SECOND CAUSE OF ACTION

Breach of Fiduciary Duties

57. Plaintiff hereby incorporates as paragraph 57 of the instant verified complaint paragraphs 1 through 56.

Young's Acts of Betrayal with a Coerced Plea and its Acceptance

58. Described previously in the original Verified Complaint, Plaintiff was not guilty of the crimes of sales tax evasion or financial institution fraud.

59. While not being guilty as charged, as the Tax Matters Partner Bulthaup did discuss with Young that he was the responsible party under Illinois administrative tax procedures for the repayment of any missing sales tax remittances regardless of the cause. This inherent executive responsibility does not make Bulthaup guilty of any crime.

60. In the instant amended complaint, Bulthaup denies any type of criminal intent or conduct on his part; and further asserts that Defendant Young's knew this, and Young's conduct and assertions surrounding Bulthaup's plea form a basis for Plaintiff's malpractice allegations.

61. Bulthaup always maintained his innocence to Young, even providing documentation to his attorney for his defense including a dozen or more affidavits, an independent audit, highlighted exhibits, bank records, results of a lie detector test and a long narrative describing what happened and where the missing money went.

62. Three of the most egregious acts of malpractice concern Young's violation of his fiduciary duty to Bulthaup by betraying his Client at the plea stage of the criminal proceedings; with the motive of securing $25,000 held by the State for himself in a corrupt bargain.

a) Young suddenly disregarded an agreed upon defense strategy by not arguing in open court that the plea was only being made in response to State's serial acts of coercion, first against Bulthaup and then against his family.

b) Without his client's prior knowledge and consent; Young interjected purposefully to cause a false and unintended guilty plea to be accepted by the Judge in order to have the $25,000 bail bond be released to himself, all to the detriment of his own client and in promotion of his own self-interest. The record shows Young knowingly and intentionally interrupted his Client and plead for him causing the plea to stand in order to obtain the bond money which had been offered to Young by the State in exchange for his getting his Client to plead guilty.

c) Young unilaterally substituted the approved defense strategy for one of "**Judicial Error**" in open court without any discussion or the prior consent of his client, only after the hearing did he explain to Bulthaup the just accepted guilty plea could be vacated at any time for any reason and he would do so if his Client did not receive probation. Letting the plea stand, though fully knowing that it was coerced, was key to Young's having the posted bail bond of $25,000 released to him for his final fee but was also causal to his client's subsequent incarceration and damages.

63. In the early stages of the case, as described in paragraphs 33 through 36 of the instant verified complaint, Young filed a motion to have the entire $25,000 promptly released to him, saying it was necessary to hire investigators and accounting professionals for the defense.

64. The $25,000 was actually to be used to supplement the $60,000 already paid to Young as his retainer. In that instance, Judge Guerin rejected Young's request and only released $1,000 supposedly for investigators (which a disappointed Young never bothered to pick up for any purpose).

65. After the Judge left the bench, State's Attorney Vaidya immediately rushed over and cornered Young where he thought client Bulthaup could not hear. The State's Attorney told Young that he would personally see the bond money was released to Young for his fees <u>if</u> he could just get his client to pled to a single count of tax evasion.

66. The State's Attorney had offered a corrupt bargain to Young, taking the $25,000 bond money that would ordinarily have been retained by the State for fees or later returned to the Defendant. Vaidya was using the power of his office to divert those monies as a bribe if Young could but get his Client to plead in an otherwise admittedly weak case. (The Assistant State's Attorney had previously told Young, "**we know we have bad witnesses**" and later that she knew the accountant for the group who had enriched themselves with the missing taxes money would be **"fired after the case was complete"**).

67. Client Bulthaup had overheard that offer and told Attorney Young he wanted his day in Court.

68. After approximately one year where Young simply adopted a strategy of "stall, stall, stall", the State sent a menacing letter to Young threatening that if Bulthaup did not plead they would go in front of a Grand Jury seeking charges of three Class X Felonies.

69. Bulthaup was certain the State's Attorney would continue their campaign of intimidation but Young continued to assert to his Client that he would "Win with Young!" which is a mantra of his (and which became his website address, <u>www.winwithyoung.com</u>)

70. The State then went in front of a Grand Jury in the Fall of 2015 and obtained the threatened indictment.

71. Mr. Vaidya then phoned Young and threatened to go ahead and file the new charges with the Court just after the Christmas holidays if Young could not get his Client to plead.

72. The State concurrently escalated their pressure campaign by threatening Bulthaup's wife, Cheryl Bulthaup. Vaidya wrote Cheryl a letter stating that he would go in front of a Grand Jury seeking to charge her with felonies if she did not cooperate in convicting her husband.

73. Young explained to Vaidya that Bulthaup's wife did not know anything specific about these matters, that she had only operated a separate Chinese restaurant on the adjacent premises to the cinema.

74. In January 2016 the State did file the Class X charges against Bulthaup, but immediately after the hearing, State's Attorney Vaidya again rushed directly to Young offering to withdraw those new charges altogether if Young could just get Bulthaup to plead to a single charge of tax evasion. Bulthaup again refused.

75. Bulthaup's wife had hired Attorney John Houlihan who then contacted Vaidya and repeated that Cheryl did not know anything. Vaidya said he realized that was possible, but that Cheryl "sleeps with the President, so she must know something". Houlihan responded, "so guilt by association, eh?" whereupon Vaidya just chuckled back and said "yup".

76. Vaidya was clearly attempting to further coerce Plaintiff by threatening his wife while tacitly admitting that she may not know anything, and even though she was not involved in anything as far as the State knew, he would seek to charge her. If Plaintiff Bulthaup didn't plea, Vaidya seemed willing to go to the extreme measure of getting a wrongful indictment against Bulthaup's wife to further put pressure on him.

77. During this time, Young revealed to Bulthaup in passing there had been an accidental meeting with Vaidya in an elevator as Young was leaving the Thompson Center, and that it went on at some length and was very positive but without going into details. Young soon thereafter developed a plan with his Client for a plea hearing.

78. Specifically, Bulthaup was to plead and after the Judge asked if "anyone, promised, threatened or coerced you in any way", Bulthaup was to reply "yes". Young was to then explain to the Court the **coercion** while submitting a copy of the State's threatening letter against his wife as an exhibit.

79. Young assured his Client the Judge could not and would not accept coerced pleas.

80. The plan also included Young asking the Judge to admonish and sanction the State's Attorney for their tactics while demonstrating to the Court how unsure the State was about their own case. The court record was to later be used in front of the jury to show the depth of coercion and the false plea being rejected; thereby undermining the State's case and demonstrate just how desperate they were.

81. A plea hearing was set for June 16, 2016.

82. Bulthaup organized a meeting with two friends of his that were attorneys. One is a former State's Attorney and now a litigator with the Quinlan Law Firm. The other had been a litigator but was then and still is the Senior Trial Attorney for the Security & Exchange Commission. Those two confirmed that a Judge, once knowing a plea was coerced, must reject that plea.

83. At the start of the plea hearing and without first consulting his Client, Young brought up a "**preliminary matter**".

84. On pages 3 through 11 of the courts record, Young again attempted to convince Jude Guerin that he needed the $25,000 bond released. Young asked for "**an issues conference as to the bond. Can we do that now? That was foreseen** (meaning with the State) **that we were going to discuss the bond issues once - - - in advance of the plea."**

84. This was not foreseen by the accused. Young did <u>not</u> make his Client aware that the release of the $25,000 would be discussed at all!

85. Young was also asking that a discussion of the bond proceeds be conducted off the record.

86. Young seemingly switches mid-sentence from later in the proceedings which would seem to be the natural progression to, "**in advance of the plea"**.

87. The Judge would not go to chambers to discuss another attempt by Young to grab the bond money so Young then renewed his request for the record. The transcript further shows Young was being evasive with the Judge as to why the money should now be released to himself, causing the Judge to directly challenge Young if his request **"wasn't really just for his fees"**. Only when challenged did Young admit the truth and the Judge for the second time angrily denied Young's request.

88. It was incumbent upon Young to get the money released first and **before** he brought up the coercion to the Judge and before the Judge rejected the planned plea deal.

89. The corrupt bargain was that money would only be released to Young if he got his Client to plead, and those monies would obviously have never been released if Young also turned around and caused the Judge to throw that same plea out on the basis of what should have been considered prosecutorial misconduct.

90. If Young had proceeded per the approved plan; when the Judge rejected the plea as Young maintained the Court must; the State would never have acquiesced to the release of the $25,000.

91. By Young not informing his Client that the bond would even be discussed and that he first wanted the Judge to release the $25,000 to his own pocket before the actual plea; Young put his own self-interest before his Clients.

92. After Judge Guerin rejected the notion of first giving Young the $25,000, Young then asked "could we pass the case" for a side discussion with his Client, but that discussion was actually with the State and Bulthaup was not privy to it.

93. Young must have then unilaterally determined that he could win his Client probation as a first-time offender while still earning the State's 'bounty' using his Clients own $25,000; judging this would have the same practical effect for his Client who was already broke and had lost everything.

94. State's Attorney Vaidya was not present in Court that day, and it is evident from the transcript that the Assistant State's Attorney only had a rudimentary understanding of the corrupt bargain between her boss and Young.

95. Young breached his fiduciary duties to Bulthaup by placing his own self-interests above those of his Client by accepting a corrupt bargain. The plea portion of the hearing began. Young then proceeded to entirely disregard the agreed upon plan to have Bulthaup's plea rejected by the Court.

96. When the Judge asked, **"Has anybody forced you, threatened you, or promised you something to get you to plead guilty?"** Bulthaup started to say yes, but Young interrupted, saying **"May I interject? Just what was stated previously on the record, other than that"** alluding to the coercion without explaining anything more to the Judge.

97. Notice in Young's Motion to Dismiss, he draws your Honor's attention to page 16, where the Judge simply asked if Bulthaup "intended" to plea? Young conveniently overlooks when Bulthaup was supposed to actually make that plea, which is on pages 21 & 22, where the Judge actually asks that question. This is when Young interrupted his Client saying, "**May I interject**" while signaling his Client to be still. Bulthaup did not voluntarily enter that plea and the entire proceeding had been the result of serial efforts of coercion by the State.

98. After Young's representation, both the Judge and Young looked at Bulthaup for an answer, who then simply parroted his attorney, "**Not other than that**" without understanding what was going on specifically, but assuming Young was proceeding as per the plan.

99. Indeed, Young was no longer operating per his prior agreement with Bulthaup. Young was violating his Client's trust and betraying his fiduciary duty; using a substitute strategy without any consultation while allowing a coerced guilty plea to stand.

100. After the hearing was over Young then 'shooshed' Bulthaup until they left the courtroom and found a secluded place in the hall, whereupon Young excitingly explained to his Client he had hoodwinked the Judge into committing a "**Judicial Error**". Young declared the Judge had "**screwed up**", and that he could vacate that guilty plea at any time in the future and that this is how he wanted to proceed, essentially a *fait accompli*.

101. Young then represented to Bulthaup that he would obtain his Client probation as a first-time offender; Young then judging this would be the same practical effect for his Client who was already broke and had lost everything.

102. By interrupting his client and not following through as per the plan, Young knowingly and intentionally caused that false plea to stand; contrary to everything he and his Client had previously agreed to.

103. Further, by Young unilaterally changing the defense strategy without consulting Bulthaup; Young had adopted a reckless strategy which endangered and subsequently harmed his client, all the while committing grave misconduct in regard to his manipulation of a Judge.

104. The Illinois definition of an act of legal "betrayal" is clear, concise and judicially recognized with *Morris v. Margulis, 307 Ill. App. 3d 1024, 1039, 718 N.E.2d 709, 241 Ill. Dec. 138 (5th Dist. 1999),* there ruling when a criminal defense attorney, "**intentionally work**(s) **to ensure their clients' conviction",** it constitutes betrayal of their fiduciary duties and further that betrayal is actually actionable malpractice for the stated purpose of deterring such **"traitorous**" behavior by defense lawyers.

105. Based on those principles, Young had variously betrayed his fiduciary duties to his Client which is especially heinous in regard to any action with a plea hearing.

106. The act of betrayal in the *Morris* case was when a prior attorney of the Defendant provided the State with questions to ask their former client to aid in getting that client convicted. Here in the case before us, Young similarly acted at the behest of the State to ensure his current Client's conviction in order to guarantee his own payday; excusing his own action and duty to his Client by claiming that he would make sure his Client got probation and therefore his freedom, or otherwise vacate the plea with the stated cause of "**Judicial Error**".

107. Further, in *Morris* an attorney is precluded from using his former Client's guilt or innocence as a defense to a malpractice action, **"This would allow counsel for the defendant to urge the jury in closing argument to convict his client. Then the same traitorous attorney could defend an action filed by his former client with the plea: "Well, you were guilty, weren't you?". We will not adopt such a policy."** The record shows that this is exactly what Young is endeavoring to

accomplish here. Young is now attempting to assert that his reckless unilaterally substitution of his "**Judicial Error**" strategy of allowing the plea to be accepted; rather than having the Judge reject the plea and asking that Judge to sanction the State, should somehow be ethically acceptable and that his very act of betrayal by letting a wrongful guilty plea stand gives him a free pass and a defense against any malpractice claims.

108. While Young failed to have the $25,000 released to him prior to the plea, at the completion on the sentence hearing the following November when State's Attorney Vaidya was present, the corrupt bargain was indeed consummated. Young then walked out of that courtroom with the order to release those funds directly to himself.

109. While still locked away in DuPage County Jail, Young was directed by his client to vacate the plea, Young did not. Soon afterward, Bulthaup was whisked away to the Statesville Correctional Center & NRC and was held incommunicado in a fully enclosed two-man cell for the next three weeks.