

IN THE CIRCUIT COURT FOR BRADLEY COUNTY, TENNESSEE
AT CLEVELAND

TIMOTHY CALEB GANN, b/n/f
TIM GANN and MARY KATHERINE
GANN; and TIM GANN, Individually;
and MARY KATHERINE GANN,
Individually.

Plaintiffs,

vs.

Docket No. V-10-824

BIGLARI HOLDINGS, INC., individually and
d/b/a STEAK N SHAKE; DEBO'S DINERS, INC.
individually and d/b/a STEAK N SHAKE;
STEAK N SHAKE OPERATIONS, INC., d/b/a
STEAK N SHAKE; and JOHN DOE.

Defendants.

FILED

2010 SEP 30 PM 4: 38

GAYLA H. MILLER
CIRCUIT COURT CLERK

COMPLAINT

Plaintiffs, TIM GANN and MARY KATHERINE GANN, individually and as parents and next friends of TIMOTHY CALEB GANN, bring this action against the above-named Defendants to recover all fair, adequate and just compensatory damages and punitive damages and for their cause of action respectfully show the court the following:

I.

PARTY IDENTIFICATION

1. At all times material hereto Tim Gann and Mary Katherine Gann, individually and as parents and next friends of Timothy Caleb Gann, at all

material times were residents and citizens of Cleveland, Tennessee, and presently reside at 1215 Blount Avenue, Cleveland, Bradley County, Tennessee.

2. To Tim Gann and Mary Katherine Gann's knowledge and belief, at all times relevant hereto, Defendant Biglari Holdings, Inc. was the owner, operator and/or franchisor of the business and premises located at 220 Paul Huff Parkway, Cleveland, Tennessee. At all times relevant hereto, Defendant Biglari Holdings, Inc. conducted business at this location under the name of "Steak N Shake." The registered agent for service of process for Biglari Holdings, Inc. is Corporation Service Co. and may be served at 2908 Poston Avenue, Nashville, Tennessee 37203.

3. Defendant Biglari Holdings, Inc. is the parent corporation of Steak N. Shake Operations, Inc. and accordingly, has at all times relevant hereto had a controlling interest in Steak N. Shake Operations, Inc.

4. Defendant Biglari Holdings, Inc. through the use of a common trademark, the use of common controls over business operations as well as the imposition of system standards in conjunction with the business operations of Debo's Diners, Inc. doing business as Steak N Shake, effectively controlled the day-to-day operations of the restaurant at issue, located at 220 Paul Huff Parkway, Cleveland, Tennessee.

5. The use of a common trademark between Biglari Holdings, Inc. and Defendant Debo's Diners, Inc., doing business as Steak N Shake, gave rise to the representation to its customers, including the Plaintiffs that the restaurant at issue being operated by Defendant Debo's Diners, was an agent of Steak N

Shake Operations, Inc., the subsidiary corporation of Biglari Holdings, Inc.

6. Tim Gann and Mary Katherine Gann relied on this representation and reasonably believed that on the night in question, they were doing business with Steak N Shake and not the franchisee personally. Tim Gann, Mary Katherine Gann and their child, Timothy Caleb Gann chose to dine at the restaurant at issue in reliance upon this representation and the quality control standards associated with the Steak N Shake trademark. As a result of dining at the restaurant at issue, Timothy Caleb Gann was given a deleterious substance for consumption which ultimately led to the infliction of severe injuries to his body and permanent damages.

7. Defendant Biglari Holdings, Inc. invited Timothy Caleb Gann and others to come upon said premises for the purpose of purchasing food, beverages and/or other restaurant items. Tim Gann, Mary Katherine Gann and their child, Timothy Caleb Gann were lawfully upon Defendant Biglari Holdings, Inc.'s premises at all times relevant hereto.

8. To Tim and Mary Katherine Gann's knowledge and belief, at all times relevant hereto, Defendant Steak N Shake Operations, Inc. was the owner, operator and/or franchisor of the business and premises located at 220 Paul Huff Parkway, Cleveland, Tennessee. At all times relevant hereto, Defendant Steak N Shake Operations, Inc. conducted business at this location under the name of "Steak N Shake."

9. Defendant Steak N Shake Operations, Inc., through the use of a common trademark, the use of common controls over business operations as

well as the imposition of system standards in conjunction with the business operations of Debo's Diners, Inc. doing business as Steak N Shake, effectively controlled the day-to-day operations of the restaurant at issue, located at 220 Paul Huff Parkway, Cleveland, Tennessee. Defendant Steak N Shake Operations, Inc.'s control over Defendant Debo's Diners, Inc.'s business operations at the restaurant at issue demonstrates the existence of an agency relationship.

10. The use of a common trademark between Defendant Steak N Shake Operations, Inc. and Defendant Debo's Diners, Inc., doing business as Steak N Shake, gave rise to the representation to its customers, including Tim, Mary Katherine and Timothy Caleb Gann, that the restaurant at issue being operated by Defendant Debo's Diners, was an agent of Steak N Shake Operations, Inc. – the principal.

11. Tim, Mary Katherine and Timothy Caleb Gann relied on this representation and reasonably believed that on the night in question, they were doing business with Steak N Shake and not the franchisee. Tim, Mary Katherine and Timothy Caleb Gann chose to dine at the restaurant at issue in reliance upon this representation and the quality control standards associated with the Steak N Shake trademark. As a result of dining at the restaurant at issue, Timothy Caleb Gann was given a deleterious substance for consumption, which ultimately led to the infliction of severe injuries to his body and permanent damages.

12. Defendant Steak N Shake Operations, Inc. invited Timothy Caleb Gann and others to come upon said premises for the purpose of purchasing

food, beverages and/or other restaurant items. Tim, Mary Katherine and Timothy Caleb Gann were lawfully upon Defendant Steak N Shake Operations, Inc.'s premises at all times relevant hereto.

13. Defendant Steak N Shake Operations, Inc. is an active foreign corporation registered with the Tennessee Department of State with its principal office being located at 500 Century Building 36 S. Pennsylvania Street, Indianapolis, IN 46204. The registered agent for service of process for Defendant Steak N Shake Operations, Inc. is Corporation Service Co. and may be served at 2908 Poston Avenue, Nashville, Tennessee 37203.

14. To Tim and Mary Katherine Gann's knowledge and belief, at all times relevant hereto, Defendant Debo's Diners, Inc. was the owner and/or operator of the business and premises located at 220 Paul Huff Parkway, Cleveland, Tennessee. At all times relevant hereto, Defendant Debo's Diners, Inc. conducted business at this location under the name of "Steak N Shake."

15. Defendant Debo's Diners, Inc. invited Timothy Caleb Gann and others to come upon said premises for the purpose of purchasing food, beverages and/or restaurant items. Tim, Mary Katherine and Timothy Caleb Gann were lawfully upon Defendant Debo's Diners, Inc.'s premises at all times relevant hereto.

16. Defendant Debo's Diners Inc. is a domestic corporation registered with the Tennessee Department of State with a principal office being located at 7625 Hamilton Park Drive, Suite 26, Chattanooga, TN 37421. The registered agent for service of process for Defendant Debo's Diners, Inc. is Debra S.

Richman and may be served at 7625 Hamilton Park Drive, Suite 26,
Chattanooga, Tennessee.

17. Defendant John Doe, was at all times relevant hereto an employee and/or agent of Defendant Debo's Diners, Inc., Defendant Steak N Shake Operations, Inc. and/or Defendant Biglari Holdings, Inc. Defendant John Doe was the employee who served Tim, Mary Katherine and Timothy Caleb Gann at the Steak 'n' Shake restaurant located at 220 Paul Huff Parkway, Cleveland, Tennessee on the date at issue. The identity of Defendant John Doe and his current whereabouts are unknown to the Plaintiffs at this time.

II.

JURISDICTION AND VENUE

18. Since the injury at issue occurred in Cleveland, Bradley County, Tennessee, jurisdiction is proper in Bradley County. Venue is proper in the Bradley County Circuit Court.

III.

FACTS

19. On or about October 9, 2009, Tim, Mary Katherine and Timothy Caleb Gann arrived at the place of business operating as "Steak N Shake" located at 220 Paul Huff Parkway, Cleveland, Tennessee, for the purpose of having dinner with family and friends. Timothy Caleb Gann ordered chili from the menu provided to him by a Steak N Shake employee.

20. Defendant John Doe, the Steak 'N' Shake employee who served Tim, Mary Katherine and Timothy Caleb Gann, asked Timothy Caleb Gann if he

would like "hot sauce" with his order. Timothy Caleb Gann acquiesced to this offer, under the reasonable belief that the "hot sauce" was a product customarily served by Steak N Shake to its customers.

21. When Defendant John Doe, the employee of Steak N Shake, delivered the Tim, Mary Katherine and Timothy Caleb Gann's orders to their table, he gave a bottled substance to Timothy Caleb Gann, which he described as "hot sauce."

22. Defendant John Doe failed to warn Timothy Caleb Gann and/or Tim and Mary Katherine Gann concerning the deleterious nature of the substance contained in the bottle that he gave to him. Furthermore, Defendant John Doe encouraged and induced Timothy Caleb Gann to consume the substance.

23. Timothy Caleb Gann, in reliance upon the representation(s) made by Defendant John Doe, and without notice or warning as to the deleterious nature of the substance, applied the substance provided by Defendant John Doe to his chili, under the reasonable belief that it was a product that Steak N Shake customarily serves to its customers.

24. Soon after ingesting the chili mixed with the substance provided by Defendant John Doe, Timothy Caleb Gann began to suffer a severe physical reaction. The physical reaction suffered by Timothy Caleb Gann included the flaring-up of hives on his skin, difficulty breathing and severe pain and inflammation of his digestive system including his mouth and throat.

25. Shortly thereafter, Tim Gann and Mary Katherine Gann transported Timothy Caleb Gann to Skyridge Medical Center in Cleveland, Tennessee, for

immediate medical treatment of the severe physical symptoms he suffered as a result of ingesting the deleterious substance provided by Defendant John Doe, the employee of Steak N Shake.

26. Subsequently, Tim Gann called the manager of the business operating as Steak N Shake on 220 Paul Huff Parkway in Cleveland, Tennessee to report the injuries suffered by his son, Timothy Caleb Gann. During this conversation, the manager advised him that the deleterious substance given to Timothy Caleb Gann had been identified as "Mega Death Hot Sauce."

27. The deleterious substance at issue, Mega Death Hot Sauce, "contains ingredients 500 times hotter than a jalapeño chili," as is claimed by the manufacturer of the substance: "Blair's Sauces and Snacks."

28. Neither the restaurant at issue, nor its parent(s), franchisor(s), agent(s) or employee(s) offered any notification or warning, verbally or otherwise, to Tim, Mary Katherine and Timothy Caleb Gann concerning the substituted product, which was a direct and proximate cause of Timothy Caleb Gann's injuries – Mega Death Hot Sauce.

IV.

CAUSES OF ACTION

A. *Claims Against Defendant Biglari Holdings, Inc.*

29. The allegations contained in paragraphs one (1) through twenty-eight (28) above, are hereby incorporated by reference as if stated fully herein.

30. To Tim, Mary Katherine and Timothy Caleb Gann's knowledge and

belief, Defendant Biglari Holdings was at all times relevant hereto, the parent corporation of Defendant Steak N Shake Operations, Inc. and had a controlling interest in its subsidiary, Defendant Steak N Shake Operations, Inc.

31. Defendant Biglari Holdings at all times relevant hereto had a duty of ordinary care to Steak N Shake customers, including Tim, Mary Katherine and Timothy Caleb Gann, to implement the appropriate controls and/or operating procedures at Steak N Shake restaurants and to ensure that they were in place (including the restaurant at issue) to (1) ensure that the food products served at its restaurants would be reasonably safe for the consumption of its customers, including the Plaintiffs; (2) to restrict the use of outside food products served to its customers; (3) warn customers, including the plaintiffs, of the nature of substituted food products that were served; and (4) ensure the exercise ordinary care to protect customers, including Timothy Gann from injury.

32. Defendant Biglari Holdings breached its duty to implement the appropriate controls and/or operating procedures and to ensure that they were in place at the Steak N Shake Restaurant at issue. As a proximate result of this breach, Timothy Caleb Gann was given a deleterious substance for consumption and suffered severe injuries which resulted in significant and permanent damages.

33. Defendant Biglari Holdings at all times relevant hereto had a duty to implement the appropriate controls and/or operating procedures at Steak N Shake restaurants and to ensure that they were in place (including the restaurant at issue) to ensure that employees hired by Steak N Shake restaurants were

individuals who would be reasonably safe employees who would not place its customers in harm's way.

34. As a proximate result of Defendant Biglari Holdings, Inc.'s breach of its duty of ordinary care to Tim, Mary Katherine and Timothy Caleb Gann, Defendant John Doe was not properly screened prior to employment and was negligently hired by the restaurant at issue, Steak N Shake. Furthermore, as a proximate result of this negligence, Timothy Caleb Gann suffered injuries from the deleterious substance given to him by Steak N Shake's employee, Defendant John Doe.

35. At all times relevant hereto, Defendant John Doe was the employee and/or agent of Defendant Biglari Holdings, Inc. and the Steak N Shake restaurant at issue and was acting within the course and scope of his employment therefor. Accordingly, Defendant Biglari Holdings, Inc. is vicariously liable for the actions of Defendant John Doe, including but not limited to his negligent acts that caused Timothy Caleb Gann's injuries and damages.

B. Claims Against Defendant Steak N Shake Operations, Inc.

36. The allegations contained in paragraphs one (1) through thirty-five (35) above are hereby incorporated by reference as if stated fully herein.

37. Defendant Steak N Shake Operations, Inc. at all times relevant hereto owed a duty of ordinary care to its customers, including Tim, Mary Katherine and Timothy Caleb Gann, to implement the appropriate controls and/or

operating procedures at Steak N Shake restaurants (including the restaurant at issue) and to ensure that they were in place to: (1) ensure that the food products served at its restaurants would be reasonably safe for the consumption of its customers, including the Plaintiffs; (2) to restrict the use of outside food products served to its customers; (3) warn customers, including the plaintiffs, of the nature of substituted food products that were served; and (4) ensure the exercise of ordinary care to protect customers, including Timothy Gann from injury.

38. Defendant Steak N Shake Operations, Inc. breached its duty of ordinary care to implement the appropriate controls and/or operating procedures and to ensure that they were in place in the Steak N Shake restaurant at issue and as a proximate result of this breach, Timothy Caleb Gann was given a deleterious substance for consumption and suffered severe injuries which resulted in significant and permanent damages.

39. Defendant Steak N Shake Operations, Inc. at all times relevant hereto had a duty of ordinary care to implement the appropriate controls and/or operating procedures at Steak N Shake restaurants (including the restaurant at issue) and to ensure that they were in place to ensure that employees that were hired were individuals who would be reasonably safe employees who would not place its customers in harm's way.

40. Defendant Steak N Shake Operations, Inc. at all times relevant hereto owed a duty of ordinary care to its customers, including Tim, Mary Katherine and Timothy Caleb Gann, to ensure that employees were hired who were reasonably safe individuals who would not place Steak N Shake customers

in harm's way.

41. Defendant Steak N Shake Operations, Inc. breached its duty of ordinary care owed to Tim, Mary Katherine and Timothy Caleb Gann by failing to implement and/or ensure that the appropriate hiring procedures were in place at the Steak N Shake Restaurant at issue to ensure the reasonable safety of its customers, including the Plaintiffs. As a proximate result of this breach, Timothy Caleb Gann suffered severe injuries that resulted in significant and permanent damages.

42. In the alternative, even if the appropriate hiring procedures were in place, the employees and/or agents of Defendant Steak N Shake Operations, Inc. failed to properly execute the procedures at the restaurant in issue and as a proximate result, Defendant John Doe was not properly screened prior to employment and was negligently hired for employment at the restaurant at issue. This breach of Defendant Steak N Shake Operations, Inc.'s duty of ordinary care was a proximate cause of Timothy Caleb Gann's injuries.

43. At all times relevant hereto, Defendant John Doe was the employee and/or agent of Steak N Shake Operations, Inc. and was acting within the course and scope of his employment with Defendant Steak N Shake Operations, Inc. Accordingly, Defendant Steak N Shake Operations, Inc. is vicariously liable for the actions of Defendant John Doe, including but not limited to his negligent acts that caused Timothy Caleb Gann's injuries.

C. Claims Against Debo's Diners, Inc.

44. The allegations contained in paragraphs one (1) through forty-three (43) above are hereby incorporated by reference as if stated fully herein.

45. Defendant Debo's Diners, Inc. at all times relevant hereto owed a duty of ordinary care to its customers, including Tim, Mary Katherine and Timothy Caleb Gann, to implement the appropriate controls and/or operating procedures at the Steak N Shake restaurant at issue and ensure they were in place to: (1) ensure that the food products it served at its restaurants would be reasonably safe for the consumption of its customers, including the Plaintiffs; (2) to restrict the use of outside food products served to its customers; (3) warn customers, including the plaintiffs, of the nature of substituted food products that were served; and (4) to exercise ordinary care to protect customers, including Timothy Gann from injury.

46. Defendant Debo's Diners, Inc. breached its duty to implement the appropriate controls and/or operating procedures at the Steak N Shake restaurant at issue and to ensure that they were in place and as a proximate result of this breach, Timothy Caleb Gann was given a deleterious substance for consumption and suffered severe injuries which resulted in significant and permanent damages.

47. Defendant Debo's Diners, Inc. breached its duty of ordinary care owed to Tim, Mary Katherine and Timothy Caleb Gann by failing to ensure that

only food products that were reasonably safe for human consumption were offered to its customers, including the Plaintiffs. As a proximate result of this breach, a deleterious substance was given to Timothy Caleb Gann for consumption from which he suffered severe injuries that resulted in significant and permanent damages.

48. Defendant Debo's Diners, Inc. at all times relevant hereto had a duty to implement the appropriate controls and/or operating procedures at the Steak N Shake restaurant at issue and to ensure that they were in place to ensure that employees hired by the restaurant at issue were individuals who would be reasonably safe employees who would not place its customers in harm's way.

49. Defendant Debo's Diners, Inc. at all times relevant hereto owed a duty of ordinary care to its customers, including Tim, Mary Katherine and Timothy Caleb Gann, to ensure that employees were hired who were reasonably safe individuals who would not place Steak N Shake customers, including Tim, Mary Katherine and Timothy Caleb Gann, in harm's way.

50. Defendant Debo's Diners, Inc. breached its duty of ordinary care to Tim, Mary Katherine and Timothy Caleb Gann by failing to implement and/or ensure that the appropriate hiring procedures at the restaurant at issue were in place to ensure the reasonable safety of its customers, including Tim, Mary Katherine and Timothy Caleb Gann. As a proximate result of this breach, Timothy Caleb Gann suffered severe injuries that resulted in significant and permanent damages.

51. Defendant Debo's Diners, Inc. breached its duty of ordinary care to hire reasonably safe employees who would not place its customers in harm's way. Defendant Debo's Diners, Inc.'s breach of its duty of ordinary care owed to Tim, Mary Katherine and Timothy Caleb Gann was a proximate cause of the injuries suffered by Timothy Caleb Gann.

52. In the alternative, even if the reasonable hiring procedures were in place, Defendant Debo's Diners Inc. and/or its employees and/or agents failed to properly execute said procedures and as a proximate result, Defendant John Doe was not properly screened prior to employment and was negligently hired by Defendant Debo's Diners, Inc. for employment at the restaurant at issue. This breach of Defendant Debo's Diners, Inc.'s duty of ordinary care to Tim, Mary Katherine and Timothy Caleb Gann was a proximate cause of Timothy Caleb Gann's injuries.

53. At all times relevant hereto, Defendant John Doe was the employee and/or agent of Defendant Debo's Diners, Inc. and was acting within the course and scope of his employment with Defendant Debo's Diners, Inc. Accordingly, Defendant Debo's Diners, Inc. is vicariously liable for the actions of Defendant John Doe, including but not limited to his negligent acts that were a proximate cause of Timothy Caleb Gann's injuries.

D. Claims Against Defendant John Doe

54. The allegations contained in paragraphs one (1) through fifty-three

(53) above are hereby incorporated by reference as if stated fully herein.

55. Defendant John Doe was an employee of the restaurant at issue on the date in question, and was serving Tim, Mary Katherine and Timothy Caleb Gann on the date and time that Timothy Caleb Gann was injured.

56. Defendant John Doe owed a duty of ordinary care to the customers he served at the restaurant in issue, including Tim, Mary Katherine and Timothy Caleb Gann. This duty included but was not limited to refraining from giving deleterious substances to Timothy Caleb Gann for consumption. This duty of ordinary care also included affirmatively warning Timothy Caleb Gann of the deleterious nature of the substance that he gave to Timothy Caleb Gann for consumption. Additionally, Defendant John Doe's duty of ordinary care owed to the Plaintiffs included refraining from encouraging and/or inducing Timothy Caleb Gann to consume the deleterious substance at issue, which is known to be five hundred (500) times hotter than a jalapeño chili.

57. Defendant John Doe breached the duty of ordinary care that he owed to the Plaintiffs by giving a deleterious substance to Timothy Caleb Gann for consumption.

58. Defendant John Doe breached the duty of ordinary care that he owed to the Plaintiffs by failing to warn Timothy Caleb Gann of the deleterious nature of the substance that he gave to Timothy Caleb Gann for consumption.

59. Defendant John Doe further demonstrated a breach of his duty of ordinary care by encouraging and inducing Timothy Caleb Gann to consume the deleterious substance at issue.

60. Defendant John Doe's breach of the standard of care that he owed to Tim, Mary Katherine and Timothy Caleb Gann was a proximate cause of the severe injuries suffered by Timothy Caleb Gann and the resulting damages sustained by the Plaintiffs.

61. When Defendant John Doe gave the deleterious substance, which is known to be five hundred times hotter than a jalapeño chili, to Timothy Caleb Gann for consumption without warning him as to its deleterious nature and encouraging and/or inducing Timothy Caleb Gann to consume the substance, he was aware of and consciously disregarded a substantial and unjustifiable risk of such a nature that its disregard constituted a gross deviation from the standard of care that an ordinary person would exercise under all of the circumstances.

62. Defendant John Doe's action(s) of encouraging and/or inducing Timothy Caleb Gann to consume the deleterious substance at issue, without rendering him any prior warning as to the deleterious nature of the substance constituted reckless indifference to the health and safety of Timothy Caleb Gann. As a proximate result of Defendant John Doe's reckless, and/or willful actions toward Timothy Caleb Gann, Timothy Caleb Gann suffered severe pain and injuries that resulted in significant and permanent damages.

63. As a proximate result of Defendant John Doe's negligent, reckless, and/or willful actions, Timothy Caleb Gann suffered severe pain and anguish and was required to seek medical care and treatment at significant expense to the Plaintiffs, and in the future he will incur further expenses. His capacity and ability to perform work and to enjoy the everyday pleasures and associations of life

have been permanently damaged, restricted and impaired.

64. Tim, Mary Katherine and Timothy Caleb Gann sustained damages resulting from the medical care reasonably required to treat Timothy Caleb Gann's injuries resulting from the actions of one or more of the Defendants and will incur additional reasonable and necessary healthcare expenses. Pursuant to Tenn. Code Ann. § 24-5-113, copies of the reasonable and necessary healthcare expenses to date that are currently in the Plaintiffs' possession are attached hereto.

WHEREFORE, PREMISES CONSIDERED, Tim, Mary Katherine and Timothy Caleb Gann pray that this Honorable Court enter a judgment against the Defendants jointly and severally for compensatory damages for the injuries suffered by Timothy Caleb Gann in a sum in excess of ten thousand dollars (\$10,000).

Furthermore, Tim, Mary Katherine and Timothy Caleb Gann pray that this Honorable Court enter a judgment against the Defendants jointly and severally for punitive damages in an amount in excess of fifty thousand dollars (\$50,000.00).

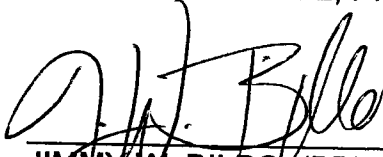
The Plaintiffs respectfully request that this Court award them all other relief that it may deem just and proper.

**TIM GANN and MARY KATHERINE
GANN, Individually and as parents
and best next friends of TIMOTHY
CALEB GANN, a minor child.**

Plaintiffs by Attorney,

BILBO LAW OFFICE, P.C.

By:



JIMMY W. BILBO, (BPR#11408)

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COST BOND

We, the undersigned Principal and Surety, do hereby acknowledge ourselves as security for the costs of this cause, not to exceed \$1,000.00.

TIM GANN and MARY KATHERINE
GANN, Individually and as parents
and best next friends of TIMOTHY
CALEB GANN, a minor child.

PRINCIPAL BY ATTORNEY

BILBO LAW OFFICE, P.C. Surety, by

