Ted E.C. Bulthaup III, *pro se*
144 South Pinecrest
Bolingbrook, IL 60440
Telephone: (630) 297-6726

First Circuit Court of the State of Illinois
County of Cook

Ted E.C. Bulthaup III **Plaintiff**	)	
v.	)	**Case No. 2019L004480**
The Law Office of Michael Young **Michael J. Young** **Defendants**	)	

PLANTIFF'S VERIFIED RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Now comes Ted E.C. Bulthaup III, Plaintiff, responding to Defendants, The Law Office of Michael Young and Michael J. Young's Motion to Dismiss,

YOUNG'S JOINDER OF SECTION 2-615 & 2-619 ARGUMENTS IS IMPROPER REQUIRING THE DISMISAL OF DEFENDANT'S MOTION

Young's combining of a 2-615 motion with a 2-619 motion is improper practice. In *Janes v. First Federal Saving & Loan Ass'n of Berwyn*, 312 N.E.2d 605 (I 974), the Illinois Supreme Court held that the joinder of a 2-615 motion and a motion for summary judgment was improper because the 2-615 motion was based on the issue of whether the pleading was sufficient while the motion for summary judgment necessarily assumes that it is. The Court has pointed out that such a motion is predicated on the inappropriate assumption that there exists a hybrid procedure where a defendant can challenge the legal sufficiency of a complaint and at the same time answer it while demanding judgment on the merits.

The Illinois Supreme Court reiterated that the Code of Civil Procedure establishes two separate and distinct procedures. The Court there stated that the defendant should have first challenged the legal sufficiency of the complaint and if, and only if, a sufficient legal cause of action had been stated then the court could only then entertain a motion for summary judgment.

Young's improper pleading states that Plaintiff's "complaint is legally insufficient and fatally flawed and cannot under any set of facts or under any circumstances state a viable cause of action". That is simply not true. Defendants Young's motion further claims the elements of malpractice are not present in the Verified Complaint while at the same time admitting they are present and therefore true by virtue of his attempt to dismiss via Rule 2-619. Therefore, Plaintiff respectfully asks that Defendants motion to dismiss be denied on the basis of improper procedure and that we proceed to trial on the merits.

THE ACTUAL INNOCENCE RULE IS NOT APPLICABLE
BECAUSE PLAINTIFF HAS SUFFICENTLY PLED YOUNG'S BETRAYAL

Regardless, of the contradictions in his own motion to dismiss, Young's assertion that there is an additional element required of his former Client, Plaintiff, to bring this action is just not true. Contrary to **735 ILCS § 5/2-605,** Young fails to take as true for purposes of the instant motion Plaintiffs allegations in the Verified Complaint which alleges two Causes of Action, Negligence and Breach of Fiduciary Duty. To be clear, Plaintiff's Verified Complaint is rife with numerous facts and examples over 28 pages which support of each cause of action. Allegations contained in verified pleadings are deemed to be admissions of fact, and so true. **Winnetka Bank v. Mandas**, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).

First, Defendant Young admits on page one of his Motion to Dismiss that he had an Attorney-Client relationship with Bulthaup, stating he was engaged for 1½ years, although it was actually closer to 2½ years as pled in Plaintiffs Verified Complaint. Second, Young was actually paid at least $90,000, for his services, much of it in cash. Third, Young asserts on page one of his motion that after an extensive and lengthy negotiation he was able to get 110 charges dismissed in return for a guilty plea on 2 charges. That is simply not true and more important for purposes of this instant motion outside the allegations supporting Plaintiff's claims of legal malpractice. The case for malpractice, among many other episodes, includes Young's handling of that very plea, but the specifics of his assertion is also factually at odds with the greater court record.

Defendant Young also asserts a defense of "collateral estoppel" at the pleading stage contending that in a legal malpractice case arising from the conviction of a defendant, his then client, Ted Bulthaup, has an additional burden of proving 'actual innocence' in order to bring his case. In some instances that may be appropriate, but in Illinois there is a recognized exception which is particularly relevant to this case, that of betrayal as found in **Morris v. Margulis**, 307 Ill. App. 3d 1024, 1039, 718 N.E.2d 709, 241 Ill. Dec. 138 (5th Dist. 1999); rev'd on other grounds, 197 Ill. 2d 28, 754 N.E.2d 314, 257 Ill. Dec. 656 (2001).

First things first. Plaintiff's Verified Complaint cites allegations that, when shown at trial, meets or exceed the standards in both **Strickland v. Washington**, 466 U.S. 668 (1984) and **Lafler v. Cooper**, 566 U.S. 156, 132 S. Ct. 1376, 182 L.Ed.2d 398 (2012), each of which affirm that the Sixth Amendment right to counsel extends to the plea-bargaining process. The performance prong in **Strickland** requires a defendant to show his counsel's representation fell below an objective standard of reasonableness. To establish prejudice in the context of a plea, a defendant must show that the outcome of the plea process would have been different with competent advice. As pled in Plaintiff's Verified Complaint, paragraphs 43 thru 67, that is certainly the case herein.

In **Missouri v. Frye,** , 566 U.S. 134, 132 S. Ct. 1399, 182 L.Ed.2d 379 (2012), the Supreme Court of the United States noticed the state of America's criminal court system, that "ours 'is for the most part a system of pleas, not a system of trials.' As to a coerced guilty plea, that Court noted that, "a frighteningly high percentage of people … confess to crimes they did not commit."

There, the Supreme Court went on to affirm that the Sixth Amendment guarantees the right to the assistance of counsel when entering a guilty plea, stating "the negotiation of a plea bargain…. is almost always the critical point for a defendant." Thus, "defense counsel has responsibilities in the plea bargain process…. which must be met to render the adequate assistance of counsel that the Sixth Amendment requires."

Illinois recently followed this affirmation in **People v. Brown**, 2017 IL 121681, confirming that the Sixth Amendment guarantees a criminal defendant the right to effective assistance of counsel at all critical stages of the criminal proceeding, specifically including a guilty plea proceeding.

Among the many allegations in the Verified Complaint, one of the keys to understanding the causes of injury is Defendant Young's handing of a coerced plea, the final result of which ended in his Client's incarceration, causing damages. Plaintiff has pled in his complaint that this constituted one of the most egregious acts of Young's malpractice, defined as betrayal, and therefore established precedent applies and Young's claim of "collateral estoppel must be denied on that basis.

As set forth in Plaintiff's Verified Complaint, it is surely not hard to comprehend that Plaintiff Bulthaup, relying on his attorney, would plead guilty whereupon Michael Young would then act in good faith as a fiduciary according to a pre-determined and agreed upon plan of action. Young was to explain to the Court that the plea had been coerced. For Young to then unilaterally enact a different plan, mid-hearing, without his Client's consent placed his client in jeopardy and so is an act of **betrayal**. In ruling on Young's motion to dismiss, the Court needs to carefully review Plaintiff's allegations set forth in paragraphs 48 thru 56 in the Verified Complaint and as further described in this Verified Response.

In Illinois, the ruling in **Morris v. Margulis** established an exception to a Plaintiff having the burden of proving innocence, stating, **"**If Morris had an attorney-client relationship with Bryan Cave, then this case is about **Betrayal!"**

In Young's various citations the burden of innocence may have been an appropriate barrier in those specific instances; but in this instance that is not an appropriate principle to close the door on the consideration of Young's malpractice. To be clear, Illinois law provides that the actual innocence rule only bars some malpractice claims - not all malpractice claims. Here, Young is not entitled to a free pass on the alleged malpractice, which has been appropriately pled by Plaintiff.

In **Morris,** defendants Bryan Cave, had asserted that the plaintiff could not prevail in his action unless he proved that he was actually innocent of the charges for which he was ultimately convicted, citing **Moore v. Owens**, 298 Ill. App.3d 672, 698 N.E.2d 707 (1998). Defendant Young's defense also pleads that **Moore v. Owens** likewise shields him from his own conduct. Simply put, it did not. The court rejected Bryan Cave's assertion and this Court should likewise reject Young's.

The **Morris** court further held that it would be unconscionable to apply the "actual innocence" rule in cases where criminal defense attorneys intentionally work to ensure their clients' conviction, in recognition that such treacherous ethical violations do occur.

Morris affirms the "actual innocence" rule will not be applied to situations where an attorney willfully or intentionally breaches the fiduciary duties he owes to his criminal defense client.

An ARDC disciplinary proceeding was cited in the **Morris** case. See in re **Rosin,** 118 Ill.2d 365, 113 Ill. Dec. 276, 515 N.E.2d 85 (1987), where the Chief Justice delivered the opinion noting, "Among the fiduciary duties owed by the attorney to the client are the duties of fidelity, honesty, and good faith. The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client." That is certainly the case here with Young's corrupt bargain, wherein he obtained the release of $25,000 in bail in return for his getting his client to admit guilt in a coerced plea that the court should have rejected.

The Court affirmatively recognized a legal malpractice action alleging negligent legal advice in accepting a plea agreement, if proven to be an intentional breach of fiduciary duty, is an exception in Illinois as a ***betrayal***, and so relieves the Plaintiff from having the burden to first prove innocence and any malpractice allegation should go to trial on the merits.

Plaintiff alleges in his Verified Complaint numerous actions of betrayal which are a significant element of Young's malpractice, all of which now must be considered as true, none of which has been nor can be refuted until trial and all of which should be considered there and then on the merits.
A particularly relevant example of betrayal in the complaint is evidenced in Defendant's own Motion to Dismiss; where his actions with a coerced plea, which plea he now uses as the basis for his defense, was indeed a betrayal which also enriched Young.

YOUNG'S MALPRACTICE AND MOTIVE WITH THE COERCED PLEA

The State, in its rush to bring charges, bypassed the Illinois Department of Revenue's standard procedures and did indeed bring over 100 charges against Bulthaup. At that time these accusations revolved solely around underreported sales taxes, many being misdemeanors, including related counts such as mail fraud in the filing of those tax forms.

Defendant Young also claims felony institution fraud was among those initial early charges that he bargained down. That is factually not true and Young certainly knows this. It couldn't be true, for those charges had not yet been filed.

In its haste to charge, the Attorney General's office stated in its same day Press Release that Bulthaup collected but did not fully remit taxes due on the sale of admission tickets to his movie theaters and this was at the center of the State's case. Soon after Plaintiff's arrest, the State realized on their own that there is no such thing as a sales tax on movie ticket admissions, so there could be no taxes due Illinois from that source.

Where taxable sales had actually been underreported, the State originally filed multiple charges of "Violation of Retail Tax Act, Agent fails to remit tax of $300 or more" for each month concerned. The charges were all relatively smaller sums ranging from three hundred to several thousand dollars compared to the many millions that Bulthaup's managed companies actually had remitted.

The State must have also realized Bulthaup could not have committed mail or wire fraud for transmitting the funds or filling out the tax return as the accountant was the sole person to have access to those computers, the passwords and user codes for tax filing and who indeed did file those improper tax returns as the relevant Administrator. Unbeknownst to Bulthaup at the time of his arrest, that accountant and two of his other Executives were the primary beneficiaries of those skimmed monies.

On its own initiative, the State quickly consolidated the gratuitous headline grabbing list of small sums into one single charge totaling over $100,000; thereby increasing the dollar amount to a single but higher level of felony which better suited the State's Attorney's purposes. That occurred within just a very few months of Bulthaup's arrest.

The State merely informed Young of their already made unilateral decision to consolidate some charges and drop others; simply apprising Young they would then be filing such a Motion without any prior notice. This was largely done in Plaintiff's presence, in court, just before a status hearing with Young simply acquiescing on the spot stating that he would have no objection.

In his Motion to Dismiss, Young is taking credit for being a skilled attorney and negotiating a reduction of over 100 charges to a plea of one charge and that is not what happened, *at all*. There was no negotiation. There was no substantive discussion. These many charges were later listed by the State as counts and are noted in Young's exhibit one, transcript of the plea hearing; but that plea hearing was a year or more after those charges had already been unilaterally consolidated by the State, again without prior consultation with Bulthaup or his attorney. The full transcript record will show this.

Young further asserts in his Motion that at the time of this consolidation Bulthaup had reviewed all of the discovery tendered, which can only be considered true in light that discovery had barely begun and little had been offered by the State up to that moment. While Bulthaup had given Defendant Young lists of items that should be the object of defense discovery, Young had not successfully acquired even one scrap of paper on his own, and never did later. (Those failures are addressed on pages 5 and 8 of the Verified Complaint under the captions "Young Fails to Advocate the Subpoena Duces Tecum" and "Young Failed to Investigate and Conduct Discovery" which failures also constitute instances of his malpractice.)

It was shortly after the consolidation of those initial charges that the State's Attorney first offered to release the $25,000 in bond money directly to Young, rather than the standard practice of keeping those monies for court costs. Young only had to get his Client to plead to that already reduced single count of tax evasion which was the sole charge at that time. Prior to this, there had not been any serious mention of a plea. (Paragraphs 33 thru 36 in the Verified Complaint). In essence, that was a bribe using Bulthaup's own money.

Contrary to Young's assertion in his Motion, there were no allegations of financial institution fraud until approximately one year later, while Bulthaup had consistently maintained throughout that he wanted his day in court and would never plead. Bulthaup believed and still does that there was enough evidence for what had actually happened that no jury would ever convict.

In the fall of 2015, State's Attorney Anshman Vaidya wrote a letter to Bulthaup, sent to Young, which threatened that if Bulthaup would not plead to the single charge of tax evasion (that Young had not negotiated), they would go in front of a Grand Jury to indict Bulthaup for three Class X felonies (with sentences of 10 years each). Bulthaup refused to be intimidated by the those threatened charges that Young is falsely asserting in his Motion he had already plead down.

The State then obtained such an indictment in November 2016. Bulthaup refused to plea.

The State then threatened to file those charges in Court. Bulthaup again refused.

The State then did file those charges in Court in January 2016 and Bulthaup again refused.

Concurrent with these threats, the State sent a letter to Bulthaup's wife, stating they wanted her to come to their offices and answer all their questions. While admitting it was her right to not appear before them, such a refusal would cause them to go in front of the Grand Jury seeking to charge her with three Class X felonies. Bulthaup's wife had already relapsed into alcoholism, their house was in foreclosure, his car repossessed, and they were financially ruined. The State had been committing serial acts of coercion against Bulthaup from the very beginning and now were threatening his family. They had already told Young in a side conference they had a bad case with "bad witnesses".

It is interesting to note that immediately after Bulthaup was charged with those Class X felonies Vaidya rushed to the defense table and offered to drop those charges if Young could just get his Client to plead to the single tax charge. Bulthaup again refused.

During a discussion about the threatening letters it was brought out that the Judge would ask if "anyone promised, threatened or coerced you in any way?". Bulthaup did not want to plea and was also reticent to lie when the Judge asked this question. Plaintiff asked Young what would happen if he pled but then answered truthfully that it was a coerced confession. Defendant Young then advised his Client that the Judge would not be able to accept a coerced plea; with the consequence that the State's Attorneys wrongful actions would be made apparent and hopefully result in a judicial reprimand of such strongarm tactics while shedding light on how weak the State's case must be. Young also stated the coercive tactics against Bulthaup and his family should thereafter cease; that the State wouldn't dare charge his wife and the case would then proceed to trial which is what Bulthaup wanted.

That is the tactic Bulthaup and Young agreed to and then put in action. Bulthaup would tell the truth that he had been coerced, and Young was then to pick up with an explanation to the Judge while providing the Court the State's Attorney's two letters as the most recent example.

Young says accurately in his Motion that on July 6, 2016, when the Court first queried Bulthaup, if it was his "intention to enter pleas of guilty to the two charges he responded in the affirmative" which is on page 16 of Young's exhibit one.

The truth that Young omits to this honorable Court is that the Judge later had to actually ask Bulthaup if he was pleading guilty, which is on pages 21 & 22 of his exhibit one.

When the Judge did ask, Bulthaup haltingly started to answer as prearranged, but then Young interrupted and rather than explain the coercion says, "May I interject?", but then just added, "Just what was stated previously on the record, other than that". Evidently Young was referencing Bulthaup's previously declared "intention" and entirely changed gears, going totally off script while signaling for Bulthaup to remain still. Young did not follow through as planned and did not describe what was considered prosecutorial misconduct.

The Judge and Young then looked at Bulthaup who parroted his attorney, "Not other than that" without realizing exactly what "that" was or what Young had been referring to, assuming his Counsel was somehow following through as per their previously agreed upon plan of action. That was not the case, Young was improvising.

After Court adjourned, Young was jubilant saying that Judge Guerin had committed "Judicial Error" and that this was great; he could vacate the plea at any time, a week, a month, whenever he wanted, even if Bulthaup should not receive the probation that Young was now positive would be granted. Young was bubbling over at the courts mistake, said their error would avoid the risks of trial, and since the State would not agree to a Rule 204 Conference, if Bulthaup did not get probation, he (Young) would just vacate the plea based on the Judge's error and then go to trial as per the original plan. Since Bulthaup had already lost everything, wouldn't that be good enough if he just kept his Client out of jail? Young gave further assurances that his Client would get probation and not to worry.

But the plea had been coerced. Young on his own initiative and contrary to the agreed upon tactic remained quiet as to the coercion and the plea was wrongfully accepted after Young's unauthorized statement, and that was an act of betrayal that should never have occurred.

This episode with the plea is described in paragraphs 50 through 56 of the Verified Complaint, and Defendant Young's new tactic and failures to act regarding the coerced plea fall far below the standards set forth in **Strickland v. Washington**, 466 U.S. 668 (1984) and so constitute malpractice.

Worse than not meeting the Strickland standard, Young's malpractice reaches a level of betrayal that relieves Bulthaup from having the burden of proving actual innocence, as in **Morris v. Margulis,** and the pleadings in the Verified Complaint herein should therefore be considered as true and so sufficient to go to trial as per court procedure and per **Winnetka Bank v. Mandas**, 202 Ill. App. 3d 373, 397 (1st Dist. 1990).

Notice that at the plea hearing, in Defendant's own exhibit one, it evidences his renewed effort to get the $25,000 bond released to him, this time without informing his Client he would make that attempt his opening priority. As noted on page 5 of this Verified Response, and again as in paragraphs 33 thru 36 in the Verified Complaint; in the first months of this case State's Attorney Anshuman Vaidya had blatantly offered to release the $25,000 bond to Young if he could only get his Client to pled to a single charge of tax evasion.

At this hearing Young must have realized that if he did not obtain the release of the $25,000 before the Judge had to reject his Client's tainted plea, the State would later not support, nor would the Judge agree to release those monies to him.

If the plea was meant to be accepted, Young would have made his argument for the $25,000 reward at the end of the hearing instead of making it his first priority.

A careful reading of the provided transcript begins with a lengthy eight-page discussion starting on page 3 by Young attempting to get the Judge to release those funds to him, all prior to the plea portion of the hearing. State's Attorney Vaidya was not present, and it is readily apparent that Assistants State's Attorney Talbott and Nicholson had not been briefed on Young's side bargain. Young pleads for the money, changing his story as to the use of proceeds, first saying he needed it for investigators, then recognizing there may be a future restitution order, then saying the Court did not need it to insure Bulthaup's continued appearances. An exasperated Judge finally asks Young, "Or is it for your fee?", (on page 9) whereupon Young then finally admits that is the true reason for his request.

The Judge promptly refuses to release the money whereupon Young then asks for an unexpected recess. Plaintiff believes this is when Young began to consider what he should do next to ensure that $25,000 was somehow released to him as promised.

An opportunity soon presented itself as the hearing resumed. Young went off script with his new tactic as described above, allowing the coerced plea to stand while assuring his Client that the plea could be vacated at any future date due to the Judge's error, rather than describe the prosecutorial misconduct per the agreed upon plan. If the case had gone to full trial and Young had lost, he might have expended much more time and effort but without having the $25,000 released to him in the end; since the State's Attorney had promised Young the money only if he could (successfully) get his client to plead.

In **People v. Clark**, 386 Ill.App.3d 673, 899 N.E.2d 342 (3d Dist. 2008), due process requires that guilty pleas be knowing and voluntary. (In the case before us, that should be referenced as to Bulthaup repeating, "Not other than that" as his attorney had then just interrupted and already plead.) A guilty plea made in reliance on the advice of an ineffective attorney may be involuntary. In **Faretta v California 422 U.S. 806, 834 (1975)** quoting **Illinois v Allen, 397 U.S. 337, 350-51 (1970)**, Justice Scalia for the US Supreme Court acknowledged the Framers intentional wording in the Sixth Amendment affords the right to "*assistance"* of counsel. According to the Court, the choice of language reflected the drafter's desire to give control of the defense to the Defendant, and not his lawyer. By Young interjecting the unexpected new strategy of using "Judicial Error" without consulting his own Client, especially after not disclosing he would first make an effort to grab the bond money; Young effectively and wrongfully denied his own Client due process by unilaterally substituting an illegitimate defense strategy, at least in part to safeguard his corrupt bargain with the State to release the $25,000 bond directly to him as reward for getting his Client to plead. That placed Young's Client in harm's way and eventually into prison. The fruits from this conflict of interest was Young's motive and constitutes another act of intentional betrayal. Here, as ruled in **Rosin,** "The attorney's fiduciary duties are breached when an attorney places his own interests above those of the client."

Young's assurance of future probation did not materialize. Young was so sure of this prior assertion that Bulthaup would be recommended for probation that he simply took another case and did not bother to show up as scheduled for the probation interview. Again as in **Rosin**, Young places his own interests above those of his client. Young was to be armed with the citations of precedent which were then thought to be key to a successful outcome with the probation officer. This is described in paragraph's 48 thru 67 of the Verified Complaint. Young's failure to appear constitutes another act of betrayal and was causal to Bulthaup's incarceration and so furthers Plaintiff's claim for damages. There is little doubt the outcome of the plea process would have been very different if Young had shown up, given competent advice and argument.

Young later offered a series of excuses as to why he didn't then file the Motion to Vacate due to judicial error, saying in the first instance that if he did (vacate) he could probably never practice law in front of this Judge again, and later saying he could never practice in all of DuPage County again. Later, Young simply said it was too late despite having first declared that he could vacate at any future date during the entire process, all the while still maintaining since it was his first offense that Bulthaup would get probation. There is a relevant instance of legal malpractice described in **Niziolek v. Chicago Transit Authority, 620 N.E.2d 1097 (Ill. App. 1st Dist. 1993)**, an attorney has the duty to research the law and protect his client's interests. "Representations which a court may find reasonable for a layman to rely upon will not necessarily be considered reasonable for an attorney to rely upon."

Later, the sentence hearing was conducted in three sessions. State's Attorney Vaidya only appeared at the last hearing; and only after a sentence of incarceration was pronounced did Vaidya speak, asking the Judge to release the $25,000 to Michael Young.

Now Young seeks to cover up this malpractice by attempting to hide behind a shield of his own misconduct in the handling of a plea that he himself entered when he interrupted Bulthaup, all in violation of his fiduciary duty to his Client.

Young also provides a transcript of his Client's closing statement (Young's exhibit four) as proof of Bulthaup's admission of guilt. The Court in **Morris** ruled, a "traitorous attorney could defend a (malpractice) action filed by his former client with the plea (by stating): "Well, you were guilty, weren't you?" We will not adopt such a policy." That rule applies to Defendant Young's attempted tactic here, which also fails on the merits.

Bulthaup had read online that he must show remorse and take full responsibility if he were to get probation. The transcript shows Bulthaup did just this, but no more than this. Never once did his Client say in that final statement that he was guilty of anything.

Bulthaup did say he had been negligent in his duties as an Officer of those companies by having failed to be diligent over a few top executives. Bulthaup repeatedly said everything that happened was his fault and his responsibility to prevent, which is true. It was his responsibility to see the business ran right and that staff paid the taxes in full. It was his responsibility to see investor's money was safeguarded, that the bank and the creditors got paid, and that his family was financially secure.

Bulthaup did fail in all those responsibilities and freely admitted it years ago and does again here and now. However….

….while those failures may be sufficient for Bulthaup to be financially liable for the underpayment of sales taxes due, any such failures were not criminal acts.

Bulthaup did not pled guilty as charged in that Closing Statement, nor did he commit the crimes the State alleged, nor commit any other criminal act, and he did not admit actual guilt in his closing statement as Young alleges on page 15 of his analysis. Bulthaup never said anything different than this throughout the entire ordeal, from the very first instant through to his closing statement and that includes to his own attorney Michael Young; with the sole exception of the plea hearing under the direction of Young himself. Bulthaup admits it was his responsibility to see these things did not occur, he never admitted to any criminality other than in the coerced plea, which plea his lawyer had maintained the Judge must be reject.

D. CONCLUSION

This Verified Complaint must be considered as true and Defendant Young is correct when he cites 735 ILCS 5/2-615, on page two of his Motion, captioned "Standard of Review", that it "must be interpreted by the reviewing court in a light most favorable to the Plaintiff (Bulthaup)".

Young incorrectly asserts that his former Client must prove his actual innocence. Young fails to recognize the Illinois Supreme Court exception in **Morris v. Margulis** that the actual innocence rule only bars some malpractice claims, not all malpractice claims. The Court in **Morris** concluded that "the case at hand is not a traditional malpractice claim" (such as this claim is not a traditional complaint) and declined to require the additional burden of proving actual innocence due to the attorney's betrayal of his own client.

For the purposes of this Verified Response, the ruling in **Morris v. Margulis** relieves Plaintiff from having to first prove innocence. The Morris court ruled, "To do otherwise would allow criminal defense attorneys to go so far as to urge juries to convict their clients, and then allow them to defend their actions by arguing that the criminal defendants were found guilty. Then the same traitorous attorney could defend a (malpractice) action filed by his former client with the plea (by stating): "Well, you were guilty, weren't you?" We will not adopt such a policy."

Also in **Morris**, in addition to liquidated damages such as those claimed in Plaintiff's Verified Complaint, that Court ruled damages can be awarded for mental suffering. "We believe that the reasoning of **Doe v. Roe**, 289 Ill. App.3d 116, 681 N.E.2d 640 (1997), is sound. We agree with **Doe** that when an attorney has reason to know that a breach of fiduciary duty is likely to cause emotional distress, damages will be given for mental suffering. We believe that under **Doe,** if Morris otherwise proves his case, damages for emotional distress should be and are recoverable."

A prima facia case has been made in the complaint as to Young's "betrayal" and relevant details of the circumstances have been further detailed here. This betrayal is especially heinous as numerous citations herein are also supported by United States Supreme Court ruling in **Strickland** when it ruled

that a "defense counsel has responsibilities in the plea bargain process which must be met to render the adequate assistance of counsel that the Sixth Amendment requires." A betrayal by an attorney of his fiduciary duties, especially concerning the Constitution of the United States should be considered a serious matter worthy of going to trial. The Illinois Supreme Court in **Morris** relieves Bulthaup from the burden of proving himself innocent due to this very concern.

In this instance, Young's actions meet the standard of betrayal as Defendant embraced an illegitimate and reckless defense strategy concerning the guilty plea without prior agreement or even consultation with his client, after which he led his client down a primrose path with warranties of outcome and false assertions. Young put his own interests ahead of his Client and took the money, all actions that were in breach of his fiduciary duties, amounting to egregious acts of betrayal.

This Court should deny Young's Motion to Dismiss, based on Young's betrayal regarding the coerced plea and his alleged corrupt bargain. Such conduct is exactly that which is described in Morris and is specifically why the Illinois Supreme Court carved out the exception of betrayal.

Young asserts on page 15 of his motion, "there is no set of facts under any circumstances that Bulthaup can allege, nor can Bulthaup prove the necessary elements to establish a prima facia case of legal malpractice". That is simply not true, there is a set of facts and the circumstances have been fully and accurately described.

A careful reading of Bulthaup's Verified Complaint demonstrates that the elements required are indeed present and that Plaintiff did submit to this honorable court with a prima facia case of malpractice.

Plaintiff therefore respectfully requests that Defendant Young's Motion to Dismiss be denied and that we proceed towards trial.

Respectively submitted,

_____

Plaintiff, Ted EC. Bulthaup III, dated this 23rd day of August 2019

Certificate of Service

I hereby affirm that on or before the 26th day of August, 2019, a copy of this Response was provided to defendants by mailing a copy of this Verified Response by regular U.S. Mail, postage prepaid with a certificate of mailing, to Michael J. Young and The Law Office of Michael J. Young, at that office located at 9842 West Roosevelt Rd, Westchester, IL 60154 and afterward by emailing a copy to both esqmichaelyoung@yahoo.com and mike@winwithyoung.com.

_____

Ted E.C. Bulthaup III, dated this 23rd day of August 2019