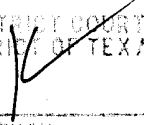


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

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

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

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v.

**10-CV-664-JRN**

**MICHAEL MIZRACHI,**  
**Defendant.**

**ORDER**

Before the Court in the above-entitled and styled cause of action is Deliverance Poker, LLC's ("Plaintiff") Notice of Voluntary Dismissal of Tiltware, LLC. (Clerk's Dkt. #14). On September 14, 2010, this Court ordered Plaintiff to provide Tiltware, LLC and Michael Mizrachi ("Defendant") with notice of a preliminary-injunction hearing that was scheduled for October 14, 2010. (Clerk's Dkt. #11). Plaintiff failed to provide proper notice in accordance with the Court's Order. (Clerk's Dkt. # 15). As a result of this failure, the Court rescheduled the preliminary-injunction hearing for **Tuesday, November 9<sup>th</sup> at 2:00 p.m.** in Courtroom Five of the United States District Court for the Western District of Texas, 200 W. 8<sup>th</sup> St., Austin, Texas 78701.

In a letter dated October 7, 2010, Plaintiff notified the Court that it has been "unable to locate Defendant Tiltware since the beginning of this lawsuit and therefore ha[s] been unable to properly serve them." (Clerks Dkt. # 15).<sup>1</sup> On October 8, 2010, Plaintiff filed the Notice of Voluntary Dismissal of Tiltware, LLC, which is now before the Court. (Clerk's Dkt #14). This Court finds that Plaintiff's dismissal under Fed. R. Civ. P. 41(a) is proper. However, even if Plaintiff voluntarily

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<sup>1</sup>After performing a quick search, the Court was able to identify all of the Tiltware, LLC's pertinent information. Thus, without more explanation, the Court finds Plaintiff's excuse for not serving Tiltware, LLC, inadequate.

dismisses Tiltware, LLC, the Court is still unable to properly issue a preliminary injunction unless Tiltware, LLC is provided notice.

Tiltware, LLC must be given notice of the preliminary-injunction hearing because it is an “adverse party.” The Court already discussed this issue in its September 14, 2010 Order. (Clerk’s Dkt. # 11). To reiterate:

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). [At the heart of Plaintiff’s Motion for Injunctive Relief is a request to enjoin Michael Mizrachi from promoting Tiltware, LLC. *See* Pl.’s Am. Mot. for TRO at ¶¶ 34–36.] Because a preliminary injunction prohibiting Michael Mizrachi from promoting Tiltware will have an adverse impact on both [Michael Mizrachi and Tiltware, LLC], this Court finds that both [Michael Mizrachi and Tiltware, LLC] are adverse parties under Fed. R. Civ. P. 65(a)(1). Therefore, both [Michael Mizrachi and Tiltware, LLC] must be provided notice before this Court may properly issue a preliminary injunction.

*Id.* Based on the legal standard and Plaintiff’s request for injunction relief, the Court maintains its previous finding that Plaintiff must provide Tiltware, LLC with notice of the preliminary-injunction hearing. This requirement stands even after Plaintiff voluntarily dismissed its claims against Tiltware, LLC.

In addition to the requirement that Plaintiff provide Tiltware, LLC with notice of the preliminary-injunction hearing, this Court, exercising its discretion,<sup>2</sup> requires Plaintiff to provide Tiltware, LLC and Michael Mizrachi 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. Additionally, Plaintiff must not only

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<sup>2</sup>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).

give Tiltware, LLC and Michael Mizrachi notice by providing the documents that this Order requires, Plaintiff must also do so on or before October 19, 2010. Finally, the second preliminary-injunction hearing will take place only after proof of notice, in compliance with this Order, has been properly filed with the Court on or before October 19, 2010.<sup>3</sup>

**IT IS THEREFORE ORDERED** that Plaintiff provide Michael Mizrachi and Tiltware, LLC 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 Michael Mizrachi and Tiltware, LLC with notice of the preliminary-injunction hearing on or before October 19, 2010.

**IT IS FURTHER ORDERED** that Plaintiff file with this Court, on or before October 19, 2010, proof that notice of the preliminary-injunction hearing has been provided, in accordance with this Order, to Tiltware, LLC and Michael Mizrachi,

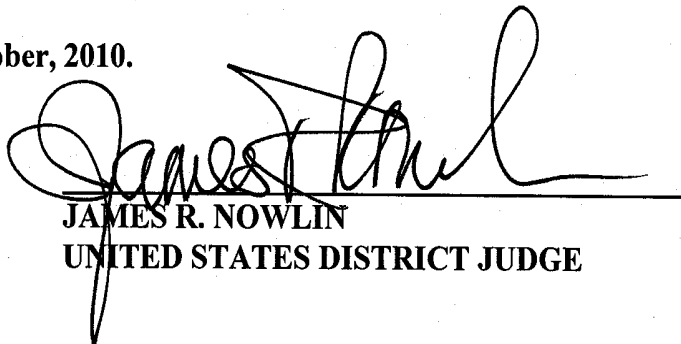
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<sup>3</sup> This Court need not strictly adhere to the time requirements of Fed. R. Civ. P. 6(c)(1). And it finds no reason to carve an exception for this case. *See Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1177-78 (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 preliminary-injunction hearing will not be held on **Tuesday, November 9<sup>th</sup> at 2:00 p.m.** in Courtroom Five of the United States District Court for the Western District of Texas, 200 W. 8<sup>th</sup> St., Austin, Texas 78701, unless Plaintiff has fully complied with this Order.

**IT IS FINALLY ORDERED** that Plaintiff will be subject to civil contempt if it fails to comply with this Order.<sup>4</sup>

SIGNED this 12<sup>th</sup> day of October, 2010.



JAMES R. NOWLIN  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> “Upon a finding of contempt, the district court has broad discretion in assessing sanctions to protect the sanctity of its decrees and the legal process.” *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d at 581. Civil contempt occurs when: (1) a court order was in effect; (2) the order required certain conduct by the respondent; and (3) the respondent failed to comply with the court’s order. *Lyn-Lea Travel Corp. v. Am. Airlines, Inc.*, 283 F.3d 282, 291 (5th Cir. 2002). Thus, it can be said that a party is in civil contempt if that party fails in “meaningful respects” to achieve substantial and diligent compliance with a clear and unambiguous decree. *Lelsz v. Kavanough*, 673 F.Supp. 828, 839 (N.D. Tex. 1987). Willfulness is not an issue, however, and not relevant in civil contempt actions. *Northside Realty Ass’n v. U.S.*, 605 F.2d 1348, 1352 (5th Cir. 1979).