

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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EQUAL EMPLOYMENT OPPORTUNITY	:	
COMMISSION,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	NO.: 1-03-cv-04617
v.	:	
	:	
MORAN FOODS INC.	:	
d/b/a SAVE-A-LOT, LTD.,	:	
	:	
Defendant,	:	
	:	
<b>and</b>	:	
	:	
DAVID MIZEREK,	:	
	:	
Third Party Plaintiff,	:	
	:	
v.	:	
	:	
1) MORAN FOODS INC.	:	
d/b/a SAVE-A-LOT, LTD.,	:	<b>THIRD PARTY COMPLAINT</b>
2) DENISE MORTON, individually,	:	
3) FRANK CALDERONI, individually, :	:	
4) JOHN DOE(S),	:	
	:	
Third Party Defendants.	:	

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**NATURE OF THE ACTION**

The plaintiff files this complaint as an intervener pursuant to 42 U.S.C. Section 2000(e) 5(f)1,

- A. to protect his individual rights and remedies under Title VII of the Civil Rights Act of 1964 and Title 1 of the Civil Rights Act of 1991 based upon gender discrimination, sexually hostile work environment, unlawful retaliation, and
- B. to assert his state law claims which arise from the same nucleus of operative facts against the Defendant Moran Foods, Inc. and other individual defendants, and
- C. to add individual defendants, Denise Morton and Frank Calderoni, who plaintiff allege actively participated in the unlawful conduct against him.

## **PARTIES**

Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and who has filed a Complaint against the defendant in this court having the following caption: Equal Employment Opportunity Commission v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd., Civil Action No. 1-03-cv-04617.

David Mizerek ("Mizerek"), third party plaintiff, is an individual who has a statutory right to intervene in this action to protect his individual rights to bring an action for compensatory damages and to enforce his independent state rights actions under the pendent jurisdiction of this court.

The Third Party Defendant Moran Foods, Inc., d/b/a Save-A-Lot, Ltd. ("Save-A-Lot") (the "Employer") is a corporation who has at all times relevant to the allegations herein been continuously doing business in the State of New Jersey, County of Cape May and City of Rio Grande and has had at least 15 employees.

Denise Morton ("Morton"), third party defendant, is an individual who at all times relevant herein was employed by Save-A-Lot as a store manager in the Rio Grande store and directly supervised the Third Party Plaintiff.

Frank Calderoni ("Calderoni"), third party defendant, is an individual who at all times relevant herein was employed by Save-A-Lot as a district manager having responsibility for their Rio Grande store.

The Third Party Defendant(s) John Doe(s) represent person(s) who participated in the unlawful discrimination against Mr. Mizerek and whose identities and liability to Mr. Mizerek are presently unknown but are being identified as "John Does" in order to

provide notice that other defendants may be identified and to preserve Mr. Mizerek's claims, if any, against them.

**COUNT ONE**

**Sex Discrimination (Title VII) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

1. At all times relevant herein the Plaintiff was employed as an assistant manager by the Defendant at the Save-A-Lot retail store located in Rio Grande, New Jersey from February 2001 until June 12, 2002 at which time he was terminated.

2. At all time relevant herein, Morton was acting as the store manager at the Save-A-Lot store in the State of New Jersey, County of Cape May and City of Rio Grande.

3. In her capacity as store manager, Morton was placed in a position of apparent authority by the employer to supervise and control the work environment and to implement the employer's policies and procedures.

4. During Morton's physical presence in the Rio Grande Save-A-Lot store, she was acting within the scope of her employment and apparent authority.

5. During the Plaintiff's employment the Morton created a work environment permeated by sexually offensive language and conduct, intimidation, ridicule and insult that was directed toward the plaintiff and was both severe and pervasive occurring on a daily basis.

6. The sexually offensive language and conduct included, among other things, the flashing of Morton's panties and bra, regular comments about her sexual affairs and desires and in particular her willingness to engage in extramarital sexual encounters, calling Mr. Mizerek from her home while he was at the store to make sexually provocative comments, stating that she "wanted an all-women store," and

making other disparaging comments degrading the male sex and Mr. Mizerek in particular that were not made to female employees who were similarly situated.

7. The sexually offensive language and conduct described herein was unwelcomed by the Plaintiff and the subject of repeated complaints by the Plaintiff to representatives of the Defendant.

8. The Employer knew or should have known of the sexually offensive language and conduct and the hostile work environment that resulted therefrom because the Employer received complaints about such environment from the Plaintiff and others.

9. At all times relevant herein, the Employer failed to adopt, implement or monitor a reasonable and effective policy and complaint mechanism for the prevention of sex discrimination and hostile work environment at their Rio Grande Save-A-Lot store.

10. Despite the Plaintiff's complaints, the Defendant failed to take any appropriate remedial action toward eliminating the hostile work environment.

11. The aforesaid actions and omissions by the Employer adversely impacted upon the terms and conditions of Mr. Mizerek's employment by making Mr. Mizerek emotionally tormented to the extent that Morton eventually caused his termination.

12. Morton retaliated against Plaintiff because of his repeated complaints, objections, and refusal to accept and/or participate in the aforesaid sexually offensive language and conduct.

13. Morton's conduct toward Mizerek in the form of sexual harassment and her participation in his termination was motivated because of his sex, male.

14. The aforesaid actions and omissions by the Employer render it liable to Mizerek based upon the doctrine of respondeat superior.

15. The aforesaid actions and omissions by the Employer render it liable to Mizerek based upon negligence.

16. The aforesaid actions and omissions by the Employer render it liable to Mizerek based upon the direct participation in unlawful conduct by upper management of the Employer.

17. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

## **COUNT TWO**

### **Hostile Work Environment (Title VII) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

18. The allegations set forth in Count One, paragraphs one through seventeen are incorporated in Count Two as if same were fully set forth at length herein.

19. The aforesaid conduct by the Employer constitutes sexual discrimination against Mizerek based upon a hostile work environment in violation of Title VII.

20. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation,

embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

### COUNT THREE

#### Retaliation (Title VII) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.

21. The allegations set forth in Count One, paragraphs one through seventeen, and Count Two, paragraphs eighteen through twenty are incorporated in Count Three as if same were fully set forth at length herein.

22. Morton's demeaning and abusive actions toward Mizerek, made it evident that Mizerek had no future employment opportunity with Save-A-Lot.

23. The aforesaid action and omissions against Mizerek constitute unlawful retaliatory action by the Employer in violation of Title VII.

24. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT FOUR**

**Sex Discrimination (NJLAD) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

25. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty and Count Three, paragraphs twenty-one through twenty-four are incorporated in Count Four as if same were fully set forth at length herein.

26. The aforesaid actions and omissions against Mizerek by the Employer constitute unlawful discrimination based upon sex in violation of the New Jersey Law Against Discrimination.

27. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT FIVE**

**Hostile Work Environment (NJLAD) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

28. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, and Count Four, paragraphs twenty-five through twenty-seven are incorporated in Count Five as if same were fully set forth at length herein.

29. The aforesaid conduct against Mizerek by the Employer constitutes sexual discrimination based upon a hostile work environment in violation of New Jersey Law Against Discrimination.

30. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

#### **COUNT SIX**

##### **Retaliation (NJLAD) v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

31. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven and Count Five, paragraphs twenty-eight through thirty are incorporated in Count Six as if same were fully set forth at length herein.

32. The aforesaid action and omissions against Mizerek constitute unlawful retaliatory action by the Employer in violation of New Jersey Law Against Discrimination

33. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent



injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT SEVEN**

**Constructive Discharge in violation of Public Policy (NJLAD)**

**v. Moran Foods, Inc. d/b/a Save-A-Lot, Ltd.**

34. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, and Count Six, paragraphs thirty-one through thirty-three are incorporated in Count Seven as if same were fully set forth at length herein.

35. The aforesaid actions and omissions against Mizerek by the Employer by terminating Mizerek's employment was in violation of the public policy of the State of New Jersey.

36. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT EIGHT**

**Sex Discrimination (NJLAD) v. Denise Morton**

37. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty three and Count Seven, paragraphs thirty-four through thirty-six are incorporated in Count Eight as if same were fully set forth at length herein.

38. Morton was placed in charge of the working environment and had direct supervision of Mizerek and her actions and omissions constitute a direct and active participation in the unlawful discrimination against Mizerek.

39. Morton aided and abetted the Employer's discrimination, harassment and retaliatory conduct against Mizerek by, among other things, directly participating in the discrimination, harassment and retaliatory conduct through her comments and conduct that included attempts to coerce and intimidate other employees to lie to the persons who were investigating claims of hostile work environment at the Save-A-Lot store in Rio Grande, New Jersey.

40. Morton conspired with Calderoni to intentionally avoid responsibility for the discrimination, harassment and retaliatory action taken against Mizerek by the Employer.

41. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT NINE**

**Sex Discrimination (NJLAD) v. Frank Calderoni**

42. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six and Count Eight, paragraphs thirty-seven through forty-one are incorporated in Count Nine as if same were fully set forth at length herein.

43. Calderoni aided and abetted the Employer's sex discrimination, harassment and retaliatory conduct against Mizerek by, among other things, being an active part of upper management who directly participated in not only the failure to implement and effectively monitor policies and practices prohibiting sex discrimination and harassment, but by failing take remedial action to eliminate the sex discrimination and hostile work environment complained of by Mizerek.

44. Calderoni conspired with Morton to intentionally avoid responsibility for the discrimination, harassment and retaliatory action taken against Mizerek by the Employer.

45. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT TEN**

**Hostile Work Environment v. Denise Morton**

46. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, and Count Nine, paragraphs forty-two through forty-five are incorporated in Count Ten as if same were fully set forth at length herein.

47. Morton's actions included a direct and active participation in the creation of a sexually hostile work environment imposed upon Mizerek in violation of NJLAD.

48. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT ELEVEN**

**Hostile Work Environment v. Frank Calderoni**

49. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, Count Nine, paragraphs forty-two through forty-five, and Count Ten, paragraphs forty-six through forty-eight are incorporated in Count Eleven as if same were fully set forth at length herein.

50. Calderoni's actions included a direct and active participation in the creation of a sexually hostile work environment imposed upon Mizerek in violation of NJLAD.

51. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**COUNT TWELVE**

**Retaliation (NJLAD) v. Denise Morton**

52. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-

seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, Count Nine, paragraphs forty-two through forty-five, Count Ten, paragraphs forty-six through forty-eight, and Count Eleven, paragraphs forty-nine through fifty-one are incorporated in Count Twelve as if same were fully set forth at length herein.

53. Morton's actions included a direct and active participation in the loss of future employment opportunity and termination imposed upon Mizerek in violation of NJLAD.

54. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

### **COUNT THIRTEEN**

#### **Retaliation (NJLAD) v. Frank Calderoni**

55. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, Count Nine, paragraphs forty-two through forty-five, Count Ten, paragraphs forty-six through forty-eight, Count

Eleven, paragraphs forty-nine through fifty-one, and Count Twelve, paragraphs fifty-two through fifty-four are incorporated in Count Thirteen as if same were fully set forth at length herein.

56. Calderoni's actions included a direct and active participation in the loss of future employment opportunity and termination imposed upon Mizerek in violation of NJLAD.

57. As a direct and proximate result of the aforesaid violations of the Plaintiff's civil rights, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

#### **COUNT FOURTEEN**

##### **Intentional Infliction of Emotional Distress v. Denise Morton**

58. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, Count Nine, paragraphs forty-two through forty-five, Count Ten, paragraphs forty-six through forty-eight, Count Eleven, paragraphs forty-nine through fifty-one, Count Twelve, paragraphs fifty-two through fifty-four, and Count Thirteen, paragraphs fifty-five through fifty-seven are incorporated in Count Fourteen as if same were fully set forth at length herein.

59. Morton's actions were intentional, malicious and without justification, for the purpose of causing Mizerek severe emotional distress and harm.

60. As a direct and proximate result of the aforesaid intentional infliction of emotional distress by Morton, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

#### **COUNT FIFTEEN**

##### **Intentional Infliction of Emotional Distress v. Frank Calderoni**

61. The allegations set forth in Count One, paragraphs one through seventeen, Count Two, paragraphs eighteen through twenty, Count Three, paragraphs twenty-one through twenty-four, Count Four, paragraphs twenty-five through twenty-seven, Count Five, paragraphs twenty-eight through thirty, Count Six, paragraphs thirty-one through thirty-three, Count Seven, paragraphs thirty-four through thirty-six, Count Eight, paragraphs thirty-seven through forty-one, Count Nine, paragraphs forty-two through forty-five, Count Ten, paragraphs forty-six through forty-eight, Count Eleven, paragraphs forty-nine through fifty-one, Count Twelve, paragraphs fifty-two through fifty-four, Count Thirteen, paragraphs fifty-five through fifty-seven, and Count Fourteen, paragraphs fifty-eight through sixty are incorporated in Count Fifteen as if same were fully set forth at length herein.

62. Calderoni's actions were intentional, malicious and without justification, for the purpose of causing Mizerek severe emotional distress and harm.



63. As a direct and proximate result of the aforesaid intentional infliction of emotional distress by Calderoni, the Plaintiff has suffered emotional distress, pain, humiliation, embarrassment, loss of employment, loss of income, loss of quality of life, permanent injury, medical expenses and the fees and costs associated with the prosecution of this claim, all of which injuries and losses will continue into the future.

WHEREFORE, Mizerek demands judgment against the Employer for compensatory damages, punitive damages, attorney's fees and costs and such additional relief, statutory or equitable, as the Court deems appropriate.

**DEMAND FOR JURY**

Plaintiff hereby demands a trial by jury as to all issues.

LOUIS P. MCFADDEN, JR., P.C.

2/23/04  
Dated

s/Louis P. McFadden, Jr.  
By: Louis P. McFadden, Jr.,  
Attorney for David Mizerek