

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

DELIVERANCE POKER, LLC,
Plaintiff,

v.

TILTWARE, LLC and
MICHAEL MIZRACHI,
Defendants

§
§
§
§
§
§
§

CIVIL NO. 1:10-CV-00664-JRN

DEFENDANT MICHAEL MIZRACHI'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Michael Mizrachi ("Defendant") files his *Original Answer to Plaintiff's Original Complaint* ("the Complaint") as follows:

A. PARTIES

1. Defendant lacks sufficient information to admit or deny the allegations in paragraph 1 of the Complaint, therefore denied.
2. Defendant admits the allegations in paragraph 2 of the Complaint.
3. Defendant lacks sufficient information to admit or deny the allegations in paragraph 3 of the Complaint, therefore denied.

B. JURISDICTION

4. Defendant admits that he is a citizen of Florida. Defendant lacks sufficient information to admit or deny the state of Plaintiff's legal residence.
5. Defendant denies the allegations in paragraph 5 of the Complaint.

C. CONDITIONS PRECEDENT

6. Defendant denies that all conditions precedent have been performed or have occurred. Specifically, Defendant denies that Plaintiff performed all obligations as required by the promotional representation agreement, including the failure by Plaintiff to close upon an offering of debt or equity interests in Plaintiff's company which raising no less than one million dollars. Further, Defendant denies that the effective date of the agreement occurred on or before August 24, 2009, and thus the agreement terminated by its own terms.

D. FACTS

7. Defendant admits the allegations in paragraph 10 of the Complaint that Plaintiff was required to pay Defendant \$150,000, provide a membership interest of 1.75% in Plaintiff's entity, and advance expenses to Defendant. Defendant admits that the contract by its initial terms required Defendant to promote Plaintiff's website and perform other actions, but denies that he was obligated to perform such actions due to Plaintiff's breach.

8. Defendant admits the allegations in paragraph 11 of the Complaint that he played in tournaments wearing hats and other items that featured Plaintiff's name and logo. The other allegations in paragraph 11 consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 11 of the Complaint.

9. Defendant admits the allegation in paragraph 12 of the Complaint that he entered into a contract with Tiltware. Defendant denies all other allegations in paragraph 12 of the Complaint.

E. COUNT I – BREACH OF CONTRACT

10. Defendant incorporates its foregoing responses in response to paragraph 13 of the Complaint.

11. The allegations in paragraph 14 of the Complaint are vague and ambiguous and consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 14 of the Complaint. Specifically, Plaintiff has not performed its obligations under the parties' agreement, including but not limited to failure to raise one million dollars in equity and debt for the company by the applicable deadline. Defendant has performed all of his obligations under the agreement or such obligations were excused.

12. Defendant denies the allegations in paragraph 15 of the Complaint. Defendant performed all of the obligations required of him under the agreement or such obligations were excused. Defendant denies that Plaintiff has suffered any damages in this matter.

13. Defendant denies the allegations in paragraph 16 of the Complaint. Defendant performed all of the obligations required of him under the agreement or such obligations were excused. Defendant denies that Plaintiff has suffered any damages in this matter.

F. COUNT II – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

14. Defendant incorporates its foregoing responses in response to paragraph 17 of the Complaint.

15. The allegations in paragraph 18 of the Complaint are vague and ambiguous and consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 18 of the Complaint. Specifically, Defendant admits that Plaintiff and Defendant had, at one time, a contract until Plaintiff breached such contract by failing to raise one million dollars in equity and debt for the company by the applicable deadline.

16. Defendant admits that he wore hats and other items featuring Plaintiff's logo and name at some events. As to all other allegations in paragraph 19 of the Complaint, Defendant lacks sufficient information to admit or deny the allegations, therefore denied.

17. The allegations in paragraph 20 of the Complaint are vague and ambiguous and consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 20 of the Complaint.

18. The allegations in paragraph 21 of the Complaint are vague and ambiguous and consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 21 of the Complaint. Further, Defendant denies that Plaintiff has suffered any damages.

19. Defendant denies that Plaintiff is entitled to any of the relief it requests in paragraph 22 of the Complaint.

20. The allegations in paragraph 23 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 23 of the Complaint. Further, Defendant denies that Plaintiff has suffered any damages and denies that Plaintiff is entitled to any of the relief it requests in paragraph 23 of the Complaint.

G. PARTICIPATORY LIABILITY – CONSPIRACY

21. Defendant admits that he entered into a contract with Tiltware. Defendant denies the allegations in paragraph 24 of the Complaint that at the time Defendant entered into a contract with Tiltware he had any contractual agreement with Plaintiff.

22. Defendant denies the allegations in paragraph 25 of the Complaint. Defendant also denies that Plaintiff has suffered any damages.

23. Defendant denies the allegations in paragraph 26 of the Complaint.

24. The allegations in paragraph 27 of the Complaint consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in paragraph 27 of the Complaint. Further, Defendant denies that Plaintiff has suffered any damages.

H. DAMAGES

25. Defendant denies that Plaintiff is entitled to any of the relief it requests in paragraphs 28, 29, or 30 of the Complaint.

I. AFFIRMATIVE AND OTHER DEFENSES

26. In addition to the answers made above, Defendant asserts the following defenses and reserves the right to raise any additional defenses which he may have against Plaintiff:

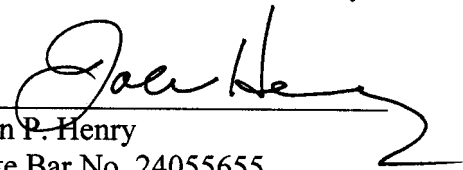
- a. Plaintiff has not satisfied the conditions precedent to bringing its claims and causes of action in this action.
- b. Some or all of Plaintiff's claims are barred by waiver and/or estoppel.
- c. Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.
- d. Plaintiff breached any agreement it had with Defendant.
- e. Plaintiff has not sustained any damages.
- f. Plaintiff's damages, if any, are speculative and therefore unrecoverable.
- g. Any injury suffered by Plaintiff was a result of its own conduct.
- h. Some or all of Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to allege facts sufficient to state a claim for punitive, exemplary or additional damages.
- i. Defendant reserves the right to deny that the amount of Plaintiff's attorney fees is reasonable or necessary.

WHEREFORE, Defendant prays that the Court dismiss all of Plaintiff's claims and causes of action with prejudice, that Plaintiff take nothing by this action, and that the Court grant him such other and further relief to which he may be justly entitled.

Respectfully submitted,

The Law Offices of John Henry, P.C.

By:


John P. Henry

State Bar No. 24055655

P.O. Box 1838

Round Rock, Texas 78680

(512) 428-5448

(512) 428-6418 Facsimile

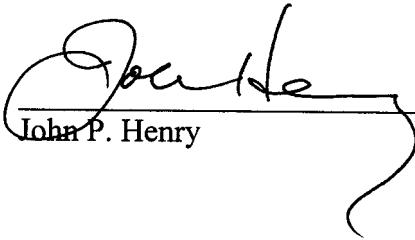
ATTORNEYS FOR DEFENDANT

MICHAEL MIZRACHI

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was, on this 29th day of September, 2010, served on the following counsel of record via certified mail, return receipt requested and/or ECF:

William Pieratt Demond
Connor & Demond, PLLC
701 Brazos Street, Suite 500
Austin, Texas 78701
Facsimile (512) 917-2111
COUNSEL FOR PLAINTIFF



John P. Henry