hours, JB22: Exhibit W p9 middle, to 24 hours at</p>

	<p>times, JB22: Exhibit p8 1st Para, and almost all weekend including Saturday and Sunday and holidays such as Thanks giving even during the unpaid probation period and holidays and took care of corrupted processes to correct and stream line and bring mid month TapeTurn process into 1st day of month process by cutting short about 15 days process/month into 1 day process per/month within just weeks of joining and further knowing that within about four months while on probation, on or around <u>1/30/1995 effective</u> voluntarily company promoted to MIS Manager and voluntarily raised salary to \$47,000.00 S1506: Exhibit I and a copy was received by John Campbell who later became CEO of CNHSI/NEON now followed by Willie Austin; and a copy was sent to Lateefah Hafeez.</p>
73.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that on or around <u>4/24/1995 effective</u>, voluntarily company raised salary to \$50,760 S1506: Exhibit J, stating due to the result of 6 months performance review, like performance evaluation S1506: Exhibit K, which is CNHSI with name Hough-Norwood Family Health care Center and further knowing that on or around <u>10/9/1995 effective</u> voluntarily company raised salary to \$55,328.46 S1506: Exhibit L, stating due to the result of annual review and position change to MIS Director, with performance evaluation S1506: Exhibit M, which is with CNHSI name Hough-Norwood Family Health care Center.</p>
74.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his predicate and illegal acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that on or around <u>1/16/1996</u> voluntarily company appointed plaintiff as Vice President/Management Information Systems making him jointly responsible with Jim Bell/Sr. VP/Finance to NEON formerly known as CNHSI and THCP and charged with the responsibility to come up with a restructured program to incorporate finance and information services of all affiliated corporation groups into one service unit S1506: Exhibit N and further knowing that on or <u>1/26/1996 dated but effective 1/15/1996</u> voluntarily company raised salary to \$65,500.00 S1506: Exhibit O, and voluntarily changed title to Vice President/Management Information Systems and further increased salary later.</p>
75.	<p>As a pattern of misconduct board member of NEON/CNHSI, Mr. Fitzsimmons, with forbidden continued self-dealings and in an effort to cover his commingled and illegal acts through discrediting Plaintiff he further conspired with NEON in early September 2005 and submitted a materially false affidavit stating as if Plaintiff was never an employee of NEON/CNHSI knowing that even by the 1st Anniversary, i.e. during October 1995, Plaintiff was promoted to Director of MIS voluntarily by company and by January 2006, voluntarily company promoted Plaintiff to Vice president of MIS, J2206: Exhibit O, S1205: Exhibit D, each time company automatically increased salary on its own and never discussed about those or even for the years company provided bonuses due to the level of Senior Management. Plaintiff's responsibilities spanned to not only THCP and to NEON as January 2006 memo described, J2206: Exhibit O-R, JL0606: Exhibit F, and further knowing that plaintiff achieved excellent results while performing his duties at THCP/NEON, particularly in the areas of Information Systems, Operations efficiency, performing the special tasks/projects as assigned and though by the nature of corporation tendency, certain issues delegated to departments certain tasks specially kept by Chief Operations Officer(s) and such</p>

	tasks includes installation of systems by COO's team either John Campbell, Donald Butler, Willie Austin, etc, and or assigning certain operational tasks to MIS and the assigned tasks get performed by Plaintiff were quite lucrative for THCP/NEON and Plaintiff put in long hours at work and worked holidays and Plaintiff was sent on an expense paid seminars including to Florida, Seattle Washington S1506: Exhibit K4, M4 and Plaintiff had an unblemished record with THCP/NEON with regard to discipline or on anything.
76.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants NEON board members collectively as one for now, NEON, THCP, and Mr. Fitzsimmons pretended as if he is representing all of them while NEON and THCP has it's own conflicts of interests and with his self interests ahead and in conflicts with as a Board of Trustee of NEON (if not for THCP at any time), and as pleaded in detail with severe conflicts which is a record. Confident/counsel to current trustees of THCP (whoever may be) and to current NEON Trustees to plead that there is no relationship between NEON and THCP, in contrary to JL0606: Exhibit B, C , and acting as an owner of both with the way he feels fit with self-dealings and with all the above conflicts and further being a board member still continuing as an attorney of record to NEON/THCP to cover his predicate acts at the expense of judiciary system.
77.	As a pattern of misconduct, NEON trustee Matthew Fitzsimmons in concert with Dennis Roth as co-attorney to achieve Holders/Ruth Aaron/Rotan Lee, etc goals at the expense of THCP, and Attorney Dennis Roth disqualified in the instant case himself upon Plaintiff gave a notice to Attorney Fitzsimmons and to Attorney Dennis Roth with conflicts, Matthew Fitzsimmons continued to violate disciplinary rules and continue to cause harm and Denise Roth used his attorney Brian Green's representation to his client(s) in the instant case as an extension and in further violations.
78.	As a pattern of misconduct, NEON trustee Matthew Fitzsimmons who pretended as confident/counsel to NEON/THCP Officer including to <u>Evelyn Armstrong</u> with whom he conspired and created an affidavit stating Plaintiff was never an employee of NEON, J2206: Exhibit M to maliciously undermine the credibility of plaintiff against the facts, JL0606: Exhibit F, J2206: Exhibit N-V and to divert the case to benefit him-self and other wrongdoers, with self-interests ahead, pleaded as if he come to know about lawsuit only after 6 years and too with NEON name when having years of knowledge and too with specific reference to NEON name as defendant for the reason including "...NEON has to be named especially as a currently established parent status..." JL0606: Exhibit G . Ethical duty to the court even when representing with many conflicts of interest or should not have represented in court with conflicts, Mr. Fitzsimmons and DR MT Millers are CNHSI's board members even prior to name change into NEON, JL0606: Exhibit H4 and Jim Turner as CEO, JL0606: Exhibit H3 , and recorded with Secretary of State under Doc ID 5154_0110 in 1996, and Jim Turner signed for Plaintiff's appointment in 1996, J2206: Exhibit O, P besides original recruitment by CHSI, J2206: Exhibit N , and known to by Mr. Fitzsimmons.)
79.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants NEON trustees through his trustee ship with NEON and as General Counsel to NEON and to cover his self-dealings and to make money by further complicated the case, keep fabricating unilaterally against facts, without even having a standing with severe conflicts and tainted the proceedings and he should not be rewarded with bill/sanction against innocent victim/Plaintiff.
80.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants and knowing obligated to represent truthfully if

	parent-child relationship existed between NEON-THCP, JL0606: Exhibit C1 , and to protect THCP assets from dissipation, represent accordingly without conflicting interests but grossly violated those and even ignored basic disclosures in the court.
81.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants/plaintiff with an obligation to avoid conflicts if same attorney/firm claimed a different relationship between NEON-THCP while acting as Agent of THCP, and a different relationship while representing NEON to claim THCP assets including fraudulent conveyance through \$1 million note at the most critical time of THCP, J2206: Exhibit AL-AQ .
82.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants/plaintiff and with obligated to avoid conflicts as a trustee of NEON and as a counsel to claim millions from a child/subsidiary relationship with THCP when already converted and or received several millions of dollars from the child to claim any past obligations and too with all the above conflicts and claimed and collected in millions additional amount in addition to already taken several millions of dollars.
83.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants and knowing that Attorney Matthew Fitzsimmons/NEON Board of Trustee Obligated to avoid statutorily forbidden self-dealings Internal Revenue Code 4941(d) , Doc ID 200236401634 p2, JL0606: Exhibit B , to maintain non-profit status to NEON and THCP-violated corporate formalities thus by mandating enjoinder/disqualification.
84.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants/plaintiff and knowing that Attorney Matthew Fitzsimmons/NEON's Trustee Obligated to uphold Attorney Disciplinary Rules by Profession- but totally and willfully disregarded by attempting to represent <u>about twenty entities/persons</u> of conflicting interests/roles simultaneously to benefit himself against his clients.
85.	As a pattern of misconduct Mr. Fitzsimmons knowing that he had Attorney-Client relationship with instant case defendants and Denise Roth who worked with had conflicts of interest in the instant case and his extension Attorney Brian Green violating DR 5-105 and in violation of extended restrictions to Brian Green's continuance through Attorney Fitzsimmons's working relationship to Denise Roth.
86.	As a pattern of misconduct knowing that Attorney Matthew Fitzsimmons and Attorney Dennis Roth are necessary witnesses in the instant case related to employment discharge, retaliation, conspiracy, predicate acts, and in absence of Robert McMillan, Paula Phelps, Jimmy Dee and Rotan Lee these two witnesses are essential followed by Ruth Aaron, THCP/NEON and Mr. Fitzsimmons's and Roth's testimony won't be in the best interests of their clients with divided loyalty.
87.	As a pattern of misconduct and knowing that a relief in the future would be foreclosed, when a party, a material witness, a wrongdoer, Mr. Fitzsimmons, in the case representing other clients in the instant case and knowing that he had many other clients/fiduciaries in the case and contaminating judiciary system in each step and knowing that NEON's board member Mr. Fitzsimmons is a fiduciary or trustee to Plaintiff, <i>Hafter v. Farkas</i> , 498 F.2d 587, 589 (2d Cir. 1974)
88.	As a pattern of misconduct and knowing that a relief in the future would be foreclosed, when a party, a material witness, a wrongdoer, Matthew Fitzsimmons knowing that he is a material witness, necessary party, has fiduciary duty to Plaintiff, has about 30 conflicts of interest against his own current clients and past clients who are defendants etc continues as an

	attorney of record, and knowing that he is trying every minute to conceal the facts, he introduced falsified affidavit in September 2005, S1205: Exhibit B as if Plaintiff was never an employee of NEON, suppresses evidence and being a material witness and a necessary party, if he goes through all the witnesses testimony, as a attorney of record in the instant case for multiple parties, and once trial is completed or gone through discovery the damage cannot be undone; Like a proverb "Once the bell has been rung, it cannot be unring" and relief in the future would be foreclosed in the instant case and violates the fundamental fairness of trial, causes prejudice, appearance of impropriety, etc.
89.	As a pattern of misconduct and knowing that a relief in the future would be foreclosed, when a party, a material witness, a wrongdoer knowing that Matthew Fitzsimmons's past clients are necessary witnesses and or defendants in the instant case and each have their own protective interests and Attorney Fitzsimmons is prejudicing as attorney of record to two conflicting clients for his self serving purposes.
90.	As a pattern of misconduct and knowing that a relief in the future would be foreclosed, being a material witness and as one of the key players in the scheme Mr. Fitzsimmons steering the discovery, obtaining evidence from all the parties, knowing completely who had what or who testifies what is improper than coaching a witness, improper than witnesses attending trial and giving witness testimony following other witness testimony, improper than jury having access to contact with news media related to the case, while deliberations taking place the retrial would be and knowing that not only a contamination of proceedings/trial but alterations for the self serving purposes of Attorneys and their affiliates who involved in the cause of the problem.
91.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that courts granted disqualification even when rule violators argued stating finding a new attorney after substantial discovery and started deposing parties courts stating although there will be some inconvenience and expense in having to seek new counsel to represent in this litigation, the appearance of impropriety that would otherwise continue outweighs any asserted inconvenience and additional expense and knowing that Ohio Supreme Court found disqualification warranted even though the parties had been through a trial and commenced appellate proceedings, <i>Kala v. Aluminum Smelting & Refining Co., Inc.</i> (1998), 81 Ohio St.3d 1 and <u>knowing none of such cases involved like the instant case where an attorney involved with the underlying case representing the case and in such a scenario the discovery would be completely contaminated causing further irreparable harm.</u>
92.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that Matthew Fitzsimmons himself has a competing attorney-client privilege with THCP, NEON, THCP Board, NEON Board, Plaintiff, other defendants of the instant case, and even breaching the fiduciary relationship he had with Plaintiff, to continue to cover his violations and knowing that Matthew Fitzsimmons's fiduciary duties getting violated for many parties, to THCP past trustees who are parties, who hired during their control of THCP to facilitate their scheme/acts.
93.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that Matthew Fitzsimmons's disqualification is warranted through the underlying appearance of impropriety stemming from concerns that Mr. Fitzsimmons had access to THCP's, THCP Board of Trustees who are defendants in the instant case, Plaintiff to whom he is fiduciary as NEON's board member and also as if a attorney-client relationship representative along with Donald Butler of THCP on RAM Technologies, and other parties in the instant case confidences and secrets by representing

	and communicating with and should disqualify that the appearance of impropriety is so strong that with perception that an attorney had abandoned them with all of their shared/earned confidences/secrets and knowing that the appearance of impropriety stemming from the breach of loyalty to many parties and disqualification is warranted to maintain trust and confidence in the litigation.
94.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that the issue here is not whether Plaintiff's relationship to Mr. Fitzsimmons's is in all respects that of attorney and client, but whether there exist sufficient aspects of an attorney-client/fiduciary relationship "for purposes of triggering inquiry" into the potential conflict involved with parties and attorneys in the instant case and knowing that the standards of Canon 5 to be applicable even though the interests adverse to those of a law firm's client are not those of another client in the traditional sense, <i>Fund of Funds, Ltd. v. Arthur Andersen & Co.</i> , 567 F.2d 225, 234 (2d Cir. 1977) (client secures disqualification of law firm, which does not represent client, because of firm's involvement with another firm disqualified for representing interests adverse to the client), and in view of the relationship between the subject of instant lawsuit and the nature of the services rendered by Mr. Fitzsimmons to various parties, <i>Glueck v. Jonathan Logan Inc.</i> , 653 F.2d 746 (2nd Cir.1981).
95.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that Mr. Fitzsimmons and Denise Roth and his attorney extension Bryant Green have been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Plaintiff's; confidences, thus under Canon 4, Canon 5, Canon 9, DR5-105, etc of the Code of Professional Responsibility, <i>Emle Industries Inc. v. Patentex Inc.</i> , 478 F.2d 562 (2nd Cir. 1973), <i>Kala v. Aluminum Smelting & Refining Co., Inc.</i> (1998), 81 Ohio St.3d 1 at 5 and knowing the further violations of ("E-C") 9-6," which provides: "
96.	As a pattern of misconduct and knowing that severe conflicts of interest involved and tainting the proceedings and knowing that Mr. Fitzsimmons in the instant case Mr. Fitzsimmons's not only accepted employment with opposing side of many people including Plaintiff but he himself representing against others with competing interest and to cover himself being involved in wrong doings as alleged through pleadings and several filings with his competitive interest against his own clients and knowing that besides many conflicts Matthew Fitzsimmons had directly on his own in the instant case, Mr. Fitzsimmons worked as co-counsel on many occasions with Dennis Roth in Holders including during 1999, having conflicts of interests in the instant case and disqualified Dennis Roth, as a co-counsel to Dennis Roth and knowing it extends to Mr. Matthew Fitzsimmons's disqualification too and vice versa and applicable to Attorney Brian Green too and he is just an extension of Denise Roth.
97.	As a pattern of misconduct and knowing that relief in the future would be foreclosed, when a party/a material witness withdrawn (Attorney Dennis Roth) admitting severe conflicts of interest but assigned his attorney (Bryant Green) to represent one of the clients in the instant case and had many other clients/fiduciaries in the case and contaminating judiciary system in each step, as Attorney Brian Green initiated representing Ruth Aaron upon Attorney Dennis Roth's disqualification from the instant case due to severe conflicts of interests including DR5-105, Canon 9 , violations with several parties, being material witness in the instant case and detrimental to his clients, and November 2005 attempted service as a party that was not perfected and knowing that Attorney Dennis Roth is a client of Attorney Brian Green, for example <i>Roth v. Schwartz</i> (Ohio 8 th Dist CV-05-567944), <i>Schwartz v. Roth et al</i> (Ohio 8 th

	<p>Dist CV-05-567781) and knowing that, Attorney Brian Green's client (Attorney Dennis Roth) is a key witness and detrimental to the parties and knowing that attorney Roth's testimony includes the key Plaintiff's termination area and testimony would be detrimental to his former clients including to THCP, Barry Scheur, SMG, Ruth Aaron, his co attorney, Attorney Matthew Fitzsimmons, in <i>State v. Williams</i>, Ohio- 2533 (App. Dist.6 2003) court affirmed the lower court disqualification even on the ground that Attorney formerly represented two of the individuals likely to be called as witnesses.</p>
98.	<p>As a pattern of misconduct, SMG claimed with not even partial truth of success claimed success by omitting the drastic failure part that</p> <p style="padding-left: 40px;">"SMG is a nationally recognized business consulting firm founded in 1988 which provides managed care consulting and hands-on operations management in all segments of the health care industry, but with a particular focus on the managed care industry. In 1999, for instance, SMG's experience included providing interim management leadership for Total Health Care Plan of Cleveland, Ohio. SMG's management team provided strategic and tactical leadership and managed all HMO operations for Total Health Care Plan." Available at http://www.state.me.us/pfr/ins/bcdoc610.htm</p> <p>On November 26, 2006 at 4:15 p.m.</p> <p>With similar deceptive half-truth disclosures, Holders obtained THCP project. Omission of material fact about failure at THCP constitute "fraud" for purposes of RICO Act for failure to disclose information where duty exists, making half-truths and or for affirmative misrepresentation, <i>Katzman v. Victoria's Secret Catalogue</i>, S.D.N.Y.1996, 167 F.R.D. 649.</p>
99.	<p>As a pattern of misconduct the improper operation, omission of material fact, statements of half-truths or affirmative misrepresentation for SMA Health Plan, Inc of Louisiana which lead to liquidation/Takeover by Receiver after disappearance of millions of dollars. Some of the Defendants of instant case were indicted starting November 18, 2005 on conspiracy, and mail fraud charges along with unjust enrichment and later extended to mail fraud and wire fraud and through repeated reconsideration motions on constitutionality related to first indictment and later on multiple charges indictments, at least Louisiana district court dismissed, Exhibit A. These charged predicates were related and the alleged criminal acts have same or similar purposes, result, participants, or victims or methods of commission and are not isolated events with the apparent economic motive and greediness is the driving force for the Holders where the Louisiana state claimed about \$4 million to \$50 million dollars in losses/unpaid claims. But the prepared motions success proves that Plaintiff's genuine requests of reconsideration motions are not frivolous on the merits wise to review or modify the law accordingly purpose and sanctions should be reversed.</p>
100.	<p>As a pattern of misconduct, Mr. Roth, Mr. Fitzsimmons and other Holders' fraudulent representations and omissions made pursuant to these-described schemes in that, among other things, they sent bills and invoice to THCP that fraudulently overstated and misrepresented the services provided and or received payments for conspiracy and to protect Scheur Group acts.</p>
101.	<p>As a pattern of misconduct Holders and others committed improper acts in Louisiana during 1999 through early 2002 and per Louisiana Insurance department over \$40,000,000 claims to the provider/members were not paid and A fourteen count indictment was announced in August 2006 against Mr. Scheur, Mr. McMillan, and others including mail fraud, wire fraud, and upon and through repeated reconsideration motions on constitutionality related to first indictment and later on multiple charges indictments, at least Louisiana district court dismissed, Exhibit A, and Plaintiff's reconsideration motions to serve justice should not be frivolous and sanctions</p>

	should be lifted/reconsidered.
102.	As a pattern of misconduct, with self interests ahead to cover-up his acts, Mr. Fitzsimmons is claiming the context as it fits for him and other parties who are in concert with him incorporating his pleadings like on or around 11/10/2005 Mr. Kimber and Dr. Marshall filed motion adopted everything that NEON and THCP filed by means of " <u>hereby join in, adopt, and incorporate by reference the arguments of defendants North East Ohio Neighborhood Health Services, Inc. and Total Health Care plan Inc.</u> " irrespective of factuality and even when Mr. Fitzsimmons based upon convenience claiming a relationship between NEON and THCP and in another convenience as if there is no relationship, etc.
103.	As a pattern of corruptive act Mr. Fitzsimmons chose to continue representing THCP/NEON with severe conflicts of interest and with self-interests ahead of code of ethics and in September 2005 itself submitted to court fabricated affidavit with totally falsifying information in an effort to dismiss the case. Plaintiff filed on or around 11/17/2005 stating postponement of discovery leads to spoliation of evidence thus should not postpone, and plaintiff's effort to disqualify Mr. Fitzsimmons didn't materialize for some reason. With a similar pattern of conflicts where attorney self interests and their materially participated case in <i>Miles Landing Homeowners Association (MLHOA) v. Bikkani</i> (cv04-519870) in which attorneys involved on behalf of plaintiff. However, due to their pecuniary benefit involvement, MLHOA attorney first through affidavit like in the instant case materially falsified information. When disqualification of attorney didn't succeed then proceeded for hearing on 4/21/2005 and the facts were surfaced only several months ago in which unfortunately judge Nancy Fuerst got trapped in to that and yet the resultant damage to related parties is enormous. That demonstrates that how far an attorney goes with perjury when their pecuniary benefits involved and the instant case as well as MLHOA cases were first involved with fraudulent affidavits submission by attorneys. Given the MLHOA fabrication outcome, where attorney pecuniary benefits involved.
104.	As a pattern of misconduct, in the instant case, on or around 9/6/2005 pleadings/motions, Mr. Fitzsimmons maliciously, knowingly, willingly fabricated affidavit with respect to Plaintiff's employment station Plaintiff was never an employee of NEON/THCP, and in addition maliciously filed pleadings stating no relationship between THCP and NEON " <u>as it seems fit</u> ".
105.	As a pattern of misconduct, and as a pattern Mr. Fitzsimmons in <i>Shuder v. Total Health Care Plan</i> (8 th Dist. 1997) CV-97-324073 where Shuder was represented by an attorney Ms. Hodgman Blair and the defendants THCP/NEON were represented by Mr. Fitzsimmons in a discrimination or so-called reverse discrimination case that was settled ultimately, fabricated an affidavit by Mr. Fitzsimmons submitted on or around 4/15/1977 in an effort to disqualify her and her firm and on 4/17/1977, as detailed by Plaintiff in November 2005 pleading/filing, Ms. Blair Hodgman shot back stating fabricated accusations and frivolous motion then he withdrew the motion. At that time, pattern was not shown to the court about Mr. Fitzsimmons and in the instant case Mr. Fitzsimmons involved in many schemes including underlying key cause besides fabricated affidavit as a part of process and he should be disqualified and or disbarred Mr. Fitzsimmons and Mr. Fitzsimmons is a vexatious litigator.
106.	As a pattern of misconduct, Mr. Fitzsimmons acted as counsel/advisor to Dr. Marshall/Mr. Kimber even when Mr. Fitzsimmons a part of Holders and THCP board members endorsed Mr. Fitzsimmons's pleadings as if factual and or incorporated the arguments through <u>Notice of Joinder In</u> . to influence the case and or court accordingly on or around November 10, 2005 in an effort to get equal credit by <u>Mr. Kimber and Dr. Marshall</u> for any factual pleadings, and or by taking <u>equal responsibility</u> for any material falsification, willful and total disregard to

	<p><u>the facts</u> and “<u>as it seems fit</u>”, as Mr. Fitzsimmons repeatedly pleaded that both <u>NEON and THCP are unrelated entities</u>. Mr. Kimber and Dr. Marshall Joinder In. boost the value of Mr. Fitzsimmons pleadings. Mr. Fitzsimmons “<u>as it seems fit</u>”, in his 11/10/2005 Argument stated:</p> <p>“Now plaintiff is attempting to depose <u>five NEON employees and/or Board members</u>, as well as NEON and THCP’s counsel. Such conduct is outright harassment, especially in regard to parties such as NEON, which plaintiff is suing for various employment-related claims arising out of his termination from THCP -- a separate entity from NEON [emphasis added]”</p>
107.	<p>As a pattern of misconduct and knowingly, willfully, to defraud the court and plaintiff, Mr. Fitzsimmons submitted a falsified affidavit to court on 9/6/2005 by <u>altering plaintiff-NEON employment relationship</u> following Mr. Fitzsimmons as a NEON Board member tortuously interfering with THCP, to conspire with Holders and contribute to THCP’s disaster with many conspiracies and predicate acts, and to cover-up self-dealings, Mr. Fitzsimmons knowingly and willfully filed false pleading and further incriminated THCP and NEON along with himself and Mr. Kimber and Dr. Marshall for their willful <u>Join In</u> to get endorsed and or to emphasize as if no relationship to NEON-Plaintiff and as if no relationship to NEON-THCP when claimed as it seems fit other times as if parent-child relationship between NEON-THCP and collected/gained over \$2.4 millions from State/Federal Government held funds.</p>
108.	<p>As a pattern of misconduct, Mr. Fitzsimmons and NEON, and others in concert (false pleaders of 11/10/2005) filed a False claim of Parent-child relationship in 2001 “<u>as it seems fit</u>” to State/Federal Government funds in which NEON/Mr. Fitzsimmons presented to Franklin county common pleas court to receive about \$1.5 million dollars excessive funds following recovery of over payments/duplicate payments out of PBM and Txen systems and paying off the medical claims and this was known as <u>false claim</u> to Dr. Marshall and Mr. Kimber thus joined in with NEON/THCP 11/10/2005 pleading/argument with the <u>claim of no relationship between NEON-THCP</u>.</p>
109.	<p>As a pattern of misconduct, Mr. Fitzsimmons, NEON and others in concert submitted/maintained a <u>false claim</u> to the State/Government stating as if <u>Parent-child relationship exists between NEON-THCP and as if agreed to maintain the same</u>.</p>
110.	<p>As a pattern of misconduct, Mr. Fitzsimmons filed in court pleadings with a key materially false information “<u>as it seems fit</u>” stating there is no relationship between NEON-THCP knowing that he filed <u>false claims</u> with State/Government funds in million(s) of dollars by claiming a relationship and while receiving federal grants, and being a nonprofit corporation and with IRS forbidden self-dealings; and while NEON/THCP maintaining in Amended and Restated Articles of incorporation of THCP that were filed in 2002 by Mr. Fitzsimmons stating THCP a wholly owned subsidiary of Northeast Ohio Neighborhood Health Services, Inc. in Secretary of State Doc ID 200236401634 further stating:</p> <ul style="list-style-type: none"> • Articles of Incorporation Third states: The corporation is an organization ... <u>primarily to support the purposes of its parent organization, Northeast Ohio Neighborhood Health Services, Inc.</u> • Article of Incorporation Fifth (g) states: On dissolution of the Corporation or the winding up of its affairs, <u>the assets of the Corporation shall be distributed exclusively to NorthEast Ohio Neighborhood Health Services, Inc...</u> • Article of Incorporation Seventh: <u>The number of Directors constituting the Board of Directors shall be three (3)...</u> • Articles of Incorporation Ninth; <u>The Corporation shall be a wholly owned subsidiary of NorthEast Ohio Neighborhood Health Services, Inc.</u>

	<ul style="list-style-type: none"> Article of Incorporation Tenth: These amended and Restated Articles of Incorporation may be amended by the action of <u>its sole member, NorthEast Ohio Neighborhood Health Services, Inc.</u> <p>With Doc ID 200136002880 Article Fifth states: <u>The affairs and business of the Corporation are to be managed by a sole director who shall be the Chief Executive Officer of the parent and sole member of Corporation, Northeast Ohio Neighborhood Health Services, Inc...</u></p> <p>Moreover in <i>Covington v. Total Health Care Plan</i> (Franklin Cty 2001) CVH07-6658, the Journal entry dated 10/29/2001 states that "The court also heard remarks from counsel and was advised that the <u>Northeast Ohio Neighborhood Health Services, Inc. acknowledges that Total is a wholly-owned subsidiary and that company</u> has agreed with the plan of reorganization that has been provided to the court."</p>
111.	As a pattern of misconduct, Mr. Fitzsimmons pleaded as if Plaintiff should never have named NEON as a defendant in this case and further claimed as if <u>NEON and THCP are separate entities, admitting to False claims of failing to state who controls them, who hired Mr. Fitzsimmons to represent them, and how he or others got control over THCP, and too while stating as if THCP is non-operational, and without stating why NEON falsified parent-child, ownership/relationship with state/Government.</u>
112.	As a pattern of misconduct, in September 2005, Mr. Fitzsimmons produced a materially false affidavit stating Plaintiff <u>was never an employee of NEON on behalf of NEON</u> , further as NEON board member, and being on behalf of NEON Mr. Fitzsimmons unlawfully participating in termination of plaintiff in concert with Holders, and being Mr. Fitzsimmons violating serious laws as a trustee of NEON and continuing to violate with attorney hat in the instant case and too with IRS forbidden dealings, board of trustees fiduciary duties.
113.	As a pattern of misconduct, Mr. Fitzsimmons defrauded the court with falsified affidavits, obstruction of justice, and emphasized as if no relationship between THCP and NEON and continues to act as a member Holders to defraud the court.
114.	As a pattern of misconduct, Fitzsimmons acted as counsel of record for NEON and THCP in the instant case with self-appointment by controlling, through piercing corporate veil, and claimed as if NEON and THCP have not waived their respective attorney-client privileges -- and will not, by acting as whole board of an institution, Dr. Miller's deposition Mr. Fitzsimmons further stating that Dr. Miller didn't know anything and by covering-up his involvement by causing underlying action and by continuing in the case on behalf of alleged clients.
115.	As a pattern of misconduct, Mr. Fitzsimmons claimed with THCP and while acting as Board member of NEON stating as if THCP is a Holding company and not NEON as parent to THCP and too while working to cure THCP's 1992 canceled/Failure to file/Statement Continued to Existence which was not reinstated until July 6, 1995 by changing the name of THCP prior to Jim Turner's death and or prior to Mr. Fitzsimmons joining in Holders
116.	As a pattern of misconduct, Mr. Fitzsimmons instead of fulfilling his fiduciary duties and to protect board members with completing the incomplete task of planned reorganization to restore appropriately the needed protection, joined with Holders, involved in many predicate acts, converted THCP funds, and as a further pattern of corrupt activity claimed THCP as a child of NEON "as it seems fits" whenever benefit was sensed only and while acting as Board member of NEON and jeopardized protection of corporate charter.
117.	As a pattern of misconduct, while stating by neon/THCP in the summer of 2001 by Willie Austin a current CEO of NEON/THCP and a Board member of NEON/THCP (Mr. Austin) in Columbus at the Law firm of Carlile, Patchen & Murphy LLP office while stating that

	<p>he came to evaluate the facts/documents, unsettled liabilities as they become liabilities to THCP/NEON when NEON gets assets/funds. Mr. Austin informed Plaintiff that EEOC claim became Rehab claim, J2206: Exhibit A1-5, and offered \$50,000 to release THCP and NEON and stated that by settling and releasing NEON and THCP still Plaintiff will have rights against Scheur Group and others and promised to deal with Plaintiff [in good faith] to resolve the issues but may take up to two years from the transfer of Rehab assets to NEON but upon waiting two years in good faith, NEON/THCP ignored to respond to certified mails and ultimately, Mr. Austin responded on March 22, 2005 stating, "<u>It was my understanding and belief that all matters pertaining to THCP were resolved prior to the court decision to dissolve the plan</u>", S1205: Exhibit E.</p>
118.	<p>It is in furtherance of misconduct where a board member acting as an alter ego of corporations with a law degree and with IRS forbidden self-dealings causing litigation to extort money under the name of legal representation without disclosing such conflicts of interests to a nonprofit corporation board and or to IRS as supposed to be disclosed, and in bad faith knowingly to state as if settled by taking responsibility, not fulfilling the promise/contract by claiming ownership of THCP, not showing a mutual release, and it is violation of Honest Services and violation of Fiduciary duty.</p>
119.	<p>As a pattern of misconduct, as per September 2005 meeting of Willie Austin he was advised by others [Mr. Matthew Fitzsimmons/Board] to delay in contacting Plaintiff, to claim as if 2001 Rehab obligation was settled and as if THCP was dissolved through court order when it was transferred to NEON, based upon the claim they placed as a parent of THCP.</p>
120.	<p>As a pattern of misconduct, Mr. Fitzsimmons any services performed to Scheur Holders/THCP or receiving any payments from THCP/Scheur Group and stated that Mr. Fitzsimmons represented for NEON with Scheur Group/THCP. It is violation of NEON board member, Mr. Fitzsimmons to act in self-dealings in forbidden transactions of nonprofit corporation(s) and in violation of IRS self-dealings and did not disclose to IRS on annual disclosures either.</p>
121.	<p>As a pattern of misconduct, and as Mr. Austin acknowledged in his September 2005 meeting, Mr. Fitzsimmons as NEON/THCP board member has access and influence over NEON/THCP officers/employees, J2206: Exhibit M.</p>
122.	<p>As a pattern of misconduct, as Mr. Austin informed in-form in September 2005 that Mr. Fitzsimmons as a trustee of NEON did not disclose to the NEON board Mr. Fitzsimmons's involvement in the activities with Scheur Group/THCP/Plaintiff's ouster and if NEON's board unaware of Mr. Fitzsimmons's support to Scheur Holder(s) to make them to become a permanent CEO over the wishes of NEON's board to run THCP in May 1999, J2206: Exhibit K, and Mr. Austin's contact is THCP's board member Moreno Miller (Mr. Miller). And as Mr. Austin acknowledged that Plaintiff was hired for CNHS/NEON, S1205: Exhibit C, D, J2206: Exhibit M-T, Mr. Fitzsimmons played a complicated forbidden self-dealings role over the years and continued to play in the instant case with the same patterns.</p>
123.	<p>During September 2005 meeting, Mr. Austin didn't deny and or expressed lack of knowledge of NEON board member Mr. Fitzsimmons/NEON's interference with THCP affairs and relationship among a) helping Scheur Group to oust Plaintiff from THCP/NEON, b) placing NEON employees under THCP to further control THCP, c) Mr. Fitzsimmons association as Scheur Holder and NEON board member, d) Mr. Fitzsimmons/NEON undue influence to obtain a letter signed by another Scheur Holder [Rotan Lee] on behalf of THCP without board's authority/knowledge knowing his imminent departure/ouster as enrollment was frozen by state and THCP is struggling to survive through crash crunch due to over/duplicate payments, J2206: Exhibit AO-AR, e) Mr. Fitzsimmons/NEON influence to get</p>

	<p>waived/postponed over a million dollars note that is being matured on or around June 30, 2000 by depriving THCP's right, J2206: Exhibit AQ, f) the time when THCP is looking for cash infuser through any kind of alliance to survive, J2206: Exhibit AP, g) whether even on or around 1/14/2000 dated Scheur Holder[Lee] letter on THCP letter head was backdated without giving a copy to the stated people or supposed to involve people who are also in rivalry with NEON, J2206: Exhibit AQ, h) NEON's board member Mr. Fitzsimmons multiple roles and acts as if confident of THCP board while there was a rivalry between THCP board and NEON board, i) NEON's refusal to pay or take responsibility citing THCP is at life and death and THCP officer [Scheur Holder]'s unauthorized colluded/deceptive letter when THCP board demanded the payment, J2206: Exhibit AL-AN. As a pattern of misconduct, Mr. Fitzsimmons refused to disqualify him-self from the case and he is not representing his clients THCP/NEON, acting with conflicts of interest and continuing to protect self-interests and seriously prejudiced the case.</p>
124.	<p>As a pattern of misconduct, Mr. Fitzsimmons created an affidavit in bad faith by conspiring with Ms. Evelyn Armstrong's stating Plaintiff was never an employee of NEON [CNHSI], S1205: Exhibit B in contradiction to S1205: Exhibit C, D, in contradiction to a NEON employee, Theresa Broughton's termination of 9/23/1996 with Plaintiff's joint position over NEON/THCP, Vito Decore and other NEON IT staff are being supervised by Plaintiff, J2206: Exhibit M-T, Plaintiff's wrote fact in 1st week of May 1999 on NEON's 4/28/1999 memo, J2206: Exhibit R stating that THCP members' phone number is not part of NEON AS400 System and that statement is based upon Plaintiff's position related with NEON and THCP. NEON believed that Plaintiff sided with THCP though Plaintiff is balancing the fiduciary duty to both the corporations.</p>
125.	<p>As a pattern of misconduct Holders/NEON, following plaintiff's May 7, 1999 memo to Scheur Holder [Rotan Lee] stated the fact that as of 5/6/1999 no claims were keyed into the system which effects the Encounter submission in the same memo stating that NEON's claim of \$430,000 could be resolved with in 72 hours if assigned that task to MIS for electronic adjudication, J2206: Exhibit J, it didn't make NEON or Scheur Holders happy as the arbitrarily proposed settlement gives more money to NEON than through adjudication, and Scheur Holders want NEON happy so they can fulfill with their planned encounter submission stopping including Ruth Aaron and attorney Denise Roth and to takeover THCP.</p>
126.	<p>As a pattern of misconduct, Mr. Fitzsimmons conspired with Paula Phelps to implement Holders scheme to oust Plaintiff to carryout their corrupted tasks through retaliation and other violations and following Plaintiff's illegal ouster while attempting to fill some position while concealing as if even the MIS department was eliminated but just by changing the name from MIS to BIS and on July 22, 1999 communication Paula Phelps wrote to Donald Butler stating, S1506: Exhibit AL, J2206: Exhibit V:</p> <p style="padding-left: 40px;">"Donald,</p> <p style="padding-left: 40px;">I have attached a position description with recommended salary range for a Network Administrator for IT. Please note, I deliberately shield away from any language that would imply actual supervisory responsibilities. This done in an effort to divert any potential legal ramifications that might land us in court, due to the fact that the VP position was eliminated as there was no need for a position of that level or responsibility needed any longer.</p> <p style="padding-left: 40px;">To recruit for a management level position, not having offered the VP an opportunity for that role would be grounds for a lawsuit. Therefore, we need to be very sensitive to the fact that we may already be under scrutiny, as I have yet to hear from the former employee IT VP.</p> <p style="padding-left: 40px;">Please advise as to your thoughts...</p>

	Paula.”
127.	<p>As a pattern of misconduct, Mr. Fitzsimmons conspired with Paula Phelps to implement Holders scheme to oust Plaintiff to carryout their corrupted tasks through retaliation and other violations and following Plaintiff’s illegal ouster while attempting to fill some position while concealing as if even the MIS department was eliminated but just by changing the name from MIS to BIS and on July 22, 1999 communication Paula Phelps wrote to Scheur Holders through Jim Dee stating, S1506: Exhibit AK, J2206: Exhibit U:</p> <p>“Hey Jimmy-</p> <p>I’ve attached a position description for Network Administrator. Please note, I have steered clear of any terminology, which might suggest supervisory duties. This in an effort to divert any possible legal ramifications, which might land us in a court of law. If this is not in line with your thinking please advise.</p> <p>Donald has requested that we try and get him a written description by the end of the day.</p> <p>Please advise.</p> <p>Thanks...</p> <p>Paula</p>
128.	<p>As a pattern of misconduct, Mr. Fitzsimmons under the name of representation as a board member, personally involved in many schemes, pretending to be representing two corporations while claiming no relationship between them where liability expected, claiming a parent-child relationship when benefits involved, and involving with self-dealings, involving as Scheur Holders’ with wrong doings and involving with NEON benefits at the expense of THCP, J2206: Exhibit AL-AN, caused serious prejudice and conflicts of interest, and while involving in Paula Phelps, Fitzsimmons, Scheur Group scheme in ousting Plaintiff illegally and involving with other schemes.</p>
129.	<p>As a pattern of misconduct NEON/Mr. Fitzsimmons created controversial documents about NEON-THCP relationship [when benefits involved] or no-relationship [where liabilities my be involved], J2206: Exhibit AL-AN. In furtherance of schemes, Mr. Fitzsimmons/NEON created controversial documents stating no relationship to Plaintiff-NEON to discredit Plaintiff using NEON/THCP, J2206: Exhibit M, in an attempt to dismiss the case against everyone to protect Scheur Holders and Mr. Fitzsimmons through whom he and NEON unjustly benefited millions of dollars at the expense of THCP, and others.</p>
130.	<p>As a pattern of misconduct Mr. Fitzsimmons further representing THCP even now when through a scheme under project slim fast in controversial role he caused harm to it for personal benefits, to cover his acts, and later when millions of dollars are available, in a scheme claimed as if NEON is a parent of child to collect the funds in contrary to the fact if infact NEON is a parent whether he would have destroyed it to help Scheur Holders bonus, finder fee payment on behalf of Lee, and to release the risk pool funds, J2206: Exhibits A-BP.</p>
131.	<p>As a pattern of misconduct THCP board became venerable to Holders due to incentive promised by Holders to individual board members, and shown an African American face [Rotan Lee besides not having needed experience/knowledge other than repeating as if everything is for African Americans only] to them and through emphasis as if company is only for African Americans, besides even when board Holders are aware of the facts through their own 2/12/1999 analysis expressing concern over possible loss of control and misrepresentation by Holders, expected “takeover” mode, “management takeover”,</p>

	<p>“Transitional Management Team”, etc., in which Mr. Miller advised to “Pay the group [SMG] and dismiss them.” Dr. Brenda Marshall (Dr. Marshall) came to a meeting on 4/9/1999 following 4/3/1999 express mail, J2206: Exhibit W, receipt alerting imminent danger to THCP through Holders and others, even after 4/5/1999 phone conversations/messages and or through 4/9/1999 meeting about false claims of Holders and others acts that are being committed against THCP and the way they took THCP as hostage by seizing the data and controlling not to submit data to state and their continued acts.</p>
132.	<p>As a pattern of misconduct NEON board member Mr. Fitzsimmons with others orchestrated against plaintiff, to get to the assets of THCP and knowing an authority didn’t exist extended THCP receivable note payment to NEON through on or around 1/14/2000 dated letter, J2206: Exhibit AQ, without the knowledge/approval of THCP Board, which crippled THCP.</p>
133.	<p>As a pattern of misconduct, when THCP is at life and death, and when THCP board requested over \$1 million dollars debt payment by May 26, 2000 from NEON, NEON refused to pay or provide a surplus note. In furtherance of NEON’s trustee cum attorney’s effort, NEON stated that payment is due on June 30, 2000 not earlier, and as if Holders [Rotan Lee] extended the maturity date to NEON’s convenient time through on or around January 14, 2000 dated letter and as if Mr. Turner understood the need to forgive this debt at the appropriate time. In furtherance of scheme, no parent-relationship was cited by NEON when a liability may be attached other than a reference to a provider stating in the pertinent part, J2206: Exhibit AN:</p> <p style="padding-left: 40px;">“...THCP is now turning its back on the various representations officers of THCP made to NEON of THCP’s agreement to extend the maturity date, evidenced by Rotan E. Lee’s letter of January 14, 2000 (attached). THCP’s demand of notification by the close of business on May 26, 2000, on how payment will be made on a Note due on June 30, 2000, and the threat that THCP will pursue collection of a future debt by offsetting the loan value against NEON’s monthly capitation payment until the debt is retired, is unreasonable, unlawful, and offensive to us. NEON has a history of meeting its obligations.</p> <p style="padding-left: 40px;">Absent its consent, NEON will file an administrative complaint with ODHS and take all legal means available in the event THCP attempts to withhold or forgo capitation payments over a matter totally unrelated to patients’ or members’ health care service under our provider contracts. NEON cannot believe THCP would want another disgruntled provider in light of the administrative matters pending with ODHS...”</p> <p>Later believing that less liabilities and excessive funds available, Mr. Fitzsimmons/NEON claimed the parent relationship and evaded the \$1,125,000 note payment to THCP and in addition received \$1 million to \$1.4 million excessive funds and NEON cannot be having a legal standing on behalf of THCP or with parent relationship as evidenced as untrue and involved with additional kind of false claims. With bad faith upon accepting the EEOC/Rehab claim in Summer 2001 by Mr. Austin/NEON/THCP and by asking for two years time, later ignored to respond until March 22, 2005 and later ignored the facts.</p>
134.	<p>As a pattern of misconduct, NEON trustee Mr. Fitzsimmons against interests of his purported client, THCP, acted irresponsibly against THCP Board trustees, J2206: Exhibits A-BP, and through self-dealings to automatically extend THCP’s over a million dollars Note without the</p>

	consent of THCP Board members which is forbidden by contract and NEON refused to pay the debt even by the Note maturity date of June 30, 2000 there by THCP become venerable.
135.	As a pattern of misconduct, NEON trustee Mr. Fitzsimmons lead THCP to membership freeze, ODI financial inquiry through millions of dollars of disaster, key personnel/departments disappearance, Holders' intimate friend's position creation in place of Plaintiff with the title of Vice President of Business & Information Systems, a business relationship with THCP under the name of Total Cleaning Inc, J2206: Exhibit BP , and a job to her daughter too. On top of many disasters created by Mr. Fitzsimmons- Holders including cash outage, J2206: Exhibits AO-AT , Mr. Fitzsimmons with his co attorney concealed the failures to locate and recover duplicate/over payments and or to comply with state regulations by submitting encounter and UR reports, J2206: Exhibits B-E, W, X and while THCP is desperately looking for cash infusion letting Scheur Holder [Lee] to waive/defer another Scheur Holder [Mr. Fitzsimmons] controlled NEON to get away with over a million dollars note thus making May 2000 board letters ineffective, J2206: Exhibits AL-AR . THCP Holders claimed that Scheur Holders concealed in a way that THCP Holders' prudent methods failed. THCP Holders failed to state in which way THCP Holders prudent methods were failed for each kind of Scheur Holder act to end up with disaster without a reckless disregard and tortious interference or not enough interference where and when needed, J2206: Exhibits A-BP . <u>At times even the THCP Board Holders directly involved with operational duties and in active recruitment of IT position(s) knowing that Plaintiff was terminated unlawfully and by promising him in front of Scheur Holders the false claims prosecution, J2206: Exhibits A-BP. At times even Board member(s) involved with and or even chaired the finance committee and during the time which the \$1 million dollar waiver/postponement letter was created and or fabricated to hurt THCP and to benefit NEON as a further pattern of corrupt activity, but to the extent NEON Trustee concealed the acts from THCP board effected THCP.</u> On 4/9/1999 at the end of meeting, Dr. Marshall stated in front of Robert McMillan, Paula Phelps and Donald Butler similar to "You have come to the right place, I have read and reread and marked everything. We do have fiduciary duty and we should terminate Scheur contract for their false claims and for taking the Medicaid funds and not performing the contractual agreement, etc." and later retaliated Plaintiff following a series of hostile environment creation and other acts there by discouraging other whistle blowers to come forward, and THCP board couldn't detect the NEON Board Trustee, Mr. Fitzsimmons involvement to convert THCP into NEON at that time, but with an attorney hat, it is like converting client/client funds by attorney and Attorney Fitzsimmons should not be further rewarded with bill/sanctions against innocent victim/Plaintiff.
136.	As a pattern of misconduct, though through 2/17/1999 Mr. Moreno Miller's memo, J2206: Exhibit AF , Board Holders aware of the fact that Scheur Group didn't have a working plan even after a month and raised an issue of not meeting the requirement but NEON Trustee Mr. Fitzsimmons got hired by Scheur group without the knowledge of THCP board which effected, many people couldn't come forward to alert the Board Holders repeatedly by the risk of sacrificing themselves like Plaintiff did in the instant case.
137.	As a pattern of misconduct, though Mr. Moreno Miller's effort to pursue Dr. Marshall even on the basis of community, employees and state people is notable, and from 2/17/1999 memo it is evident that Dr. Marshall got influenced and stated to Mr. Moreno Miller in January 1999 by stating other group is costly when in fact Scheur Group is costly by about \$400,000 and Miller was not aware of it until February 17, 1999.
138.	As a pattern of misconduct, though Mr. Moreno Miller sensed by February 1999 the fact that

	Barry Scheur group is not factual and cannot turn around Day-Med but recommended a Columbus plan to purchase etc THCP board lured by Holders false promises, payments, and through Matthew Fitzsimmons involvement/concealment.
139	As a pattern of misconduct, though THCP and NEON formerly known as CNHSI, JL606: Exhibit H , are nonprofit corporations under section 501(c)(3) NEON and THCP board of trustees and officers/directors failed to maintain relevant fiduciary duties to protect the interests of these corporations to continuously maintain such status and failed the obligation to follow Attorney General's "Guide for Foundation Board Members" (GFBM), JL606: Exhibit A , and Internal Revenue Code, IRC, including 4941(d), which is part of corporate governing documents, Doc ID 200236401634 p2, JL606: Exhibit B , and obligation of non-profit corporation.
140	As a pattern of misconduct, Officers/Directors and Trustees who have additional fiduciary duty with respect to corporation and based upon their professional status, and contract neglected such obligations coupling with willful violations, with bad faith, malicious, fraudulent intent, retaliation, etc in furtherance of acts and often acted as multiple agents with various roles and crossed the Holder's lines and one of such an individual is Attorney Matthew Fitzsimmons (Mr. Fitzsimmons) who had well over twenty multiple conflicting roles where his fiduciary duty should be fulfilled and those acts/violated as pleaded earlier.
141	As a pattern of misconduct, Mr. Matthew Fitzsimmons as a Trustee of a non-profit corporation NEON since 1994, admitted in NEON's November 10, 2005 pleadings, participated with his forbidden self-dealings and with his personal interests ahead being a board of trustee and with other commingled activities and continuing the same with the instant case.
142	As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as a Trustee of NEON with parent-child relationship to THCP who has fiduciary duty to THCP and in a way to maintain without conflicts to NEON and THCP and not to destroy THCP at the expense of NEON or to protect from any destruction and negligence, Doc ID 200136002880 P23 of Secretary of State filing Para 3 stating "NEON has represented to the Rehabilitator that it will upon the termination of the Rehabilitation proceedings and the acceptance by this Court of the Plan of Reorganization, remain as the parent organization of Total Health Care Plan and accept responsibility for its ongoing dealings." JL606: Exhibit C1 .
143	As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as a Trustee of NEON, Doc ID 200136002880 P26 of Secretary of State filing Para 2, with a wholly owned subsidiary relationship to THCP, JL606: Exhibit C2 , Doc ID 200236401634 p4 stating THCP be a wholly owned subsidiary of NEON, JL606: Exhibit C3 , has fiduciary duty has fiduciary duty to THCP and in a way to maintain without conflicts to NEON and THCP and not to destroy THCP at the expense of NEON or to protect from any destruction and negligence and without self-dealings.
144	As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as a Trustee of NEON and as General counsel with fiduciary duty to related <u>for profit</u> corporations such as Community Housekeeping Corporation (CHC), Tab 2 Exhibit C of 11/10/2005 NEON/THCP pleading, J2206: Exhibit T , and not to initiate/aid forbidden transactions.
145	As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with

	<p>conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as a Counsel/Attorney/insider information provider to Scheur Group as Scheur Holder (with Rotan, Barry Scheur/Scheur Group) for money especially from THCP funds, help to oust Plaintiff stating <u>"...there is no longer a need for any senior level management within the IT function...Matt Fitzsimmons...Release Form... 40 years of Age or Older..."</u> JL606: Exhibit AM, AN, as part of scheme, to further conceal under altered department/Title name JL0606: Exhibit O, AQ, AR, J2206: Exhibit Y3, and in conflicts with NEON and THCP.</p>
146.	<p>As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as an agent and as Scheur Holder while Mr. Fitzsimmons working for Scheur Group in the schemes associated to manipulative, fictitious and deceptive saving Project SlimFast, JL606: Exhibit AQ-AS with self-dealings, to deplete THCP systematically, JL606: Exhibit V-AJ, with conflicting fiduciary and Honest service violations to others to whom already obligated including to board, THCP, NEON, etc.</p>
147.	<p>As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as Confident/counsel to THCP trustees (Dr. Brenda Marshall, Moreno Miller, Frank Kimber, Joseph Davis, Arnold Pinkney) either separately, J2206: Exhibit K5, and or through the General consulship of THCP; in hundreds of conflicts as stated.</p>
148.	<p>As a pattern of misconduct, Mr. Matthew Fitzsimmons as a board member of NEON with conflicting loyalty/due care with respect to NEON and others interfered with the affairs of THCP and employees as Confident/counsel to THCP officers such as Paula Phelps; with whom conspired to oust Plaintiff to succeed in the schemes of Holders and with tortuous interference J2206: Exhibit U, V which lead to exhaust THCP assets, JL606: Exhibit V-AR, and fabricated as if whole department was eliminated J2206: Exhibit Y3, etc</p>
149.	<p>As a pattern of misconduct, Mr. Matthew Fitzsimmons as Confident/counsel to NEON/THCP Officer Evelyn Armstrong with whom conspired and created an affidavit stating Plaintiff was never an employee of NEON, J2206: Exhibit M to maliciously undermine the credibility of plaintiff against the facts, JL606: Exhibit F (6/30/2006 dated affidavit of Vito DeCore), J2206: Exhibit N-V and to divert the case to benefit him-self and other wrongdoers. With self-interests ahead, pleaded as if he come to know about lawsuit only after 6 years and too with NEON name when having years of knowledge and too with specific reference to NEON name as defendant for the reason including <u>"...NEON has to be named especially as a currently established parent status..."</u> JL606: Exhibit G.</p>
150.	<p>As a pattern of misconduct participating, Mr. Matthew Fitzsimmons even with ethical duty to the court even when representing with the conflicts of interest or should not have represented in court with the conflicts, Mr. Fitzsimmons and DR MT Millers are CNHSI's board members even prior to name change into NEON, JL606: Exhibit H4 and Jim Turner as CEO, JL606: Exhibit H3, and recorded with Secretary of State under Doc ID 5154_0110 in 1996, and Jim Turner signed for Plaintiff's appointment in 1996, J2206: Exhibit O, P besides original recruitment by CHSI, J2206: Exhibit N, and known to by Mr. Fitzsimmons.</p>
151.	<p>As a pattern of misconduct participating, Mr. Matthew Fitzsimmons confident/counsel to current trustees of THCP (whoever may be) and to current NEON Trustees to plead that there is no relationship between NEON and THCP, in contrary to JL606: Exhibit B, C, and acting as an owner of both with the way he feels fit with self-dealings and with all the conflicts.</p>
152.	<p>As a pattern of misconduct participating, Mr. Matthew Fitzsimmons as confident/counsel to</p>

	NEON trustees through his trustee ship with NEON and as General Counsel to NEON and to cover his self-dealings and to make money by further complicating the case, keep fabricating unilaterally against facts, filing to Strike Plaintiff pleadings as of July 5, 2006 without even having a standing for him represent in the court with the conflicts and tainted the instant case already.
153.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to follow Attorney General "Guide for Foundation Board Members" (GFBM), JL606: Exhibit A , (board of trustee/Officer/Director) - but violated totally.
154.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to represent truthfully if parent-child relationship existed between NEON-THCP, JL606: Exhibit C1 , and to protect THCP assets from dissipation, represent accordingly without conflicting interests but violated.
155.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to avoid conflicts if same attorney/firm claimed a different relationship between NEON-THCP while acting as Agent of THCP, and a different relationship while representing NEON to claim THCP assets including fraudulent conveyance through \$1 million note at the most critical time of THCP, J2206: Exhibit AL-AQ . The "Fraudulent conveyance" or "\$1 million note" or "NEON note" refers to J2206: Exhibit AQ , AO of \$976,000 note amount receivable by THCP from NEON with interest from December 1, 1997 while Mr. Rotan Lee promised to get those funds and pretended for looking for more funds as "possible equity infusion into THCP", J2206: Exhibit AP , but Holders including Mr. Lee continued their conspiracy at the expense of THCP with Mr. Fitzsimmons and others thus evaded those funds, J2206: Exhibit AL-AN , at the most critical time/need of a child [if parent-child relationship exists between NEON and THCP] or with an unrelated individual self-right to exist, if no child relationship to NEON.
156.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to avoid conflicts as a trustee of NEON and as a counsel to claim millions from a child/subsidiary relationship with THCP when already converted and or received several millions f dollars from the child to claim any past obligations and too with the conflicts.
157.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to avoid forbidden self-dealings, Doc ID 200236401634 p2, JL606: Exhibit B , to maintain non-profit status to NEON and THCP-violated corporate formalities and Internal Revenue Code 4941(d).
158.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons record of attorney to THCP in the instant case, with the conflicts.
159.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons record of attorney to NEON in the instant case, with the conflicts.
160.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons obligated to uphold Attorney Disciplinary Rules by Profession- but totally and willfully disregarded by attempting to represent well-over twenty entities/persons of conflicting interests/roles simultaneously.
161.	As a pattern of misconduct participating, Mr. Matthew Fitzsimmons besides involving many conflicting roles for a long time, Mr. Fitzsimmons continue to violate willfully those duties and ethics in the instant case causing severe harm to plaintiff, and to many defendants including to his current clients THCP and NEON and using the court system to cover-up his violations.
162.	As a pattern of misconduct, Mr. Matthew Fitzsimmons has taken such a commingled and self-serving roles to further abuse the legal system to enhance his legal fees by further

	complicating the case by malicious filings which leads to third party complaints and cross complaints but in an attempt to cover up his past acts and to generates more fee to him through further self-dealings and with improper of propriety.
163.	As a pattern of misconduct, being received notice to voluntary disqualification in September 2005 itself Mr. Fitzsimmons ignored such requests to save time to court and to the parties and to avoid further violations but he chose to continue and keep filing for sanctions and other things to intimidate plaintiff and to cover-up his illegal acts. As requested earlier, Mr. Fitzsimmons's pleadings and filings should be stricken and new attorneys for NEON and THCP can choose whatever the way they would like but Mr. Fitzsimmons tainted the current proceedings and under the judiciary system such commingled and self-serving acts are improper. Similarly, new attorneys to THCP and NEON will choose the type of discovery they want and until Mr. Fitzsimmons disqualification/disbarment process is complete it will be unfair to continue with the current proceedings and currently related matter is pending in front of Ohio Supreme Court.
164.	As a pattern of misconduct, with Holders in a coordinated effort with NEON Holder(s) such as a NEON board member Attorney Matthew Fitzsimmons (Mr. Fitzsimmons) caused to dissipate THCP assets. Mr. Fitzsimmons through his self-dealings representing as an attorney to THCP and NEON and among other deviations from facts, Mr. Fitzsimmons pleaded in September 2005 stating a) Plaintiff brought claims after 6 years, b) plaintiff was never an employee of NEON, c) there is no relationship between NEON and THCP. NEON knew all along and assumed the liability of Plaintiff's claims through NEON executive/Officer Willie Austin in 2001, detailed in 6/22/2006 pleading. Mr. Fitzsimmons's claim stating NEON has no knowledge of getting a claim this late is not factual. The instant case was further distracted from its main course with the false claim by Mr. Fitzsimmons stating Plaintiff was never an employee of NEON and NEON and THCP have no relationship. In addition to J2206: Exhibit N-T, JL606: Exhibit F highlighted Plaintiff's supervision of NEON employees, hiring NEON employees, etc.
165.	As a pattern of misconduct, besides conflicting of interest between NEON and THCP as confirmed by J2206: Exhibits AL-AQ Mr. Fitzsimmons representing both while he himself continuously violating all kind of laws and conflicts.
166.	As a pattern of misconduct, besides conflicting of interest between NEON and THCP as confirmed by J2206: Exhibits AL-AQ Mr. Fitzsimmons representing both while he himself continuously violating all kind of laws and conflicts and J2206: Exhibit AN P 2 Para 3 & 4 refers to "NEON has never asserted a legal claim for services of NEON personnel to THCP," "NEON will assert a vigorous legal defense and claim for reimbursement of past services of its personnel..." and it did not suggest how plaintiff's hours of average of about 16 hours a day, about 340 days a year were divided or swapped if not considered as an employee by giving offer by NEON, J2206: Exhibit N-V , and recruiting by NEON. NEON did not disclose in that correspondence the amounts, several millions of dollars, that were transferred from THCP to NEON or NEON personnel on THCP payroll who got paid including John Campbell, JL606: Exhibit V2 , not the other way around for most part, and received services by NEON.
167.	As a pattern of misconduct, NEON trustees through NEON's board member Mr. Fitzsimmons drafted and directed, J2206: Exhibit N-V by grabbing the opportunity against THCP board, conspired with Holders, obtained first lump sum as they asked from THCP, JL606: Exhibit AL , about quarter million dollars higher than maximum possible amount and conveniently targeted Plaintiff and ousted to advance other acts.
168.	As a pattern of misconduct, though the scheme of 'NEON note' '\$1 million note' Mr.

	<p>Fitzsimmons breached his fiduciary duty/care/loyalty to THCP and to THCP board of directors by directing letters/demands J2206: Exhibit AL-AQ, as trustee of NEON and as General Counsel to evade the \$1+ million dollars note for the funds received from THCP. Mr. Fitzsimmons breached IRC self-dealings and AGC on behalf of NEON and THCP and in addition violated many Ohio Disciplinary Rules. NEON/NEON Directors evaded payment on a note to THCP at its critical time for survival, later claimed by NEON board and Mr. Fitzsimmons stating NEON and THCP has parent-child relationship without disclosing NEON attempted to destroy THCP by evading the owed money at the critical junction, J2206: Exhibit AN, with such false claims or through further scheme THCP was claimed by NEON as wished by NEON Holders against THCP Board of Trustees.</p>
169.	<p>As a pattern of misconduct, in conspiracy with Mr. Fitzsimmons, NEON Board/Officers, Holders created Rotan Lee's 1/14/2000 dated letter knowing that he didn't have such authority to give away without THCP Board's permission irrespective of Moreno Miller is a chair of Finance committee at that time and knew and or should have known and whether consented to it or not and in violation of corporate fiduciary duty and in violation of fiduciary duty to THCP board of directors and is against SMG's 1/18/1999 claim/assurance stating that Mr. Rotan Lee, Vice President of Scheur Management Group, J2206: Exhibit AC p1-2, stating anyone SMG hires has the capability of being a CEO or COO, who can do planning, direction and leadership and all of the consultants have been corporate vice presidents or senior vice presidents of health plans.</p>
170.	<p>As a pattern of misconduct, in conspiracy with Mr. Fitzsimmons, NEON Board/Officers, Holders created Rotan Lee's 1/14/2000 letter and J2206: Exhibit AQ evidences fraudulent conveyance of THCP's \$1 million assets through Scheur Holder in conspiracy with Mr. Fitzsimmons/NEON Board member, a pretended THCP counsel, and a Scheur Holder, to NEON. Scheur Holders including Scheur Holders knew that they do not have any authority to do so and did as part o collusion with Mr. Fitzsimmons and with willful tortuous acts of NEON, in aiding to oust plaintiff to fulfill Holders goal and NEON Holders including Mr. Fitzsimmons and Scheur Holders including Rotan Lee knew and doesn't have such a right to give away/delay the receipts of \$1 million owed by NEON to THCP, created J2206: Exhibit AQ letter, yet as a pattern of further corrupt activity, Mr. Fitzsimmons pleaded stating there is no relationship between NEON and THCP.</p>
171.	<p>As a pattern of misconduct, as J2206: Exhibit AP evidences that on the same day, 1/14/2000, Scheur Holder Mr. Rotan Lee indicated that he will be looking for cash infusion to THCP account for THCP's survival and J2206: Exhibit AQ, evidences that as if on the same day, 1/14/2000, Mr. Lee gave away the \$1 million note, that too when THCP CFO requested access to that \$1 million [\$976,000 with interest [from 1997] from NEON on 1/7/2000, J2206: Exhibit AO, with bad faith, forbidden self-dealings and the same key person, Mr. Fitzsimmons involved in this conspiracy and in other illegal acts including the ouster of Plaintiff, JL606: Exhibit AM-AS, J2206: Exhibit U, V, Y3 and currently acting as attorney of record in the instant case for THCP and NEON and already tainted the proceedings by bringing his corruptive acts to court to commit against court and by committing further malpractice.</p>
172.	<p>As a pattern of misconduct, instead of Mr. Fitzsimmons loyalty be extended to THCP board without divided loyalty for claiming an attorney of THCP to launder about \$150,000 or so, Mr. Fitzsimmons is in violation of THCP board's interest [Dr. Brenda Marshall, Frank Kimber, Moreno Miller, Joseph Davis, etc] by working in collusion with Scheur Group, NEON and others without full/disclosure to THCP board members but pretended to be with fiduciary responsibility while conspiring against interests of corporation with forbidden self-</p>

	dealings during 1999 and to date.
173.	As a pattern of misconduct, Scheur Holders claimed, J2206: Exhibit AC , as if they know how to run Health organization in various states thus basic Ohio state Medicaid requirements should have known to Scheur Group that under Ohio Revised Code (ORC) 5111.17 and Ohio Administrative code chapter 5101:3-3-26 and more specifically under ORC 5101:3-26-06(C)(6) which mandates each qualified managed care plan like THCP to submit encounter data "as specified by ODHS." ORC 5101:3-26-10(A) authorizes ODHS to impose certain specified sanctions including the freezing of enrollment, retention of capitation payment, and cancellation of contract. It is unconscionable for a consulting group, SMG, to take up THCP project for sake of control and money in 1999 by promising to follow state requirements. In contrary to the contract with THCP, Scheur Holders hindered encounter submission in March 1999 itself in many ways, JL606: Exhibit AK , J2206: Exhibit G-L, AA-AC, X including stating Attorney Denise Roth (Mr. Roth) will settle after deadline, J2206: Exhibit W by arguing OAC rules are arbitrary or legally defective.
174.	As a pattern of misconduct, Scheur Holders claimed, J2206: Exhibit AC , as if they know how to run Health organization and in violation of fiduciary duty, Ms. Ruth Aaron and others in concert withheld UR reports due March 31, 1999 that were finished by MIS J2206: Exhibit E p9 last Para , repeated requests for extension of time from ODHS JL606: Exhibit I-T , becoming due with new time period reports JL606: Exhibit K , spending over \$100,000 just for such reports to New Channel Technologies alone by ousting Plaintiff, JL606: Exhibit T2 1st Para with \$120/hour and as many as 4 kind of people JL606: Exhibit R , and THCP ended up with point and monetary penalties which lead to freezing of THCP membership. With kickbacks from Txen outsourcing system to Scheur Holders, totally disregarded minimum required functionality or welfare of THCP client and even as of June 13, 2000, about a year after went alive, the UR report modules alone incomplete and away at 232 hours, JL606: Exhibit AJ , at the cost of about \$150/hour and continuously failed to submit needed reports while wondering if THCP has gone too far with TXEN to make a vendor change as of February 16, 2000, JL606: Exhibit AI . Failed to meet November 1999 encounter data requirements even after many chances given by state and upon implementation of new Txen system, J2206: Exhibit Z , State/ODHS started imposing \$157,000+ withhold penalty per each such occurrence, JL606: Exhibit AA , especially when reserves are depleting due to other serious schemes.
175.	As a pattern of misconduct, Scheur Holders, NEON Holders, and THCP Holders (collectively "Holders") knew all along and Plaintiff offered repeatedly help J2206: Exhibit L2, X6, Z, AI, AS, AY- BB, BO, B4, C, E p8 point 2 2nd Para on wards , that PBM or TXEN system doesn't have OHIO Medicaid encounter, UR report facilities or other basic requirements, JL606: Exhibit U, AI , and they cannot meet the need. To cover-up the acts, in retaliatory and discriminatory way when THCP board initiated a preliminary inquiry, Scheur Holders and NEON Holders including Mr. Fitzsimmons ousted plaintiff illegally, JL606: Exhibit AL-AP , J2206: Exhibit U, V, Y3 . Following series of schemes and disasters to THCP since 1999, Scheur Holders and NEON Holders turned against THCP board and crippled THCP through \$1 million note evasion, J2206: Exhibit AL-AQ , when THCP board members needed that payment and counted at the critical time from net worth depletion, JL606: Exhibit V-AD and claimed THCP failure as Success, J2206: Exhibit AT .
176.	As a pattern of misconduct, knowing that Mr. Fitzsimmons under DR5-102 (A) Mr. Fitzsimmons should be disqualified from representing NEON/THCP to avoid a continuing and potential violation of the Code of professional Responsibility, further knowing that Matthew Fitzsimmons and Denise Roth are fact witnesses, have serious conflicts of interests,

	<p>at least Denise Roth withdrew representing his client(s) upon bringing/reminding the facts through pleadings to him and to his firm's attention but Mr. Fitzsimmons refused withdraw to cover-up his acts by further knowing the roles of advocate and witness are inconsistent and inappropriate for Mr. Fitzsimmons to testify on behalf of his client(s). <i>Mentor Lagoons, Inc. v. Rubin</i> (1987), 31 Ohio St.3d 256, 257, 510 N.E.2d 379, and as DR 5-102(A) states that "... after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4)." (1) Mr. Fitzsimmons testimony will relate to many contested matter related to THCP-NEON relationship, Plaintiff's employment with THCP/NEON, schemes participation, Mismanagement of THCP, conversion of THCP funds to NEON, Scheur Holders being Mr. Fitzsimmons as a board member of NEON and Scheur Holder, Unlawful discharge of plaintiff in conspiracy with Scheur Holders/NEON, other acts including Slim-fast. (2) Mr. Fitzsimmons testimony or Attorney Roth's testimony will not just relate solely to a matter of formality but substantial evidence will be offered in opposition to the testimony. (3) Mr. Fitzsimmons testimony or Attorney Roth's testimony will not just relate solely to the nature and value of legal services rendered in the case by the lawyer or the firm to the client. (4) Mr. Fitzsimmons or Attorney Roth's or their firms not representing their clients would not create a substantial hardship on their respective clients under the distinctive value of the lawyer or the firm as counsel in the particular case.</p>
177.	<p>As a pattern of misconduct, in an effort to cover his predicate acts Mr. Fitzsimmons continuously violating EC 5-9, which states that an advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. <i>155 N. High Ltd. v. Cincinnati Ins. Co.</i> (1995), 72 Ohio St.3d 423, 426-427, 650 N.E.2d 869; EC 5-10 which states that where the question arises, doubts should be resolved in favor of the lawyer testifying and against his becoming or continuing as an advocate; knowing that DR 5-102(A) makes no allowance for a waiver by the client of the rule against a lawyer serving in the dual role of advocate and witness, but Mr. Fitzsimmons claimed/stated that his client(s) "... <u>NEON and THCP have not waived their respective attorney-client privileges – and will not waive them –</u>", p18 of NEON/THCP pleading filed on 11/10/2005.</p>
178.	<p>As a pattern of misconduct, even upon knowing that his testimony is admissible and the exceptions in DR 5-101(B)(1) through (4) does not apply, NEON Trustee/Attorney Fitzsimmons trying to emphasize being a board of trustee of NEON besides serious conflicts of interest and Disciplinary Rule violations but rather using THCP/NEON names tried to cover him-self. Mr. Fitzsimmons further knew that his testimony is admissible, he had personal knowledge and had knowledge as trustee concerning plaintiff's ouster/conspiracy, to his personal knowledge to the extent Scheur Holders involvement/acts, to his involvement with Scheur Holders personally and as board of trustee of a nonprofit corporation, his involvement with controversial Ms. Armstrong's affidavit creation, his unique involvement personally and as NEON's board member and repeated aspects of all parties including Plaintiff/THCP/Scheur Holders, his personal knowledge to NEON-THCP relationship and money transfers and conflicts of interest, his personal knowledge to claimed relationship between THCP/NEON and to his personal knowledge to claim no-relationship between THCP/NEON, his unique personal knowledge and involvement as board of trustee for 1/14/2000 letter of Rotan Lee to NEON to evade a million dollars, personal knowledge and a s board of trustee related to dealings with Paula Phelps/Robert McMillan/Plaintiff/THCP,</p>

	communications/conspiracy etc.
179.	As a pattern of misconduct, to protect his own acts Mr. Fitzsimmons is continuing in the instant case as if an attorney of THCP/NEON, knowing that Mr. Fitzsimmons's testimony would be potentially prejudicial to THCP/NEON on the issues of creditability, liability, damages and that "none of the exceptions in DR 5-101(B) apply," knowing that Mr. Fitzsimmons cannot serve as both advocate and witness in violation of the Code of Professional Responsibility, knowing that Mr. Fitzsimmons testimony on behalf of NEON/THCP/Scheur Holders/himself is necessary to prove NEON/THCP with respect to any innocence, liability and damages.
180.	As a pattern of misconduct, to protect his own acts, Mr. Fitzsimmons is continuing in the instant case as if an attorney of THCP/NEON, knowing that the facts related to Mr. Fitzsimmons involvement with self-dealings, with conflicts of interest are known only to Mr. Fitzsimmons and were not within the direct knowledge of either THCP/NEON/Scheur Holders or another source, and further knowing that Mr. Fitzsimmons's testimony is admissible and could be prejudicial to his clients' if Mr. Fitzsimmons to defend his own handling of THCP/NEON; testimony is admissible, it is predicated on necessity, Mr. Fitzsimmons testimony is "relevant" and within his "personal knowledge of these matters."
181.	As a pattern of misconduct, to protect his own acts and with forbidden self-dealings, Mr. Fitzsimmons is continuing in the instant case as if an attorney of THCP/NEON DR 5-101(B) which requires that an attorney not accept employment if it is clear the attorney will be called as a witness, DR 5-102(B) which states that if an attorney learns he will be called as a witness after accepting employment, the attorney must discontinue the employment if his testimony is or may be prejudicial to the client. In this case, Mr. Fitzsimmons knew he was personally involved in THCP NEON, as a board member of NEON, in ousting Plaintiff, conversion of NEON note, working against neon board, by having self interests ahead of corporation and in favor of others and Mr. Fitzsimmons's testimony would be prejudicial to his clients. Corporations act through officers who are appointed by a board of directors, Mr. Fitzsimmons pretended to be working for THCP board of trustees, but worked with Scheur Holders and being as a board member of NEON conflicted interest and facilitated to convert NEON note from THCP and worked against THCP board of trustees, and representing against board of trustees by claiming as if he is representing THCP and serving self-interests and with conflicting interests. It was clear from the relationship of the parties, and their positions in this lawsuit that there was a conflict of interest. <i>Abadir v. Fanous</i> , No. 71871 (1997 Ohio App. Dist.8), JL606: Exhibit D .
182.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons is continuing to represent NEON/THCP and continuously violating many Disciplinary Rules including DR 5-102(A) (where counsel ought to testify on behalf of NEON/THCP, his alleged self-dealing clients being a board of trustee through forbidden transactions) and DR 5-102(B) (where counsel will be called to testify other than on behalf of his currently chosen NEON/THCP but on behalf of Scheur Holders and others including himself) and his testimony does relate to substantive claims, and knowing that different appeal court affirmed the trial court decision of disqualification of attorneys on similar grounds, <i>Coulson v. Goodyear Tire & Rubber Co.</i> , No. 19485 (2000 Ohio App. Dist.9), JL606: Exhibit E ; <i>Amos v. Cohen</i> , 156 Ohio App.3d 492, 806 N.E.2d 1014 (2004).
183.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons is continuing to represent THCP, NEON in violation of Disciplinary Rules 5-105(A) and 5-105(B) knowing that THCP and NEON interests [which have no relationship per Mr. Fitzsimmons] were adverse to each other, J2206: Exhibit AL-

	<p>AQ, and adverse to the interest of Mr. Fitzsimmons being a board member of NEON and <u>as a pattern of further corrupt activity</u>, Mr. Fitzsimmons as a Scheur Holder in collusion with Mr. Rotan Lee and others breached contract and involved with fraudulent conversion of about \$1 million to NEON from THCP in the year 2000 by not having loan funds accessible at the time most needed to THCP's survival, J2206: Exhibit AL-AQ, and as a part of acts and without the knowledge and or authority of THCP Board and with tortious interference with THCP affairs. THCP and NEON have diversified interests.</p>
184.	<p>As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons is continuing to serve as NEON's board of trustee, colluded with Scheur Holders to oust Plaintiff, worked against NEON's board in May 1999 against NEON's interest, J2206: Exhibit K5, as his interests in Scheur Group conflicted, claiming as counsel to NEON and THCP which have diversified interest and working with financial interest and through Internal Revenue Code forbidden self-dealings, further knowing that the interests of a nonprofit corporation included the board resolutions and not just one board members' opinion and as a responsible board member should not be acting with self-deals and pretending to be representing various parties like in the instant case which adversely affecting representation of THCP and NEON and by participation with Scheur Holders and though expected loyalty to THCP board of trustees.</p>
185.	<p>As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons knowing that he could not adequately represent THCP, while representing NEON in the instant case, conversely knowingly that Mr. Fitzsimmons could not adequately represent the interests of NEON, while representing as a board of trustee, with financial interest for the services, by involving in Plaintiff's ouster, by involving in THCP affairs and in conversion of THCP-NEON note to NEON's advantage against THCP boards' authority, etc. and in continued violations of DR. 5-105(A) and (B).</p>
186.	<p>As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continuing with forbidden self-dealings and knowing that even if Mr. Fitzsimmons cease to represent THCP, Mr. Fitzsimmons had already shown his bias in favor of self-interests and being a board member of NEON against wishes of other board members and with finance interests, whose position is not in the best interests of the corporation; knowing that if Mr. Fitzsimmons cease to represent NEON, in fact, Mr. Fitzsimmons as a board member of NEON, General counsel of NEON participated with Scheur Holders and converted THCP's about \$1 million owed money of NEON to THCP for NEON purpose against the welfare of THCP which was wrongful. Mr. Fitzsimmons claimed as if he served as a counsel to THCP and NEON and THCP board members are contesting by themselves, so he still had conflicts in a different dimension. In addition, Mr. Fitzsimmons worked with/colluded with Scheur Group and others who are separate parties in the instant case and Mr. Fitzsimmons already corrupted the court proceedings with self-interests to cover-up facts and with many conflicts of interests.</p>
187.	<p>As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continuing by representing THCP in the lawsuit; Mr. Fitzsimmons undertook representation against his current client, the alleged parent corporation "as it seems fit", NEON, to which he was a board member and claimed no-relationship to THCP, "as it seems fit" knowing that where an attorney undertakes representation against a current client, adverse representation is prima facie improper, <i>Abadir v. Fanous</i>, No. 71871 (1997 Ohio App. Dist.8), JL606: Exhibit D, citing <i>Henry Filters, Inc. v. Peabody Barnes, Inc.</i> (1992), 82 Ohio App.3d 255, <i>Sarbey v. Natl. City Bank</i> (1990), 66 Ohio App.3d 18, and as a pattern of further corrupt activity, knowing that the attorney must</p>

	show there are no actual or apparent conflicts, and knowing that in this case it is clear a conflict does exist in representing NEON or THCP being a board member of NEON and among many other things involving with Scheur Group, ousting Plaintiff and converting NEON note of \$1 million both the corporation, representing against THCP Board members by claiming as if represented and representing THCP.
188.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continuing violating Ohio state disciplinary rules that prohibit engaging in conduct that adversely reflects on fitness to practice law and that bar an attorney from accepting employment if the exercise of professional judgment on behalf of the client reasonably may be affected by the lawyer's financial, business, property or personal interests. Mr. Fitzsimmons illegally earned fees, to influence THCP board through false information against NEON board members in some aspects being a board member of NEON and in collusion with Scheur Holders and with similar conflicting roles continued to represent NEON/THCP and continued to violate Disciplinary Rules and prejudiced NEON/THCP clients and plaintiff and in a conduct prejudicial to the administration of justice.
189.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continue violating DR 5-103(A), by acquiring a proprietary interest in the cause of action or subject matter of instant litigation to cover-up his role in ousting plaintiff through his claim of representing NEON/THCP, being a board member of NEON influencing through forbidden self-dealings and to divert facts to earn more money while covering up his predicate acts as a pattern of further corrupt activity with multifold violations which includes: 1) an attempt to cover-up his role as Board member of NEON, interference in THCP affairs, participating with Scheur Holders and illegally ousted Plaintiff and other activities, still representing as an attorney of THCP/NEON, 2) through proprietary interest increasing his legal cost by creating work though causing complications and to prolong the case for his self benefits at the expense of client, plaintiff, and other parties.
190.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continue violating DR 7-102(A)(1) by representing NEON and THCP to assert a position, conducting a defense, in retaliation for filing grievance against his ethical conducts in good faith and filing the suit as a victim from Holders' acts, and in a cover-up through intimidation, harassment and Mr. Fitzsimmons continue to utilize NEON and THCP through self-dealings or taking other action on behalf of a client when Mr. Fitzsimmons knows or it is obvious that the action is intended to harass or maliciously injure Plaintiff and or others so he can keep benefiting through financial interest and with conflicts of interest as NEON Board member and schemes participant. Mr. Fitzsimmons is acting with self-dealings and against the interests of clients and in NEON/THCP filings of November 2005 Mr. Fitzsimmons stated the NEON board chairperson, Dr. Miller knows nothing, suggesting that Mr. Fitzsimmons further evidencing that Mr. Fitzsimmons monopolized and acting as clients.
191.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-dealings, Mr. Fitzsimmons continue violating <u>DR 2-109(A)(1)</u> and DR 7-102(A) knowing that even if the client's intent to approach to undertake the representation, the lawyer must refuse the employment or be subject to sanction and per DR 2-110(B)(1) if the lawyer discover this to be the client's intent after accepting the representation, the lawyer is required to withdraw or be subject to sanction and when the lawyer nevertheless remains in the representation and carries out the harassing or malicious act, the lawyer has violated DR 7-102(A)(1).
192.	As a pattern of misconduct, to protect his own predicate acts and with forbidden self-

	dealings, Mr. Fitzsimmons knowingly participated with Scheur Holders and committed serious violations and knowingly retaliated and harassed Plaintiff and violating DR 1-102(A)(5) through "Engage in conduct that is prejudicial to the administration of justice."
193.	As a pattern of misconduct, Mr. Fitzsimmons's conduct involved with approval of a scheme as a board member of NEON and as a General counsel of NEON to avoid NEON note payment upon due to THCP in the year 2000 and when THCP board of directors requested but perpetrating a scheme with Scheur Holders to evade payment; Mr. Fitzsimmons had committed this conduct and thereby violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and (6) (engaging in conduct adversely reflecting on fitness to practice law) 7-102(A)(3) (knowingly failing to disclose what he is required to reveal); <i>Office of Disciplinary Counsel v. Dukat</i> , 79 Ohio St.3d 189, 680 N.E.2d 972, (1997), and violations of DR7-102 (B) and Mr. Fitzsimmons Mismanaged THCP assets/personnel with conspiracy, with willful-fiduciary violations, and other serious violations with other Holders.
194.	As a pattern of misconduct, Holders including Mr. Lee, Mr. Fitzsimmons, and others knowing the THCP accounts and the terms under which they were maintained by THCP; Defendants, in violation of their duties of care and loyalty, caused THCP, and to use and deplete these funds and other assets for purposes not permitted by the applicable contracts/authorization given by THCP board and or corrupted the board so that they do not perform their fiduciary duties. The Defendants knew or should have known that Mr. Lee and Holders including Mr. Fitzsimmons diverting funds for improper purposes without properly recording, informing, detailing, or reporting such depletion/use of funds under the name of settlements and or give away notes. THCP board knew or should have known that the books, records and financial reports of THCP would not accurately reflect its true financial condition, but rather would cause THCP to appear to be far more solvent than it actually was due to their mismanagement and fraudulent activities to get their bonus and other benefits and to retaliate and acts with other means of illegal acts as specified in complaint against Plaintiff to further conceal Holders' acts.
195.	As a pattern of misconduct, knowing that Directors and trustees have legal responsibilities imposed by state and federal law and are called to operate at the highest ethical standard and Foundations recognized as a 501(c)(3) organization such as THCP and NEON are charitable trusts under Ohio law; individuals who have the authority to conduct the affairs of the foundation (directors, trustees or officers) are charged with certain fiduciary duties under statutory and common law and Guide for Foundation Board Members (GFBM) by Attorney General, JL606: Exhibit A , summarizes; Page 2 last paragraph of GFBM emphasized the duty of care , the legal standard set forth in Revised code Section 1702.30(B), liable for misdeeds of the board and staff; GFBM recommended having policy and procedures about conflict of interest, financial control, whistleblower protection they violated them intentionally.
196.	As a pattern of misconduct, knowing that Directors and trustees have legal responsibilities imposed under the duty of loyalty , they must loyally place the corporation's interest above any self-interest, acting fairly and independently to further advance the best interest of the organization; Director has personal, financial interest in a decision and also trustee had loyalty that could influence a decision along with personal financial interest is at stake; Mr. Fitzsimmons involved in transactions with businesses in which he hold an interest (acting as NEON trustee and taking up instant case to earn money and manipulate accordingly to complicate further and keep earning more besides many other conflicts), engaged in competent enterprise(s) to the detriment of foundation/corporation, diverting an

	<p>organization's assets for personal gain and diverting any kind of secret profit or other advantage in dealing with or on behalf of the organization (using his law firm as cover.) GFBM p5, organization and individual's interests are opposed. Mr. Fitzsimmons violated the conflict of interest policies without written disclosures made by board members of their relationships with other nonprofits and businesses that might seek to provide services for the foundation/corporation including between THCP and NEON.</p>
197.	<p>As a pattern of misconduct, knowing that Directors and trustees have legal responsibilities imposed under the duty of loyalty and duty of care per GFBM, JL606: Exhibit A, potential conflicts include serving on the board of a nonprofit seeking a grant from the corporation/foundation serving/defending foundation on behalf of foundation where the foundation/board member accused of wrongdoing, working with/influencing; knowing that under those standards, evading \$1+ million obligation of NEON foundation to THCP, another foundation where direct fiduciary duty involved through relationship, and leaving THCP to cripple conflicted with Attorney Fitzsimmons's several roles and in direct contradictory to p5 2nd paragraph of printing business example, JL606: Exhibit A. Board meeting minutes should document any member's disclosure of conflict and absence from voting and discussion; formal written disclosures of possible conflicts to be made by board members on an annual basis violated these for self-serving purpose.</p>
198.	<p>As a pattern of misconduct, knowing that Directors and trustees have legal responsibilities imposed Trustees should be sure to disclose any potential areas of conflict at each board meeting; to avoid trouble in demonstrating loyalty to the organizations'</p> <ol style="list-style-type: none"> 2) Trustee/Mr. Fitzsimmons evaded disclosing financial interest whenever he entered with nonprofit corporation into a business relationship with him, or business in which he hold an interest, do not vote or debate 3) Trustee/Mr. Fitzsimmons should not have failed to disclose relationships with nonprofit corporations he serve whether as a board member/volunteer while working against them and lobbying <p>Mr. Fitzsimmons as a professional and as a board member instead of following and or implementing, upon joining as a board member to NEON, used the board for forbidden self-serving/self-dealings and still continuing as an attorney and tainted the proceedings.</p>
199.	<p>As a pattern of misconduct, knowing that Directors and trustees have legal responsibilities imposed under Duty to maintain accounts, and ORC Section 1702.30 mandates the responsibility that can not be delegated to ensure wise use of funds, fiscal soundness of the organization and that the assets are being used for their intended purpose only, instead of establishing internal accounting system of checks and balances so no one person has total control over finances, THCP board gave full control to Holders and or Holders conspired and took over the control of THCP and when plaintiff complained for mismanagement and other acts, THCP board took no action, failed to take action, and or sided with them through bribes and or negligence. When mismanagement became public record took no action, including on about million dollars give away note to NEON.</p>
200.	<p>As a pattern of misconduct, NEON's board members violated serious fiduciary duties to NEON by engaging in violations of charitable trust by illegally and or in bad faith holding THCP note funds when THCP board of directors requested and or soon after note term ended and or in obtaining 1/14/2000 letter from Mr. Lee and especially, Mr. Fitzsimmons violated multiple conflicts per each violation as his activities are commingled and conflicted as if no law existing for any aspect and he should not be rewarded with bill/sanctions against innocent victim/Plaintiff.</p>
201.	<p>As a pattern of misconduct, NEON claimed a parent-child relationship and whole subsidiary</p>

	relationship, with THCP, JL606: Exhibit B, C , through such relationship NEON board of trustees have fiduciary responsibility to THCP child/subsidiary; Section 1702.30 (D) creates liability stemming from the trustee's actions to instances where the trustee acts or fails to act" with a deliberate intent to cause injury to the corporation," or acts in "reckless disregard for the best interests of the corporation." While Mr. Fitzsimmons collaborated with Holders and participated in the tortious conduct, some NEON directors ignored to restrain Mr. Fitzsimmons or encouraged him to cause injury to THCP along with Holders.
202.	As a pattern of misconduct, and in violation of Duty of compliance , Mr. Fitzsimmons failed to comply with 510(c)(3) status through letting self-dealing transactions and attempting to cover those and instead of protecting the whistleblower and by promising false claims investigation, THCP board and NEON board member(s) sided with Holders to retaliate against an employee, plaintiff, who reported activity of Holders/Corporation.
203.	As a pattern of misconduct, Mr. Fitzsimmons involved with CNHSI/NEON, THCP and other entities and as Trustee of NEON, he is in breach of the duties of care and loyalty that he owed to CNHSI/NEON, THCP and other entities. Mr. Fitzsimmons involved with Scheur Holders in 1999, had knowledge of THCP mismanagement/participation with it and activities through conspiracy, and or involved of diverting money that belonging to THCP into the outside Accounts including to NEON, and Scheur Holders. The misused/diverted, paid under fictitious settlements, misused through duplicate/over payments under the name of loans or other means/paid for services not performed/not performed as claimed, can be estimated as about \$10 million, i.e. close to 1999 THCP's net worth and net worth when Scheur Holders and NEON Holders altered the NEON owed conditions through forbidden self-dealings and these funds hereon referred as "misused/diverted funds."
204.	As a pattern of misconduct, Mr. Fitzsimmons/NEON Trustee, NEON Holders, and THCP Holders eventually noticed that some funds returned or obtained services out of a portion of the funds misused/diverted. A substantial portion of the diverted funds, however, was never returned to THCP or used for the benefit of THCP, but rather was used to payments to various individuals/services not needed or for redundant services, over payments duplicate payments, claiming for services with false promises and false claims of achievements, a portion of the mismanaged funds was also paid towards Scheur Holder's personal expenses, including Scheur Holders travel, lodging, used to pay the expenses of, or otherwise to benefit, other entities owned and/or controlled/influenced by Mr. Fitzsimmons, for which THCP received no benefit. THCP Board of Trustees were aware of Scheur Holders and NEON Holders' improper diversions of funds, and in breach of their duties of care and loyalty to THCP did not take sufficient steps to prevent the diversions from continuing and or influenced by well concealed acts of Scheur Holders.
205.	As a pattern of misconduct, THCP Board knew that giving away \$1 million note by a conspirator who claimed to be a capable officer through SMG promises but knowing he doesn't have such authority but apparently signs, and THCP Board knowing that corporation cannot survive without those funds but did not take appropriate action and it is not consistent with the purposes for which it is organized; NEON/officers/trustees have failed the duty to comply with the agreements and representations it has made and instead of paying the money when note matured to the company that gave note, colluded with Scheur Holders to help oust plaintiff among other things and benefited \$1 million note to evade by influencing and by conspiring with people who do not have authority to give away.
206.	As a pattern of misconduct, the corporations have made representations and Plaintiff relied on as to the manner in which those will be operated, whether these representations were made in the course of seeking public benefits, including tax exempt status or seeking

	<p>contributions to the corporation and THCP/NEON boards their fiduciaries failed to be careful to abide by these promises. Holders' negligence including Mr. Lee, Mr. Fitzsimmons is not limited to diverting THCP funds to themselves and to others and to entities that they controlled or affiliated with causing and/or allowing THCP misspend funds and other assets with the NEON note causing and/or allowing THCP to fail accurately to record and report its true financial condition, and bringing THCP to be claimed under NEON; the negligence and other of the Defendants includes, but is not limited to assisting Holders in diverting THCP funds to themselves and to other entities that they controlled or affiliated with failing to report the diversion to THCP Board or auditors and/or to take actions to prevent the diversions, causing and/or allowing THCP to misspend, over pay, duplicate pay, give away note authority over NEON at the time of maturity, causing and/or allowing THCP to record and report its true financial condition, and bringing THCP to operate with insufficient reserves and capital.</p>
207.	<p>As a pattern of misconduct, the Holders knew that such foregoing acts, in addition to constituting negligence, constituted gross negligence and a reckless disregard for any injury to Plaintiff, THCP, and to others and as a direct and proximate result of these acts of negligence, gross negligence and recklessness, plaintiff, THCP and others were injured and Mr. Fitzsimmons, Holders including NEON Holders wrongfully exercised dominion and control over the property and personnel of THCP including the note payable to THCP by NEON and got it waived and or obtained payment delay beyond maturity date when THCP is in crisis through Scheur Holder(s) and with such acts in mind NEON Holders including Mr. Fitzsimmons a board member of NEON and Holders conspired to oust Plaintiff and as a direct and proximate result of this to benefit through conversion and Plaintiff, THCP and others were injured as stated in the complaint.</p>
208.	<p>As a pattern of misconduct Holders knowing that a note contract is implied in law under which NEON is required to pay THCP the value of the benefits they received by virtue of diverting the notes obligation and knowing that as a direct and proximate plan of such unjust enrichment and breach of an implied contract and predicate acts Plaintiff was ousted, THCP, and THCP employees and others were injured and Holders including Rotan Lee, Mr. Fitzsimmons directed and/or knowingly participated in these Preferential Transfers while acting on behalf of THCP, NEON Trustee and the authorizing person was an officer of THCP or an employee or Scheur Holder, attorney or other person of comparable influence to an officer they had reasonable cause to believe that THCP was or was about to become insolvent; as a result, each of them is personally liable for the amount of the property so transferred; Holders' diversions of THCP money under the name of settlements, payments and notes made unreachable (example through 1/14/2000 letter of Scheur Holder to NEON) to THCP even by due date can constitute fraudulent and Mr. Fitzsimmons, Mr. Lee, and other Holders were "insider" as defined in R.C.1336.01(G); and to the extent that the transfers of THCP checks/money to Holders and their subsequent deposit in the outside Accounts can constitute continuing fraudulent transfers under Chapter 1336 of the Revised Code; and the Defendants have combined maliciously to injure THCP and its employees in its person or property, in a way not competent by any of the Defendants acting alone; and as a proximate result of this malicious combination, THCP and its employees have suffered the injuries previously alleged; and the Defendants undertook the described actions of complaint, actions and omissions with actual malice including a conscious disregard for the rights of other persons, which had a great probability of causing substantial harm.</p>
209.	<p>As a pattern of misconduct, Mr. Fitzsimmons in a capacity of NEON board member and on behalf of NEON board qualified as a principle and participated with Paula Phelps, Rotan Lee</p>

	<p>in Holders activities to oust Plaintiff from April 1999; ultimately succeeded, post ouster of Plaintiff the enterprise participants concealed the facts of the MIS department existence in a pattern of corrupted activity and continues to obstruct justice, hinder evidence and in a continued effort of activity, Mr. Fitzsimmons prepared a falsified affidavit in September 2005 and with conflicting role concealed the facts with court without disclosure where supposed to disclose and Mr. Fitzsimmons is material witness on contested matters and his testimony affects his clients and others with whom he had fiduciary/client relationship and Mr. Fitzsimmons refused to disqualify himself when opportunities were provided to cover his predicate acts and to further harm.</p>
210.	<p>As a pattern of misconduct, Mr. Fitzsimmons pleaded there is no relationship between NEON-THCP besides his knowledge of millions of dollars transfer to NEON, he conspired and obtained from Scheur Holders, Rotan Lee's letter of 1/14/2000 with an extension of time beyond the due date for about \$1 million loan obligation of NEON to THCP and too in violation of Internal Revenue Code (IRC) including IRC 4941(d)(1)(B) self-dealings <u>by the THCP private foundation to the disqualified person, NEON/NEON Trustees/Officers which is an extension of credit within the meaning of IRC 4941(d)(1)(B) and is an act of self-dealing</u>; and without such annual disclosures to IRS and or without such allocations and Mr. Fitzsimmons "as it seems fit convenience" he and his firm claimed parent-child relationship and or subsidiary relationship between NEON/THCP some other times (to get money or when anticipated no liabilities) if in-fact no relationship, he concealed conflicts of interest between two corporations especially being a board of trustee and he deliberately ignored the balance the duty of care, duty of loyalty, Attorney Disciplinary Rules, ethical standards, conflicts of interest, Internal Revenue Code forbidden self-dealings as described, dozens of parties of conflicts; and constituting willful and negligent acts and even upon giving constructive notice for voluntary disqualification offer that was given in September 2005 itself, Mr. Fitzsimmons continued to cover his predicate acts and with his forbidden self-dealings, malice, further harassment intent, to further harm society through such acts in violation of 1702.30 (D) and malpractice; and these patterns are "clear and convincing evidence" for the violations mentioned.</p>
211.	<p>As a pattern of misconduct, it is a fact that NEON/THCP attorney, Mr. Fitzsimmons, committed specifically identifiable improprieties in furtherance of the conspiracy for which Holders committed; Mr. Fitzsimmons continue to conspire with others to alter relationship between Plaintiff and NEON/THCP and NEON/THCP; Mr. Fitzsimmons through his self dealings representing NEON/THCP with his interests ahead of clients and conflicting in a way courts perhaps never seen; NEON produced a materially falsified affidavit in the first week of September 2005 and filed with court with an attempt to dismiss Plaintiff's case; as part of a scheme to defraud by means of false or fraudulent representation, a willful misrepresentation regarding Plaintiff's employment with NEON/THCP; the scheme was devised with specific intent to defraud by nondisclosure or with misrepresentation, controlling people, Attorney Fitzsimmons corrupted THCP and NEON board members by taking payments through Holders under the name of fictitious services and or to commit wrongful acts and to unduly influence the board; these acts associated with conflicts of interest, piercing corporate veil, and as if involved with bribes.</p>
212.	<p>As a pattern of misconduct, Attorney Fitzsimmons knew that Corporate form was disregarded and Directors and Agents are liable for corporate misdeeds as the control over corporation by those to be held liable was so complete the corporation has no separate mind, will, or existence of its own. And as long as officer places himself in position of conflicting loyalties and subsequently violates his/her duty of trust and benefits at expense of</p>

	<p>corporation, liability attaches. <i>DeBoer Structures Inc. v. Shaffer Tent Awning Co.</i> (S.D.Ohio, 2002) 233 F.Supp.2d 934, and victims entitled to assert claim against corporation's board of directors concerning accounting write down by directors. <i>Davis v. DCB Financial Corp.</i> (S.D.Ohio, 2003) 259 F.Supp.2d 664, and being a board member of NEON, Mr. Fitzsimmons's representation on behalf of other board members serves his self dealings and not acting as a counsel to them or to the corporation thus with continued forbidden self-dealings continuing in the instant case to cover-up his predicate acts.</p>
213.	<p>As a pattern of misconduct, Mr. Fitzsimmons as a principal/NEON board member, being involved in wrongful acts and dozens of conflicting fiduciary entities/persons and with dozens of Disciplinary Rule violations, and knowing that should not represent NEON, THCP, and or other members with conflicts of interest knowingly and willfully violating Disciplinary Rules to erode confidence in judiciary system; from 1994, Mr. Matthew Fitzsimmons controlled CNHSI/NEON by serving as a trustee of nonprofit corporation directly or indirectly controlled its subsidiaries including for profit corporations. By virtue of the position Mr. Fitzsimmons held with CNHSI/NEON as a board of trustee and as general counsel to multiple entities, Mr. Fitzsimmons and his firm owed CNHSI/NEON, THCP and other entities duties of care and duty of loyalty, duty of compliance. Since Mr. Fitzsimmons represented both NEON/THCP since 1990 as he claimed and involved with forbidden self-dealings and finance transactions, being a board member, self-dealings with respect to forbidden corporation transactions, self-dealings with respect to non-profit corporation to profit corporation, it should not give any special protection from disqualifying and disbaring Mr. Fitzsimmons when facts were brought in front of court and does not create additional rights to him to keep using NEON/THCP cover to increase his earnings and to prejudice his clients, plaintiff, and others.</p>
214.	<p>As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated many Disciplinary Rules including 1-102; 1-102(A)(3)(4), 1-102(A)(5), 1-102(A) (6), and 1-103(A).</p>
215.	<p>As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-101(A)(1), accepted/solicited employment in a conflict of interest without many of the client's/parties consent after full disclosure – By conspiring with others who are defrauding, working against own past/current client with conflicts of interest.</p>
216.	<p>As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-101(B), accepted employment through forbidden self-dealings knowing it is clear that would be called as a witness.</p>
217.	<p>As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-102(A), egregious misconduct of attorney Fitzsimmons's were explained in Plaintiff's September 11, 2005 and in 11/23/2005 pleadings and requested for Attorney Fitzsimmons voluntary disqualification but he ignored thinking that covering up of facts through threats and intimidation are more important to him than following Disciplinary Rules and to avoid conflicts of interest in his dozens of parties/entities who get affected through his participation with adverse conflicts of interest and similar to Denise Roth's extension.</p>
218.	<p>As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-102(B), personally involving in THCP NEON, as a board member of NEON, in ousting Plaintiff, conversion of NEON note, working against NEON board, by having self interests ahead of corporation and in favor of others and causing witness testimony would be prejudicial to the clients; pretended to be</p>

	working for THCP board of trustees, but worked with Scheur Holders and being as a board member of NEON conflicted interest and facilitated to convert NEON note from THCP and worked against THCP board of trustees, and representing against board of trustees by claiming as if representing THCP and serving self-interests and with conflicting interests.
219.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-103(A), acquired an improper proprietary interest in a client's case – using it for self serving-purposes; being as trustee of NEON, controlling NEON and THCP, having fiduciary relationship with all of the defendants, keeping financial interest ahead of others and code of professional conduct.
220.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 5-105(A) & (B), representing conflicting interests with self-dealings, obtained proffered employment and adversely affecting clients with whom had fiduciary duty in the instant case including THCP, NEON, THCP board of trustees, Scheur Holders, self interests, etc.
221.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 6-101(A)(3), repeatedly neglecting an entrusted legal matter – i.e. neglecting the fiduciary duty, neglect to client, and serving with conflicts of interest and with divided loyalty to adversaries and with self-serving purpose.
222.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-101(A)(1), failed to seek a past/current client's lawful objective – Violated fiduciary responsibilities and serving for others' interest as involved with many parties and further implicating the client.
223.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-101(A)(2), failing to carry out a contract of employment – disguising the services, not meeting the Client's/ex-client's welfare contract with serving self-interest and the interests of conspirators.
224.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-101(A)(3), intentionally prejudicing or damaging client in the course of professional relationship especially THCP during 1999, 2000 and later by claiming a parent-child relationship, "as it is convenient" and or to state no relationship to NEON -THCP- using the client for self-serving purposes including NEON and THCP.
225.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-102(A)(3), knowingly failing to disclose what he is required to reveal, concealing that which an attorney is required by law to reveal.
226.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-102(A)(4), knowingly using perjured or false evidence, falsely accusing Plaintiff with frivolous conduct to intimidate, producing fraudulent affidavit in concert with co-conspirators(s), committing fraud against court.
227.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated 7-102(A)(6), creating or preserving evidence the attorney knows or should know is false.
228.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his attorney Bryant Green knew that they violated DR 7-102(B)(1) &(2) to the extent they clearly established that their clients perpetrated a fraud upon a person or tribunal but not him and violated by not rectifying the same and failed to reveal the fraud to the affected person or tribunal and to the extent involved with fraudulent or dishonest schemes.
229.	As a pattern of conflicts of interest, Mr. Fitzsimmons, Denise Roth and his extension/his

	attorney Bryant Green knew that they violated 7-102(A)(7), counseling a client in conduct the attorney knows is illegal or fraudulent and trying to defend under the name of client to cover up own violations in ouster of Plaintiff from THCP/NEON, acting against client and to the institution for which a board member while making it appears as if defending the client, acting on behalf of other board members by concealing facts to them and without any disclosures to them and or with conflicts of interest, counseling THCP under the name of a new client upon perpetrating fraud against old client with conspiracy (just one example is \$1+ million NEON note evasion scheme), a conduct the attorney knows is illegal or fraudulent, trying to defend under the name of client, THCP, to cover up own violations in ouster of Plaintiff from THCP/NEON and representing as adversary to old client THCP, to its board of trustees and others.
230.	As a pattern of conflicts of interest, Attorneys in the instant case are using law degrees for constitutional violation including with Fourteenth Amendment and Sixth Amendment violations. Like in <i>State v. Upshaw</i> , 110 Ohio St.3d 189, 2006 -Ohio- 4253 (2006), thus Plaintiff felt that, the appearance of impropriety was so great to avoid further tainting the proceedings, following materially falsified affidavit submission.
231.	The foregoing reasonably indicates that Fitzsimmons is at least NEON's trustee and attorney for rival companies NEON/THCP and that he also represented all other defendants in the past and now implied as representing all of defendants. Fitzsimmons as attorney to NEON, THCP and the party in which Plaintiff brought a course of action against in which Mr. Fitzsimmon acts and continues to act as defense attorney to the detriment of Plaintiff and other parties and against THCP.
232.	Plaintiff is a client/implied client of Matthew Fitzsimmons and also had privity as Trustee of employer/corporations; Attorney Fitzsimmons is also de jure attorney. Attorney Fitzsimmons knew the severe conflicts of interests as a Trustee with fiduciary responsibility and by having Attorney-client relationship with Plaintiff while representing against system vendors such as Tingley Systems, RAM Technologies, and by representing THCP when it was against NEON until it was taken over and by representing all other defendants. Attorney Fitzsimmons further knew that conflicts of interest exists thus he should have recused or should have been disqualified, <i>Henry Filters, Inc. v. Peabody Barnes, Inc.</i> (1992), 82 Ohio App.3d 255, 260, and continuing to do malpractice.
233.	There is a real danger that Mr. Fitzsimmons is with a divided loyalty to all the clients as all are clients recognized by the Trustee Fitzsimmons. Board of Trustee Fitzsimmons breached his duty of care to Plaintiff in several ways including that an irreconcilable conflict of interest exists in which he is defense attorney to a course of action brought by Plaintiff that is adverse to the vested interests. The Disqualification of Attorney Fitzsimmons was not just based solely upon allegation of a conflict of interest, <i>Kitts v. U.S. Health Corp. of S. Ohio</i> (1994), 97 Ohio App.3d 271, 275 but based upon the connection with evidence that a need for the disqualification exists, <i>Phillips v. Haidet</i> (1997), 119 Ohio App.3d 322, 327.
234.	Attorney Fitzsimmons had conflicting interest as both Attorney to NEON/THCP and as Attorney to NEON, Attorney to THCP, as an attorney to all other defendants currently as implied attorney but in the past as an attorney and as a Trustee of NEON/THCP and to Fitzsimmons "being able to be on both sides of a legal issue that is being adjudicated.
235.	From the record it is clear that he is an attorney for all, with conflicts and to cover-up his acts he submitted falsified Affidavit to court in September 2005 itself and continued to take unfair advantage. By allowing Trustee Fitzsimmons to continue his representation and with his forbidden self-dealings unfair advantage is continuously taken and continues to be

	prejudiced. Thus attorney Fitzsimmons should be disqualified.
236.	Trustee Fitzsimmons knew that he committed and continue to commit legal malpractice and he knew that duty exists with an attorney-client relationship to all the parties including to Plaintiff, breach of that duty exists, and damages proximately caused by the breach. <i>Krahn v. Kinney</i> (1989), 43 Ohio St.3d 103, 105.
237.	Trustee Fitzsimmons knew that he is not immune from liability to third persons arising from his performance as an attorney in bad faith on behalf of, and with the knowledge of his client, and also that third person is in privity with the client, privity with Trustee Attorney Fitzsimmons's himself and Trustee/Attorney Fitzsimmons is acting maliciously." <i>Scholler v. Scholler</i> (1984), 10 Ohio St.3d 98.
238.	With Trustee Fitzsimmons to Plaintiff the attorney-client relationship existed, Attorney/Trustee acted maliciously toward the plaintiff and the legal malpractice is wrong in that it 1) equates the existence of privity with the existence of an attorney-client relationship, and 2) exists privity between the third party and the client's attorney.
239.	Attorney cum Trustee Fitzsimmons is committing malpractice through multiple ways: <ul style="list-style-type: none"> a) <u>as an attorney-client relationship</u>: Attorney client privilege exists with Trustee cum Attorney Fitzsimmons and as he is liable to his client alone including to plaintiff for negligence in the conduct of his professional duties, <i>Stoll v. Kennedy</i> (1987), 38 Ohio App.3d 102, 104, malpractice exists. b) Plaintiff is in privity with the Defendant NEON/THCPs c) Plaintiff is in privity with Trustee Attorney Fitzsimmons who is also attorney for Defendants NEON/THCP which are in privity d) Plaintiff is in privity with other board of trustees/officers of NEON/THCP and who are defendants and to whom he was an attorney and with an implied attorney e) In addition, Trustee Fitzsimmons acted maliciously against Plaintiff f) Thus due to attorney-client relationship, due to existence of privity, and or through on any and all of the five grounds listed above Trustee cum Fitzsimmons should be disqualified and should be sanctioned for malpractice, <i>Hile v. Firmin, Sprague & Huffman</i> (1991), 71 Ohio App.3d 838, <i>Simon v. Zipperstein</i> (1987), 32 Ohio St.3d 74, 76, and the privity could be between the third party and the client of the attorney, not between the third party and the attorney of the client though in the instant case the privity exists both the above ways and more.
240.	An attorney-client relationship exists in the traditional sense when "an attorney advises others as to their legal rights, a method to be pursued, the forum to be selected, and the practice to be followed for the enforcement of their right, <i>Landis v. Hunt</i> (1992), 80 Ohio App.3d 662, 669 and the rendering of legal advice and legal services by an attorney and the client's reliance on the advice and services is the benchmark of an attorney-client relationship.
241.	In light of EC 5-19 of the Code of Professional Responsibility, which provides that, a lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. In the instant case Attorney Fitzsimmons who claims to be an Attorney of NEON/THCP breaching his duty <u>with self-serving interests as Trustee, director of corporation as himself</u> , and by representing other trustees and officers individually there by

	completely violating EC5-19.
242.	Privity exists that is the connection or relation between Plaintiff and Trustee Fitzsimmons, or between Plaintiff and Attorney Fitzsimmons's current clients, and other defendants to whom he represented in the past and had implied relationship now has legally recognized interest in the same subject matter, and mutuality of interest exists, <i>Black's Law Dictionary</i> (7 Ed.Rev.1999), 1217. Similarly, for the legal malpractice purposes, privity between Plaintiff and NEON/THCP and other defendants, Trustee Fitzsimmons share a mutual or successive right of property or other interest, <i>Arpadi v. First MSP Corp.</i> (Apr. 23, 1992), Cuyahoga App. No. 59939.
243.	The obligation of an attorney is to direct his attention to the needs of the clients, not to the needs of a third party not in privity with the client, nor for his self-serving purposes as a Trustee. Per the interest of the original attorney-client relationship intended to protect, and by comparing to the interest of the person bringing suit for the alleged legal malpractice, <i>Scholler v. Scholler</i> (1984), 10 Ohio St.3d 98, privity exists as the interest of the client is concurrent with the interest of the Plaintiff. Not only that Plaintiff and Trustee Attorney Fitzsimmons had privity directly and through his other clients and Plaintiff's interest in the subject matter of lawsuit and concurrent with an interest, of attorney-client relationship giving rise to a duty, and malicious conduct exists and Attorney Fitzsimmons also should be disqualified, <i>Sayyah v. Cutrell</i> , 143 Ohio App.3d 102, 757 N.E.2d 779 (2001).

III. Attorney Matthew Fitzsimmons Violated basic laws for his pecuniary benefit, concealed facts from the court and should not be rewarded by punishing the victim/Plaintiff who tried to bring to the attention of court:

- B) Through 1/11/2007 and other filings by Mr. Fitzsimmons confused the court and no attorney would have represented in front of court with 32 DR violations as listed in Section I, and with 243 sample Counts of Professional misconduct listed in Section II by Mr. Fitzsimmons/Board of Trustee cum Attorney:

Unfortunately, Matthew Fitzsimmons filed in 1/11/2007 dated motions/memoranda in 2006-2073, 2006-2302 claiming as if Plaintiff is a vexatious litigator as Trustee Fitzsimmons altered the facts. Plaintiff submitted opposition motions/documents but those were returned/not filed by Supreme Court on 1/24/2007 stating such documents are due by 1/22/2007 in 2006-2073 cases and the reconsideration motion was denied on 3/20/2007. Attorney Matthew Fitzsimmons emphasized with nonfactual information on *Miles Landing Homeowners Association (MLHOA) v. Bikkani* (8th Dist. Cv04-519870) and or the associated case *Miles Landing Homeowners Association (MLHOA) v. Harris* (8th Dist. Cv03-507970). As an example, in MLHOA CV03-507970, Plaintiff's Attorney Keith Barton is representing diversified parties (P1, D5, D6, D7, D8, D9, D10, D11, D13) to cover his tracks – with total disregard to fundamental

laws which supposed to protect constitution with false affidavits appointed a Receiver on Plaintiffs' property in Cv04-519870.

Like Attorney Matthew Fitzsimmons stated in Supreme Court filing later apparently conceding to the appearance of his name in trial court docket and elsewhere that it is not an issue whether his name appears on the docket. It is not issue to the Plaintiff either but the fact is that Attorney Fitzsimmons involved personally and as Trustee in ousting Plaintiff and with the related series of acts, and represented in the court with his pecuniary benefits, with serious conflicts of interest, and with many other violations. Upon coming to Appeal court, on various Judgment entries of Trial court including the inadvertent striking of served summons to Matthew Fitzsimmons [refused to accept tendered summons from Sheriff], Appeal court felt non-appealable. However, it is a material of fact that Matthew Fitzsimmons was a named party in trial court and in Appeal Court as shown in 12/18/2006 filing of Supreme court, Sheriff tendered the service and later filed by Matthew Fitzsimmons to get it stricken. On 1/5/2007 in 2006-2302, Matthew Fitzsimmons claimed as if he never a party and on 1/11/2007 in *Bikkani v. Lee* (Ohio S. Ct. 2006-2302) case as well as in the instant *Bikkani v. Lee* (Ohio S Ct. 2006-2073) case filed stating as if Plaintiff is Vexatious to discourage victims to come forward and report the corruption and crimes to the court to review or modify laws as the court deems fit based upon other cases they come across. With the same approach, with half-truths already got sanctions in the Appeal court without Plaintiff getting an opportunity to prove the facts thus 2006- 2073 and 2006-2302 originated on the underlying cause of constitutional issues and or with public importance to modify a law where needed critically.

Matthew Fitzsimmons claimed as if Plaintiff continued filings in Appeal Court following denial of Appeal thus caused sanctions. As the Appeal Court Docket entry reflects the facts below, with half-truths filing, following 9/26/2006 and 9/27/2006 Appeal Court's decision to dismiss for

lack of Final Appealable Order [Attorney Disqualification is one of them under special circumstances], Mr. Fitzsimmons is the one who keep filing Motions like 10/2/2006 motion and 10/6/2006 Motion for sanctions. Without getting chance to cure any deficiencies of lack of prosecution, on 10/3/2006 trial court dismissed the case and **using that sudden and confusing judgment entry**, Mr. Fitzsimmons filed Motion for sanctions in Appeal court on 10/6/2006 for which obtained sanctions. It is not like Mr. Fitzsimmons alleged as if Plaintiff keep-filing something when in fact Plaintiff ended up keep defending unnecessarily.

10/06/2006	N/A	MO	MOTION BY APPELLEES, NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC., FOR SANCTIONS INCLUDING ATTORNEYS' FEES, COSTS AND EXPENSES
10/02/2006	N/A	MO	APPELLEE'S BRIEF IN OPPOSITION TO APPELLANT'S MOTION FILED ON SEPTEMBER 22, 2006
09/27/2006	N/A	JE	MOTION BY APPELLANT, PRO SE, TO FILE BRIEF INSTANTER IS DENIED. VOL. 621 PG. 36. NOTICE ISSUED.
09/26/2006	N/A	BL	September 26, 2006: SUA SPONTE, APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER. R.C. 2505.02 VOL. 621 PG. 4. NOTICE ISSUED

Like stated earlier, Plaintiff tried to seek to reinstate the stricken Defendant, Matthew Fitzsimmons, through appeal process and even in Appeal court CA 06-088650 Matthew Fitzsimmons represented NEON, Matthew Fitzsimmons, & THCP under Appellee (7) as inserted:

APPELLEE (7)	THCP & MATTHEW FITZSIMMONS NEON	ATTORNEY	MATTHEW T FITZSIMMONS (0013404) REPUBLIC BUILDING SUITE 1400 25 WEST PROSPECT AVENUE CLEVELAND, OH 44115-0000
		ATTORNEY	

Thus, it does not change the fact into as if never named him as a party to claim **during the appeal process** by claiming allegations against Plaintiff like he claimed in December 6, 2006 filing in front of this court. Thus, Plaintiff is not vexatious as alleged by Matthew Fitzsimmons to distract neither the court nor an intention of placing his name in Supreme Court docket without ever having him in the lower courts. Plaintiff believed that not having all the parties of lower court in the appeal process diminishes the merits but did not realize that Mr. Fitzsimmons can continue

representing with half-truths. Plaintiff tried to get justice done through complaint with merit and facts and Plaintiff's complaint sustained Motion to Dismiss of all defendants in the year 2005 as well as in 2006 on the basis of merit and inserted below 5/30/2006 Judgment Entry based upon 11/23/2005, 11/29/2005, and 12/1/2005 Motions of Defendants.

05/30/2006	N/A	JE	DEFENDANTS' (BARRY S. SCHEUR, BARRY S. SCHEUR, ESQ. & ASSOCIATES, INC. AND RUTH M. AARON) MOTION TO STRIKE PURSUANT TO CIVIL RULE 11 (FILED 11/23/2005) IS DENIED. DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC.) MOTION TO STRIKE AND MOTION FOR SANCTIONS, INCLUDING ATTY'S FEES AND DISMISSAL OF THE COMPLAINT DUE TO PLAINTIFF'S EREGIOUS MISCONDUCT (FILED 11/29/2005) IS DENIED. DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC.) MOTION TO STRIKE PLAINTIFF'S NOV. 23 MOTION, & MOTION FOR SANCTIONS, INCLUDING ATTY'S FEES & DISMISSAL OF THE COMPLAINT DUE TO PLAINTIFF'S EGREGIOUS MISCONDUCT (FILED 12/01/2005) IS DENIED. BOOK 3573 PAGE 0068 05/30/2006 NOTICE ISSUED
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11/29/2005	D14	MO	DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION TO STRIKE AND MOTION FOR SANCTIONS, INCLUDING ATTY'S FEES AND DISMISSAL OF THE COMPLAINT DUE TO PLTF'S EREGIOUS MISCONDUCT MATTHEW T FITZSIMMONS 0013404 05/30/2006 - DENIED
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12/01/2005	D	MO	DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION TO STRIKE PLTF'S NOV. 23 MOTION, & MOTION FOR SANCTIONS, INCLUDING ATTY'S FEES & DISMISSAL OF THE COMPLAINT DUE TO PLTF'S EGREGIOUS MISCONDUCT MATTHEW T FITZSIMMONS 0013404 05/30/2006 - DENIED
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In November 2005 itself Matthew Fitzsimmons supposed to give deposition but he filed for protective order and filed protective order for various NEON/THCP employees/officers and he is the one who attempted to delay the process or to cover-up the facts to protect himself while earning with NEON/THCP with his IRS forbidden self dealing transactions. Besides seeking protective orders filed, he filed false affidavit on September 7, 2005 itself [explained details in the subsequent sections]. As the facts evidenced and as he became as a necessary party, with notice Plaintiff served Matthew Fitzsimmons who is a necessary party. The following trial court docket entry insert shows Plaintiff's effort to expedite the process including through the discovery in 2005

itself but failed to obtain through protective order motion and by representing with prejudicial interests:

11/10/2005	D	MO	DEFENDANT(S) BARRY S SCHEUR(D2), SCHEUR & ASSOCIATES INC DEFENDANT T(D3) and RUTH M AARON(D5) MOTION TO STAY DISCOVERY MARY LOUISA L'HOMMEDIEU 0066808 05/10/2006 - DENIED AS MOOT
11/10/2005	D	MO	DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION TO STAY DISCOVERY PENDING A DECISION ON THE MOTIONS TO DISMISS, MOTION TO QUASH SUBPOENAS AND MOTION FOR PROTECTIVE ORDER/MATTHEW T.FITZSIMMONS 0013404 05/10/2006 - GRANTED AND DENIED IN PART
11/10/2005	D8	OT	D8 DR BRENDA STEVENSON MARSHALL COLLEGE OF BUSINESS NOTICE OF JOINDER IN MOTION TO STAY DISCOVERY MICHAEL C COHAN 0013542
11/08/2005	P1	PP	WITNESS FEE, PAY TO PRASAD BIKKANI FOR MT MILLER DDS \$10.00
11/08/2005	P1	SH	CUYAHOGA COUNTY SHERIFF DEPT NOV 3, 2005 SERVED SUPBOENA ON: MT MILLER C/O CLERK SERVICE FEE \$14.50
11/04/2005	P1	OT	P1 PRASAD BIKKANI WITH REASONABLE PARTICULARITY AND CLARIFICATION, NOTICE OF DEPOSITION OF DENISE A. ROTH FORMER ATTORNEY/COUNSEL OF THCP UNDER THE NAME OF ROTH, ROELF & GOFFMAN. PRO SE 9999999
11/04/2005	P1	SH	CUYAHOGA COUNTY SHERIFF DEPT NOV 2, 2005 SERVED SUBPOENA ON: WILLIE AUSTIN AS FOLLOWS: C/O RECEPTION DESK SERVICE FEE \$12.50
11/04/2005	P1	PP	WITNESS FEE, PAY TO PRASAD BIKKANI FOR WILLIE AUSTIN \$10.00
11/04/2005	P1	PP	WITNESS FEE, PAY TO PRASAD BIKKANI FOR EVELYN ARMSTRONG \$10.00
11/04/2005	P1	SH	CUYAHOGA COUNTY SHERIFF DEPT SERVED SUBPOENA ON: EVELYN ARMSTRONG C/O RECEPTION DESK SERVICE FEE \$12.50
11/04/2005	P1	SH	CUYAHOGA COUNTY SHERIFF DEPT NOV 2, 2005 SERVED SUBPOENA ON: VITO DECORE AS FOLLOWS: C/O RECEPTION DESK SERVICE FEE \$12.50
11/04/2005	P1	PP	WITNESS FEE, PAY TO PRASAD BIKKANI FOR VITO DECORE \$10.00
11/04/2005	P1	PP	WITNESS FEE, PAY TO PRASAD BIKKANI FOR LEE JACKSON JR. \$10.00
11/04/2005	P1	SH	CUYAHOGA COUNTY SHERIFF DEPT SERVED SUBPOENA ON: LEE JACKSON JR MIS DEPARTMENT SERVICE FEE \$12.50
11/01/2005	P1	SR	SUBPOENA FOR: EVELYN ARMSTRONG, HUMAN RESOURCES DEPT., ISSUED 11/01/05
11/01/2005	P1	SR	SUBPOENA FOR: VITO DECORE, MIS DEPT., ISSUED 11/01/05
11/01/2005	P1	SR	SUBPOENA FOR: MT MILLER DDS, NEON'S BOARD MEMBER AS OF 1994, CHAIRPERSON TO BOARD OF TRUSTEES IN 1999 AND CURRENTLY, MT MILLER, INC., ISSUED 11/01/05
11/01/2005	P1	SR	SUBPOENA FOR: LEE JACKSON JR, MIS DEPT., ISSUED 11/01/05
11/01/2005	P1	SR	SUBPOENA FOR: WILLIE AUSTIN, CEO, BOARD MEMBER/TRUSTEE OF NEON/THCP, ISSUED 11/01/05
10/28/2005	P1	OT	P1 PRASAD BIKKANI WITH REASONABLE PARTICULARITY AND CLARIFICATION, NOTICE OF DEPOSITION OF DEPT. NEON'S BOARD TRUSTEE/ MEMBER, MATTHEW GT. FITZSIMMONS. PRO SE 9999999

Unfortunately, Matthew Fitzsimmons is the one with his pecuniary interests controlled/controlling THCP, NEON, and others as detailed in 12/18/2006 filing, other filings, filing with half-truths, and Motion after Motion until the victim give-up. Matthew Fitzsimmons filed his Motion on 12/6/2006 and Plaintiff filed opposition on 12/18/2006. About three weeks later, on 1/11/2007, Matthew Fitzsimmons filed the motion again in opposition to 12/18/2006 Plaintiff's opposition and by claiming as if Plaintiff as a Vexatious litigator instead of a victim and also he filed in similar fashion as part of Memorandum of Jurisdiction in 2006-2302 case. Unfortunately, Plaintiff mailed opposition response to 1/11/2007 but that was not filed by court stating it was received late on 1/24/2007 [which would have given facts to the court] instead of 1/22/2007 while keeping nonfactual 1/11/2007 motion of Attorney Fitzsimmons which was 3 weeks later than Plaintiff's 12/28/2006 filing. In addition, similar Plaintiff's factual mailing that was received by court on 1/24/2007 and Mr. Fitzsimmons/THCP/NEON to counter 1/11/2007 Filings in 2006-2302 (though on time) but unable to file by court under Rule III, Section 3(B). Thus, to serve justice, Plaintiff requests court to reconsider the decision in view of the facts and prose is trying his best with good faith to meet the quality of submission too. In addition, Matthew Fitzsimmons quoted Miles Landing Homeowner case, the facts are not as specified by Matthew Fitzsimmons and hopefully the hundreds of homeowners who are suffering will prevail as justice served by courts. Matthew Fitzsimmons's 1/11/2007 filing has no merit to allege against Plaintiff/Victim.

Attorney Matthew Fitzsimmons indicated through 12/6/2006 filing as if the attorney disqualification denial is not appealable, as the request was not denied after judgment. However, on 12/8/2006 trial court denied attorney disqualification there by giving hope for final appealable and one of the related judgment entry, 12/15/2006, and 12/4/2006 Judgment Entries were inserted:

12/08/2006 N/A JE CASE HAVING BEEN DISMISSED WITH PREJUDICE. PLAINTIFF PRASAD BIKKANI'S MOTION WITH DIRECT EVIDENCE LINKING MATTHEW FITZSIMMONS.

			TO OPERATIONS/TORTIOUS INTERFERENCE WITH THCP AFFAIRS, (A) TO MAKE "INITIAL ADJUDICATION ESTABLISHING PATTERN OF CORRUPT ACTIVITY" (B) MOTION TO MAKE CLASS CERTIFICATION, GRANT CONTINUATION AND TO POSTPONE HEARING SCHEDULES PENDING OHIO SUPREME COURT'S OUTCOME TO DISQUALIFY ATTORNEYS WHO MATERIALLY AND OR THROUGH EXTENSION INVOLVED IN THE INSTANT CASE TO AVOID FURTHER IRREPARABLE HARM. (FILED 12/04/2006) IS MOOT. BOOK 3743 PAGE 62 12/08/2006 NOTICE ISSUED
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12/15/2006	N/A	JE	CASE HAVING BEEN DISMISSED WITH PREJUDICE, AND THIS COURT HAVING DEEMED PLAINTIFF'S MOTIONS FILED ON 11/30/06 AND 12/4/06 MOOT. DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION TO STRIKE PLTF'S MOTION WITH DIRECT EVIDENCE LINKING MATTHEW T. FITZSIMMONS TO OPERATIONS/TORTIOUS INTERFERENCE WITH THCP AFFAIRS (FILED 12/11/2006) IS MOOT, AND DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION TO STRIKE PLTF'S MOTION WITH FIRST 380 PATTERN OF CORRUPT ACTIVITIES LISTING OUT OF THOUSANDS (FILED 12/11/2006) IS MOOT, AND DEFENDANT RUTH M. AARON'S MOTION TO STRIKE ANY FILINGS RELATING TO UNDERSIGNED COUNSEL AS OF OCT. 3, 2006 (FILED 12/12/2006) IS MOOT. BOOK 3748 PAGE 0895 12/15/2006 NOTICE ISSUED
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12/04/2006	N/A	JE	CASE HAVING BEEN DISMISSED WITH PREJUDICE, PLAINTIFF PRASAD BIKKANI'S MOTION WITH FRIST 380 PATTERN OF CORRUPT ACTIVITIES LISTING OUT OF THOUSANDS, A) TO MAKE INITIAL ADJUDICAITON ESTABLISHING A PATTERN OF CORRUPT ACTIVITY SO THAT ATTORNEY GENERAL CAN INTERVENE B) MOTION TO GRANT CONTINUATION AND TO POSTPONE HEARING SCHEDULES PENDING APPEAL OUTCOME (CURRENTLY PENDING WITH OHIO SUPREME COURT) TO AVOID IRREPARABLE HARM (FILED 11/30/2006) IS MOOT. BOOK 3738 PAGE 0724 12/04/2006 NOTICE ISSUED
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Thus, Plaintiff appealed along with other pertinent judgment entries on 1/8/2007 under CA 89269 hoping for justice and it was not taken by Appeal court either but on such facts also this honorable can reconsider the facts. The Trial court knew the merits of case and repeatedly denied sanctions against Plaintiff and 1/10/2007 trial Court Judgment Entry and 12/18/2006 judgment Entries were inserted here and also shows how Defendants repeatedly filed for sanctions like 1/8/2007, 10/26/2006, 6/9/2006, 10/30/2006 filings but withstood on merit:

01/10/2007	N/A	JE	DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION FOR RECONSIDERATION OF ORDER DENYING MOTIONS FOR SANCTIONS (FILED 01/08/2007) IS DENIED. BOOK 3767 PAGE 0547 01/10/2007 NOTICE ISSUED
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12/18/2006	N/A	JE	DEFENDANT RUTH M. AARON'S MOTION FOR SANCTIONS (FILED 10/26/2006) IS DENIED. DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH
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SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION FOR SANCTIONS (FILED 6/9/06) AND DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC) SUPPLEMENTAL MOTION FOR SANCTIONS, INCLUDING ATTORNEYS FEES, COSTS, AND EXPENSES (FILED 10/30/2006) ARE DENIED. BOOK 3750 PAGE 0244 12/18/2006 NOTICE ISSUED

As the 6/27/2006 Docket entry indicates, Attorney Matthew Fitzsimmons refused the service on him on or around 6/27/2006.

06/27/2006 D18 SR 06/27/2006 8614346 THE WITHIN NAMED FITZSIMMONS/MATTHEW/T 06/26/2006 SHERIFF DEPUTY SERV. REFUSED IN MY COUNTY.

As the below 7/5/2006 Docket entry indicates, following non perfection of service against Mr. Fitzsimmons in November 2005, Sheriff tendered service on Attorney Matthew Fitzsimmons on or around 6/27/2006 then Attorney Matthew Fitzsimmons filed on 7/5/2006 by claiming as if Plaintiff "purporting to serve" the amended complaint and on 7/25/2006 Trial court granted stating UNOPPOSED [unfortunately when the facts are part of record, as inserted below. However, for the facts of record Mr. Fitzsimmons knew that Plaintiff in good faith listed Attorney Fitzsimmons in the instant case as he was named as a party in trial court and Appeal court. But Mr. Fitzsimmons maintained with half-truths as if he never a party but Plaintiff stated the facts with good faith based upon tendering the service and reinstatement of Mr. Fitzsimmons as a party is part of Appeal process.

07/05/2006 D MO DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT PURPORTING TO NAME THEIR COUNSEL AS A DEFENDANT OR, IN THE ALTERNATIVE, TO BAR PLAINTIFF FROM FILING AND SERVICING THE AMENDED COMPLAINT FILED. MATTHEW T FITZSIMMONS 0013404 07/25/2006 UNOPPOSED AND GRANTED

Matthew Fitzsimmons intensely tried to blame Plaintiff for MLHOA cases by covering their wrongdoings in those cases and to blame as if Plaintiff as Vexatious, to take further advantage. With the same Miles Landing Plaintiff and Harris as Defendant in trial court *Miles Landing Homeowners Association v. Harris*, (8th Dist, cv03-501112), the following docket entry shows the County prosecutor's criminal investigation involvement and due to continued investigation they refuse to provide documentation and the investigation itself is a milestone, as

hundreds of victims suffered and continued to suffer and unfortunate that Mr. Fitzsimmons continued to confuse the court to conceal the facts:

10/17/2006	N/A	JE	MOTION OF CUYAHOGA COUNTY PROSECUTOR'S OFFICE TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER IS GRANTED. THE SUBPOENA ISSUED TO THE CUYAHOGA COUNTY PROSECUTOR'S OFFICE ON OCTOBER 7, 2006 IS HEREBY QUASHED. NANCY HARRIS IF PROHIBITED FROM MAKING FURTHER ATTEMPTS TO SUBPOENA THE RECORDS OF THIS CRIMINAL INVESTIGATION. BOOK 3695 PAGE 0507 10/17/2006 NOTICE ISSUED
10/12/2006	D1	MO	D1 NANCY HARRIS MOTION TO MODIFY SUBPOENA DUCES TECUM ISSUED TO CTY PROSECUTOR'S OFFICE AS THEY STATED WITH 10-06-06 FILING THAT THE DOCUMENTS MAY YET RESULTS IN CRIMINAL INDICTMENT AND CRIMINAL PROSECUTION..... (W)..... PRO SE 9999999 10/17/2006 - DENIED

Prior to detailing in the next few sections, Plaintiff indicates that Plaintiff had meritorious claim, with half-truths and in violation of dozens of Disciplinary rules and pertinent laws Attorney who is a Board of Trustee caused tortious interference, ousted Plaintiff even whom represented in the past, caused victim in the process, and continue to cause damages by repeatedly filing with half-truths. In addition, Matthew Fitzsimmons continued to file motions after motions under the name of opposition to previously opposed motion. Plaintiff requests court to reconsider facts and strike Mr. Fitzsimmons's 1/11/2007 Motion which is already out of time limit to oppose 12/18/2006 Motion of Plaintiff that is in opposition to his 12/6/2006 Motion. Similarly, the portions other than the jurisdiction of memorandum in the 2006-2302 case and vexatious allegations he made against Plaintiff should be stricken upon reconsidering facts, if and when possible by honorable Supreme Court.

IV) Conclusion:

In the following paragraphs Plaintiff pleads with court not to grant Attorney Matthew Fitzsimmons's bill/sanctions against innocent victim/Plaintiff, and lists related intense conflicts of interests and half truths involvement by Board member Matthew Fitzsimmons, who happened to be an Attorney and with severe violations of Disciplinary rules and judiciary system.

Some of the issues rise through Attorney Fitzsimmon's cum Board of trustee raises issues like:

A) Whether a board of trustee, as a General counsel

- i) can violate of IRC 4941(d)(1)(B),
- ii) can materially participate in conspiracy for pecuniary benefit against corporation/client,
- iii) can materially participate in unlawful termination of employees in conspiracy with third parties
- iv) can materially participate in submission of wrong information/financial statements to corporation through third parties,
- v) can participate in conversion of corporation against board of trustees,
- vi) can materially participate in the conversion of funds; and still can represent in the subsequent lawsuit against a victim/Plaintiff not only with conflicts of interests but also with further pecuniary benefit and to suppress/alter facts

C) Whether an attorney in conjunction with the above violations/characteristics can submit to the Trial court

- i) materially falsified affidavit,
- ii) half truth pleadings,
- iii) evade deposition
- iv) obtain protective order, for further pecuniary benefit and to protect all his past clients who happened to be over a dozen defendants in the instant case and attorney being a party to the lawsuit can refuse the summons and can represent in the case.

D) Whether an attorney in conjunction with the above violations/characteristics can participate in hundreds of corrupt activities; when sought help from Appellate court then can present half truth to the court to obtain sanctions against victim/Plaintiff then continue to represent in Supreme court with half truths as if the Plaintiff is vexatious

E) Whether the impressive credentials of working as clerk with Ohio Supreme Court's Chief Justice even decades ago, like Mr. Fitzsimmons's affidavit suggested, prevents to serve justice from disqualification/disbarment/disciplinary action to protect community and or victims and the judiciary system

F) Whether the parties can be represented by an attorney of the above violations/characteristics along with an attorney/group of another attorney's extension

- G) Whether Appeal court lacks jurisdiction/appealable matter to review even when the same court considered Mr. Fitzsimmons/NEON/THCP's motion to impose sanctions against Plaintiff/victim when sought justice within the existing law, or to modify the existing law to protect community.

Plaintiff filed an Action on his own behalf, on behalf of employer THCP/NEON. The complaint sought breach of fiduciary duty, conversion, receipt of an unlawful distribution of assets, action false/misleading financial statements, action on conversion, reinstatement, retaliatory/unlawful termination, action on material falsification, etc. Plaintiff filed disqualification of Attorney Matthew Fitzsimmons arguing first that Mr. Fitzsimmons had a conflict of interest by way of Mr. Fitzsimmons's role as corporate counsel to THCP/NEON, Board member of NEON/THCP (Claimed NEON as a member of THCP), represented Plaintiff and other employees, represented other defendants, as a party to the lawsuit and served summons, involved in crimes and too involved in unlawful discharge and other allegations of the complaint and evaded deposition and still a witness in the litigation. As the record indicates, a past attorney-client relationship existed between Plaintiff and Attorney Fitzsimmons; the subject matter of those relationships is substantially related; and Mr. Fitzsimmons acquired confidential information from Plaintiff and supports Attorney Fitzsimmons disqualification, *Dana Corp. v. Blue Cross & Blue Shield Mut. of N. Ohio* (C.A.6, 1990), 900 F.2d 882, 889; *Mentor Lagoons, Inc. v. Rubin* (1987), 31 Ohio St.3d 256.

Mr. Fitzsimmons eluded as if Plaintiff brought the derivative lawsuit for hundreds of employees in \$x millions inclusive treble and punitive damages and there by on behalf of corporation asking the corporate counsel to be disqualified. Though generally, a party on the outside of an attorney-client relationship "lacks standing to complain of a conflict of interest in that relationship." *Morgan v. North Coast Cable Co.* (1992), 63 Ohio St.3d 156, 159, it is true if an attorney never represented a client or stranger to the attorney-client relationship to complain any of the conflict of interest. It is not the case with Plaintiff and Mr. Fitzsimmons represented

Plaintiff. Attorney Fitzsimmons's representation of the corporation is substantially/directly related. In such circumstances, though, whether Attorney ultimately is a material witness in the litigation does not matter, *Patrick v. Ressler* (Sept. 28, 2001), Franklin App. No. 00AP-1194, the factual context of his prior representation of THCP/NEON and the factual context of the present case create a relationship substantial enough to justify disqualification. Furthermore, Mr. Fitzsimmons is a board member, represented all the defendants, a party to the current lawsuit, altering evidence, materially participated in illegal activities including in retaliation and unlawful termination of Plaintiff for his pecuniary benefit.

Moreover, Plaintiff has brought the action on behalf of the corporation after giving series of notices/communications to nonprofit corporation/board of directors. As the corporation's counsel, it is presumed that Attorney Fitzsimmons received confidential information, *Brant v. Vitreo-Retinal Consultants Inc.* (April 3, 2000), Stark App. No. 1999CA00283 and the subsequent representation by Mr. Fitzsimmons is not vicarious but primary and unlike a need to presume the received confidences as rebuttable, *Brant v. Vitreo-Retinal Consultants, Inc.* (Apr. 3, 2000), Stark App. No. 1999CA00283, discretionary appeal denied, 90 Ohio St.3d 1402. Under the given circumstances, Appeal court imposing attorneys' fees would be unfortunate to determine the reasonableness, as well as amount of the attorney fee award. Similarly, it is unfortunate to rule in favor of Mr. Fitzsimmons' motion and by reconsidering the facts the Court should vacate the attorneys' fee award and in favor of Plaintiff including the vexatious litigant label. This great injustice is the further consequence of pecuniary benefit involved and the parties who involved in the underlying case representing the case with half truths and this case is unique for the final appealability or to modify the law accordingly and the victim/Plaintiff should not be penalized for the good faith efforts and too in view of great loss already suffered through.

As stated earlier Mr. Fitzsimmons, and other attorneys/firms violated **Fourteenth Amendment** and **Sixth Amendment** besides **Canon 5**, **Canon 4**, **Canon 9**, and other DR violations. NEON's Board member/Trustee Mr. Fitzsimmons is a fiduciary or trustee to Plaintiff, *Hafter v. Farkas*, 498 F.2d 587, 589 (2d Cir. 1974). In the instant case the violations are much beyond any case ever come to in front of court and involved many conflicts and constitutional violations and caused severe injustice to Plaintiff and to the judiciary system itself. Matthew Fitzsimmons himself has a competing attorney-client privilege with THCP, NEON, THCP Board, NEON Board, Plaintiff, other defendants of the instant case, and even breaching the fiduciary relationship he had with Plaintiff, to continue to cover-up violations. Attorney Fitzsimmons/Board member severely violated Disciplinary Rules and Fiduciary duties for over a dozen defendants in the instant case and to Plaintiff as all are his clients/ex-clients/ or express attorney-client relation, thus strict standards of **Canon 5** is applicable. Mr. Fitzsimmons has been privy to THCP, NEON, Dr. Marshall, Mr. Kimber, Mr. Lee, Mr. Scheur, Ms. Aaron, SMG, Mr. McMillan, Ms. Phelps, Mr. Pinkney, Mr. Davis, and Plaintiff's; confidences, thus violation under **Canon 4** and Mr. Fitzsimmons should have been disqualified from representing the defendants in the instant case. In the course of the former representation Mr. Fitzsimmons acquired information related to the subject matter of his subsequent representation, and Mr. Fitzsimmons should be disqualified under **Canon 9** of the Code of Professional Responsibility, *Emle Industries Inc. v. Patentex Inc.*, 478 F.2d 562 (2nd Cir. 1973), *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1 at 5. As a matter of fact, attorney Mr. Fitzsimmons, Attorney Dennis Roth, Attorney Brian Green violated **Canon 4**, **Canon 5** and **Canon 9**. Attorney Brian Green is an attorney of disqualified Attorney Dennis Roth. It is clear that under **Canon 9** as well as **Canons 4 and 5**, Matthew Fitzsimmons should be disqualified. Similarly the **Canon 4** of the Ohio Code of Professional Responsibility imposes a duty on Matthew

Fitzsimmons, and on Dennis Roth to protect THCP's, Plaintiff's, THCP Board of Trustees, NEON's, and SMG defendants as all of them have privity with them confidences and secrets including to related to Plaintiff's wrongful termination claim, *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, (2005); DR 4-101(A); *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1. Using the direction in Disciplinary Rule **5-105(D)** and by **Canon 9's** warning that "A Lawyer Should Avoid Even the Appearance of Professional Impropriety" but getting violated in all aspects.

Mr. Fitzsimmons improperly defending/defended against the disqualification motion, with serious disregard for the orderly process of justice, without a colorable basis in law, and causing a harsh blow to the process as it "will have a profound chilling effect upon victims/litigants and would interfere with the presentation of meritorious legal questions. In an idealized world, victim would have bowed out, but reality dictates that great injustice the proper course was to appeal or to get reviewed/modified the law as this kind of case never occurred before. The way Mr. Fitzsimmons involved continued to conceal facts is nothing less than an insult to the doctrine of stare decisis and a slap in the face of the adversary process, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983). Unfortunately, Mr. Fitzsimmons contaminating the law of attorney disqualification, which is a fundamental importance to the legal community and to our society. Mr. Fitzsimmons using confidential information that he has obtained from a client against that client on behalf of another one and representing an adversary of his former clients of the subject matter of the two representations is not just "substantially related," but same. Mr. Matthew Fitzsimmons not only had access to but also received confidential information of **Plaintiff**, THCP, board of directors, officers, to NEON, board of directors, officers, and above a dozen defendants in the instant case. In the instant case Mr. Fitzsimmons and his firm popped up as counsel to an adversary of Plaintiff, and other

defendants following illegal conversion of THCP under NEON and representing against THCP board of directors officially. Thus Mr. Fitzsimmons's interference under the name of an attorney to two defendants in the instant case is not just the representations that are substantially related to past services/obtained confidences from others but totally and directly related. Consistently with this distinction, *Westinghouse Elec. Corp. v. Kerr-McGee Corp.*, 580 F.2d 1311, 1321 (7th Cir. 1978) -- like this is a case where the same law firm represented adversaries in substantially related matters -- states that it would have made no difference whether "actual confidences were disclosed" even if the law firm had set up a "Chinese wall" between the teams of lawyers working on substantially related matters, though the two teams were in different offices of the firm, located hundreds of miles apart. Mr. Fitzsimmons couldn't have created a Chinese wall in his mind between his multiple violations with various clients. Since it is a direct relationship, substantial relationship inquiry is not needed.

The fact that Mr. Fitzsimmons made stubbornness in resisting disqualification is improper, *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 1983). Somehow **Appeal court and this court** got influenced by Mr. Fitzsimmons and awarded sanctions against Plaintiff even without taking up the case to which Plaintiff sought justice on basic principle of law, fairness to all litigants believing that fairness requires that any law firm and/or individual of professional impropriety, questionable ethics, or misconduct with the given the opportunity to rebut any and all adverse inferences which may have arisen by virtue of a prior filings. Unfortunately, instead of Matthew Fitzsimmons getting disqualified, innocent Plaintiff get sanctioned, suffered due process, due process guarantees, fundamental fairness to victims/litigants, *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 24 (1981). In the instant case not only the counsel/Mr. Fitzsimmons changed the sides in representing against some other client also involved as a party, involved with dozens of serious violations of the Code of Professional

Responsibility with a clear un rebutted factual basis. Even just where "the firm itself changed sides", without having a need to have other conflicts such as in the instant case, the law firm was disqualified; *Analytica, Inc. v. NPD Research Inc.*, 708 F.2d 1263 (7th Cir. 05/31/1983).

Unfortunately, Mr. Fitzsimmons's interest happened to be in violation of retaining client by way of controlling the board as a board of trustee and in denying a serious breach of professional ethics which outweighed any felt obligation to 'come clean ' by ignoring as officers of the court though generally most of the attorneys are trustworthy, *The Lawyer's Obligation to be Trustworthy when Dealing with Opposing Parties*, 33 S.C.L. Rev. 181 (1981). It is not a serious and studied disregard for the orderly process of justice. There is a legal basis for original position, material misrepresentation and cover-up involved as alleged whether that position was found to be legally correct/incorrect thus can not be characterized as lacking justification but Matthew Fitzsimmons is vexatious and representing his controlled clients to protect his improper acts, *Overnite Transp. Co. v. Chicago Indus. Tire Co.*, 697 F.2d 789 (7th Cir. 1983). In *Overnite Transp.*, the plaintiff brought suit based on a novel interpretation of the Interstate Commerce Act, not previously addressed in published case law. The district court granted the defendant's motion to dismiss, and on appeal the 7th Cir. Court affirmed then the district court granted the defendant's motion for an order assessing attorney's fees against the plaintiff's attorneys, finding that the attorneys had acted vexatious in instituting the lawsuit. On appeal from the attorney fee award, the 7th Cir. Court held that the district court had abused its discretion. In the instant case, the victim/Plaintiff deserves the fees and award and not Mr. Fitzsimmons under the name of THCP/NEON to get sanctions against Plaintiff. Trustee Fitzsimmons with his forbidden self dealings ahead of his clients and with his pecuniary interest, malpractice, malicious nature continuing currently an Appeal court case CA-07-089312 too and it is in violation of basic judiciary system to let him continue without sanctions against him and with the

violations/conflicts listed above. Mr. Fitzsimmons and other violators including firms should be disqualified and Disciplinary counsel should be allowed to investigate the existing dozens of serious violations. As the issues for posed for consideration, Attorney Fitzsimmons should be disqualified/disbared and he even blocked discovery from board of trustee MT Miller to cover his tracks, and as a Trustee himself should not be tortuously interfering corporate matters for his self-dealings.

The legal profession demands adherence to the highest standards of honesty and integrity. It is a fact that any sanction is an indelible stain on lawyer's as well on Appellant's record and by balancing these considerations, the court can find that Attorney Fitzsimmons's misconduct is highly egregious than other sanctioned attorney's acts/omissions including, *a public reprimanded Ohio State Governor Taft for his lapses in disclosures* under violation of DR 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law), *Disciplinary Counsel v. Taft*, 858 N.E.2d 414, 112 Ohio St.3d 155 (2006). The court can decide whether to impose any sanction at all or not but Appellant requests court to review the facts. There is no doubt that duties violated by Attorney Fitzsimmons, often willfully, caused injury with aggravating factors and he did not dispute such violations other than just bluntly blaming on Appellant for the harm he did to his numerous clients.

Mr. Fitzsimmons created victim, submitted materially false affidavit to court, had many violations including deliberately withholding that which by law they were required to reveal; *Disciplinary Counsel v. Wrenn*, 99 Ohio St.3d 222, 2003-Ohio-3288, 790 N.E.2d 1195 (six-month stayed suspension imposed for assistant county prosecutor's concealment of exculpatory evidence in a criminal case), and *Disciplinary Counsel v. Jones* (1993), 66 Ohio St.3d 369, 613 N.E.2d 178 (six-month actual suspension imposed for assistant county prosecutor's failure to

advise court in criminal prosecution that he had found previously misplaced evidence that was potentially exculpatory or mitigating).

Attorney Fitzsimmons forced Appellant to keep disclosing violations of Mr. Fitzsimmons while he keep feeling the filed facts tend to effect Mr. Fitzsimmons, he knew that Appellant was forced to plead with facts without malice or falsity where actual malice essential to feel improper against Appellant, *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244. To the extent Appellant has to disclose violations of others and or corporation or his clients's are due to Mr. Fitzsimmons's continued evasion of facts and his continued shifting of blame on Appellant in an effort to coverup his tracks at the expense of Appellant and all other parties. In fact, Appellant believes that Attorney is the one who is acting with **actual malice**.

In the instant case, Attorney Fitzsimmons neglected 16 clients, and made false statements. Attorneys indefinitely suspended in the similar or lesser cases where an attorney repeatedly neglected multiple clients', made false statements and or acted dishonestly: *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, 778 N.E.2d 564, *Dayton Bar Assn. v. Shaman* (1997), 80 Ohio St.3d 196, 685 N.E.2d 518, *Akron Bar Assn. v. Snyder* (1997), 78 Ohio St.3d 57,676 N.E.2d 504. Attorney Fitzsimmons is a Board of Trustee for nonprofit corporation(s) NEON/THCP. While serving in that noble position of public trust he himself violated the law and flouted the rules that regulate the legal profession. By doing so, he betrayed his principal duty as an Attorney -- and he undermined the public's faith in both the legal profession and our system of justice.

WHEREFORE, though trustee Fitzsimmons claiming MLHOA cases for his advantage improperly and besides he knowing the facts that Plaintiff came to Appeal with good faith following *Miles Landing Homeowners Association (MLHOA) v. Bikkani* (cv04-519870) in which MLHOA attorney's with pecuniary interest went to great extent to modify/alter facts even in

front of court numerous times including on 4/21/2005, along with false affidavits, forgeries, having Enterprise deals with convicted Felon Marcus Dukes (who got convicted on multiple counts of mail fraud, wire fraud and money laundering) and influenced to Appeal in the instant case, as pecuniary benefit involved to attorney(s) in the instant case. Unfortunately trustee cum Attorney Fitzsimmons being submitted materially false affidavit to the court in September 2005 itself in the instant case, and blocking deposition from whom Mr. Fitzsimmons submitted affidavit by preparing it, and by representing co-trustee MT Miller and by blocking his deposition for Mr. Fitzsimmons' advantage; and being personally involved, representing multiple parties. Plaintiff believed that law supports the appeal at least under the contest to modify the law if needed, and with the experience of MLHOA case and as difficult to safeguard the integrity of process as many key facts are being altered by involved attorneys and in good faith believed that Disciplinary Rules and pertinent laws supports the appeal. Plaintiff sincerely pleads with the Honorable court not to reward Attorney Matthew Fitzsimmons with bill/fee/sanctions/verdict against innocent victim Plaintiff, good faith and cause exists to plead for rescue from Court to seek for justice. Trustee cum Attorney Fitzsimmons initiated Appeal CA-07-089312 case for his pecuniary benefit at the expense of forbidden self-dealings of a non-profit corporation, and in the 4/4/2007 filing of "Preliminary Statement", Mr. Fitzsimmons didn't disclose the pending Appeal case he is maintaing while blaming plaintiff in many ways including the number of months ago started the case. Being Trustee, tortiously interfering business relationships, controlling the corporation(s) for his pecuniary benefit, with the forbidden self-dealings, Attorney Fitzsimmons is manipulating the events as he deems fit. Mr. Fitzsimmons should not be rewarded for wrongful acts but he should be disciplined. Attorney Fitzsimmons should be granted some time to respond these hundreds of counts and other violations as 4/9/2007 pleading in last paragraph of page 3 requests. Matthew Fitzsimmons' bills should not be rubbed on victim/plaintiff.

Hope there are Fiduciary duties, accountability; breach of fiduciary duty, privity, malpractice, malicious acts and all those plays a role along with the constitution rights of victims. Trustee cum Attorney Fitzsimmons should be disciplined with dozens of Disciplinary rule violations listed above. If not sanctions to attorneys like Matthew Fitzsimmons, what else an attorney should do to get sanctioned and how the attorneys who got disciplined for lesser violations than Trustee cum Attorney Fitzsimmons can get justice and the attorneys who are obeying laws and Disciplinary Rules get justified for not having violations by leaving whom victims brought forward even at great sacrifice. Trustee cum Attorney Fitzsimmons should be disciplined with his vexatious conduct and judgment against victim/Plaintiff should be reversed to the benefit of justice.

Respectfully submitted,

Prasad Bikkani, Pro Se, Plaintiff
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Certificate of Service

A copy of the foregoing is **personally** being mailed by Plaintiff by U.S. mail on **18th** day of April 2007 to Mr. Fitzsimmons (as Mr. Fitzsimmons' certificate did not include others, Plaintiff also omitted) and 4/16/2007 mailing was mailed to him on 4/16/2007 itself by driving to Airport.

THCP /NEON - Defendants
%Matthew Fitzsimmons
25 West Prospect Ave, Suite 1400
Cleveland, OH 44115

Prasad Bikkani, Pro Se, Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

* CRIMINAL DOCKET

VERSUS

* NO. 05-304

BARRY S. SCHEUR, ET AL.

* SECTION "L" (2)

ORDER & REASONS

Before the Court is Barry Scheur's Motion to Reconsider (Rec. Doc. 150).¹ The Defendants ask the Court to reconsider its Order & Reasons of January 3, 2007 denying their motions to dismiss all counts of the Second Superseding Indictment. *See* Rec. Doc. 142. With the benefit of further briefing and argument, the Court now GRANTS the Defendants' motion to reconsider and hereby DISMISSES the Indictment (Rec. Doc. 1), the Superseding Indictment (Rec. Doc. 33), and the Second Superseding Indictment (Rec. Doc. 80) in their entirety as to all Defendants.²

I. BACKGROUND

The factual and procedural background of this case are discussed in the Court's Order & Reasons of January 3, 2007. In that decision, the Court framed the issue presented by the Defendants' motions as follows:

¹ By Order of the Court, the remaining Defendants in this case, Robert McMillan, Rodney Moyer, and Danette Bruno, are deemed to have joined in the instant motion to reconsider. *See* Rec. Docs. 100 & 119.

² While the Court refers only to the Second Superseding Indictment in the text of this Order & Reasons, the previous indictments suffer from the same problem and thus are subject to the same disposition.

EX A

The Second Superseding Indictment in this case falls somewhere between *Cleveland* and *Christopher*. The indictment does not specifically allege that the Defendants fraudulently obtained a license to operate The Oath in Louisiana, perhaps in deference to *Cleveland*. However, the indictment also does not specifically allege that the Defendants defrauded or “looted” The Oath, its insureds, or other third parties. *Cf. Christopher*, 342 F.3d at 385 (noting that the indictment made clear that “the ‘bottom line’ of the scheme was to defraud the insurance companies of their assets”).

See Rec. Doc. 142. The Court reached the following conclusion:

While the indictment does not explicitly state that the insureds and medical providers were defrauded, the Court nevertheless finds that the indictment conforms to minimal constitutional standards. *See Gordon*, 780 F.2d at 1169. Indeed, all of the facts alleged in the indictment, which the Court must accept as true, lead to the inescapable conclusion that in addition to defrauding the LDOI, the Defendants also defrauded insureds and medical providers of property, namely money.

See Rec. Doc. 142.

II. PRESENT MOTION

The Defendants ask the Court to reconsider the conclusion stated in its January 3, 2007 Order & Reasons denying their motions to dismiss that the Second Superseding Indictment in this case does not run afoul of the rule announced in *Cleveland v. United States*, 531 U.S. 12 (2000). The Defendants argue that by reading in an implication, or “inescapable conclusion,” that entities other than the LDOI were defrauded, the Court constructively amended the indictment in contravention of the Defendants’ Fifth Amendment right to grand jury indictment. *See United States v. Hoover*, 467 F.3d 496 (5th Cir. 2006). The Defendants re-urge their argument that the Second Superseding Indictment on its face fails to state offenses against the United States. The Government contends that a constructive amendment challenge must necessarily await trial, but that in any event, the Court has not broadened or constructively amended the indictment.

III. LAW & ANALYSIS

The Fifth Amendment provides that “[n]o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend. V. “Ever since *Ex Parte Bain* in 1887, it has been the rule that after an indictment has been returned the charges may not be broadened through amendment except by the grand jury itself.” *Stirone v. United States*, 361 U.S. 212, 215 (1960). As noted in *Ex Parte Bain*:

If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance the common law attached to an indictment by a grand jury . . . may be frittered away until its value is almost destroyed.

Ex Parte Bain, 121 U.S. 1, 10 (1887).

The Government is correct that in denying the Defendants’ motions to dismiss, the Court merely found that the indictment conformed to minimal constitutional standards, and thus that a constructive amendment challenge is premature. See, e.g., *United States v. Phillips*, 2007 WL 172131, at *5 (5th Cir. 2007) (“In evaluating whether constructive amendment has occurred, we consider ‘whether the jury instruction, taken as a whole, is a correct statement of the law and whether it clearly instructs jurors as to the principles of law applicable to the factual issues confronting them.’”) (quoting *United States v. Guidry*, 406 F.3d 314, 321 (5th Cir. 2005)).

However, the Defendants’ argument does shed light on constitutional problems that will undoubtedly arise at trial, problems that the Court did not adequately consider in its previous Order & Reasons. Although the underlying facts in this case more closely resemble those in *Christopher v. Miles*, 342 F.3d 378 (5th Cir. 2003), *United States v. Stewart*, 151 F. Supp. 2d 572 (E.D. Pa. 2001), and *United States v. Shelton*, No. 1:00CR127-P-D, 2001 U.S. Dist. LEXIS

24594 (N.D. Miss. July 26, 2001), the Court (and ultimately the jury) is limited by the words of the Second Superseding Indictment. A mere showing that the LDOI was defrauded and that The Oath was unjustly enriched will not satisfy the Government's burden at trial. Under *Cleveland*, the Government must also prove that the Defendants defrauded someone other than the LDOI of "property." But as noted in the Court's Order & Reasons, "the indictment does not explicitly state that the insureds and medical providers [or anyone else] were defrauded." See Rec. Doc. 142. Without the "inescapable conclusion" reached by the Court, the Second Superseding Indictment fails to state an offense under *Cleveland*.³

While the Court's analysis in its Order & Reasons may have been appropriate in resolving a motion to dismiss a civil complaint for failure to state a claim (where notice pleading is the rule), and while the indictment may theoretically have been able to (barely) survive its equivalent in the criminal context, when viewed in the practical world of what will be required at trial, the Second Superseding Indictment cannot survive scrutiny. At trial, to survive the "*Cleveland* guillotine," the Government would have to prove that specific victims, other than the

³ The cases relied upon by the Government must be read in light of the subsequent decision by the United States Supreme Court in *Cleveland*. See *United States v. Pepper*, 51 F.3d 469, 472 (5th Cir. 1995) ("There is no statutory requirement that direct misrepresentations must be made to the victims of the scheme."); *United States v. Hatch*, 926 F.2d 387, 392 (5th Cir. 1991) ("The focus of the mail fraud statute is upon the use of the mail to further a scheme to defraud, not upon any particular kind of victim. . . . [F]ailure to define precisely the victim of the scheme to defraud does not prevent conviction under the mail fraud statute."). While these are no doubt still correct statements of the law, *Cleveland* has imposed an overriding condition that "§ 1341 requires the object of the fraud to be 'property' in the victim's hands." *Cleveland*, 531 U.S. at 26-27. Beyond the general allegation in the first paragraph of the Second Superseding Indictment that The Oath "received insurance premiums . . . and, in turn, paid medical providers," the indictment makes no reference to any victims defrauded of "property." Although the Government has amended the original indictment on two occasions, the Second Superseding Indictment remains silent in this respect.

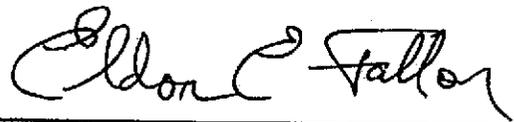
LDOI, were defrauded of specific property. This was not set forth in the indictment. Thus, a conviction based on such proof would, in effect, result in a stretching or amending of the indictment by the Court, which is constitutionally forbidden. Furthermore, whether or not this indictment runs afoul of *Cleveland* is, at most, a very close call. In such an instance, the parties, society, and the judicial system are best served by allowing an appellate court to consider the matter at its embryonic stage, rather than after a full term, lengthy trial.

IV. CONCLUSION

Accordingly, IT IS ORDERED that Scheur's motion to reconsider, in which McMillan, Moyer, and Bruno are deemed to have joined, is GRANTED and that upon further consideration the Indictment (Rec. Doc. 1), the Superseding Indictment (Rec. Doc. 33), and the Second Superseding Indictment (Rec. Doc. 80) are hereby DISMISSED IN THEIR ENTIRETY as to all Defendants.

IT IS FURTHER ORDERED that the pretrial conference and trial dates are CANCELLED.

New Orleans, Louisiana, this 3rd day of April, 2007.



UNITED STATES DISTRICT JUDGE