

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2010 SEP 14 PM 3:44

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY

**DELIVERANCE POKER, LLC,**  
**Plaintiff,**

v.

**TILTWARE, LLC AND**  
**MICHAEL MIZRACHI,**  
**Defendants.**

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10-CV-664-JRN

**ORDER**

Before the Court in the above-entitled and styled cause of action is Deliverance Poker, LLC's ("Plaintiff") Motion Requesting Injunctive Relief. (Clerk's Dkt. #2). On September 8, 2009, this Court denied Plaintiff's Motion for Temporary Restraining Order (Clerk's Dkt. #3). In response to this Court's written Order, Plaintiff filed an Amended Memorandum in Support of a second Motion for Temporary Restraining Order. (Clerk's Dkt. #8). After reviewing Plaintiff's amended pleadings, this Court denied Plaintiff's second Motion for Temporary Restraining Order. This Court is now prepared to conduct a hearing on Plaintiff's request for a Preliminary Injunction. However, the date set for the hearing will be delayed if Plaintiff fails to properly provide Michael Mizrachi and Tiltware, LLC ("Defendants") notice in accordance with this Order.

**Reasoning**

Federal Rule of Civil Procedure 65(a)(1) states, "[t]he court may issue a preliminary injunction only on notice to the adverse party." An "adverse party" is defined by the Fifth Circuit as any party adversely affected by the injunction. *See Parker v. Ryan*, 960 F.2d 543, 545 (5th Cir. 1992). Because a preliminary injunction prohibiting Michael Mizrachi from promoting Tiltware will have an adverse impact on both Defendants, this Court finds that both Defendants are adverse parties under Fed. R. Civ. P. 65(a)(1). Therefore, both Defendants must be provided notice before this

Court may properly issue a preliminary injunction.

While adverse parties must be given notice before a court can properly grant a preliminary injunction, “the sufficiency of written and actual notice is a matter for the trial court’s discretion.” *See Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978). To that end, this Court, exercising its discretion, requires Plaintiff to provide Defendants with a copy of its Original Complaint (Clerk’s Dkt. # 1), Motion for Injunctive Relief (Clerk’s Dkt. #2), Amended Memorandum in Support of Motion for Injunctive Relief (Clerk’s Dkt. # 8), and a copy of this Order. Finally, Plaintiff must not only give Defendants notice by providing the documents that this Order requires, Plaintiff must also do so no later than September 24, 2010.<sup>1</sup>

**IT IS THEREFORE ORDERED** that the Plaintiff provide Defendants notice of the preliminary-injunction hearing along with a copy of its Original Complaint (Clerk’s Dkt. # 1), Motion for Injunctive Relief (Clerk’s Dkt. #2), Amended Memorandum in Support of Motion for Injunctive Relief (Clerk’s Dkt. # 8), and a copy of this Order.

**IT IS FURTHER ORDERED** that Plaintiff provide Defendants with notice of the preliminary-injunction hearing on or before September 24, 2010.

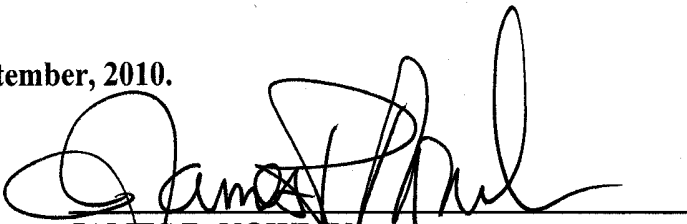
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<sup>1</sup> This Court need not strictly adhere to the time requirements of Fed. R. Civ. P. 6(c)(1). But it finds no reason to carve an exception for this case. *See Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1177-78 (5th Cir. 1989) (noting that a trial court need not follow Rule 6(c)(1) when deciding the adequate time to provide a party notice of a preliminary-injunction hearing); *see also Parker*, 960 F.2d at 544 (noting that five days’ notice are generally required before a preliminary-injunction hearing, but applying Fed. R. Civ. P. 6(d) before it was amended and redesignated to Fed. R. Civ. P. 6(c)(1), which requires 14 days notice).

**IT IS FURTHER ORDERED THAT** the parties in the above-entitled case shall appear for a hearing before this Court on **Thursday, October 14<sup>th</sup> at 2:00 p.m.** in Courtroom Two of the United States District Court for the Western District of Texas, 200 W. 8<sup>th</sup> St., Austin, Texas 78701.

**IT IS FINALLY ORDERED THAT** the preliminary-injunction hearing will not take place on **Thursday, October 14<sup>th</sup> at 2:00 p.m.** if Plaintiff fails to provide Defendants with notice of the preliminary-injunction hearing in the manner required by this Order.

SIGNED this 14<sup>th</sup> day of September, 2010.



**JAMES R. NOWLIN**  
**UNITED STATES DISTRICT JUDGE**