

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,

v.

Tiltware, LLC and  
Michael Mizrachi  
Defendants.

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Civil Action No. \_\_\_\_\_

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PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

A. Parties

1. Plaintiff, Deliverance Poker, LLC ["Deliverance"], is a corporation that is organized under the laws of (and has its principal place of business in) the State of Texas.
2. Defendant, Michael Mizrachi ["Mizrachi"], is an individual and a citizen of the State of Florida. He may be served with process at 12879 SW 51<sup>st</sup> Street, Miramar, Florida 33027-5807.
3. Defendant, Tiltware, LLC ["Tiltware"] is a corporation that is incorporated under the laws of the State of California. Defendant has its principal place of business in the State of California. Defendant does not have a registered agent for service of process in the State of Texas. Service of process on Defendant Tiltware may be made according to the laws of the State of Texas by serving Raymond Bitar at 10866 Wilshire Blvd., 4<sup>th</sup> Floor, Los Angeles, California, 90024.

B. Jurisdiction

4. The court has jurisdiction over the breach of contract lawsuit made the basis of this injunction under 28 U.S.C. §1332(a)(1) because the Plaintiff and the Defendants are citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs.
5. The court has supplemental jurisdiction over Plaintiff's requests for both a temporary injunction and a permanent injunction against Defendant Mizrachi under 28 U.S.C. §1367 because Plaintiff's claims are so related to the claims within the court's original

jurisdiction that they form part of the same case or controversy under Article 3 of the U.S. Constitution. More specifically, Plaintiff's request for a temporary injunction against Defendant Mizrachi is directly and inextricably related to the other causes of action (breach of contract and tortious interference with existing contract) over which this Court has original jurisdiction.

### C. Venue

6. Venue is proper in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. Section 1391.
7. Additionally and/or alternatively, venue is proper in the Western District of Texas under Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 590-596 (1991) insofar as the contract in question provides that

“the parties irrevocably agree, consent and otherwise submit to the exclusive jurisdiction of a court of appropriate jurisdiction in Travis County, Texas for the adjudication of any dispute, controversy or claim arising from or in connection with this Agreement.”

8. This forum-selection clause is presumed to be valid under Kevlin Servs. v. Lexington State Bank, 46 F.3d 13, 15 (5<sup>th</sup> Cir. 1995).

### D. Conditions Precedent

9. All conditions precedent have been performed or have occurred.

### E. Facts

10. Plaintiff and Defendant Mizrachi executed a written contract on or about July 12, 2009 [“Deliverance Contract”]. Said contract provided that Plaintiff would 1) pay Defendant Mizrachi \$150,000, 2) provide a membership interest of 1.75% in Plaintiff's corporation, and 3) advance expenses related to poker tournaments in which Defendant Mizrachi would participate. Said contract further provided that Defendant Mizrachi would compete in tournaments, make personal appearances to promote Plaintiff's website, exclusively wear memorabilia promoting Plaintiff's website, and give interviews.
11. Defendant Mizrachi honored the Deliverance Contract until approximately July 2010. During this time, he played in over 20 tournaments on behalf of Plaintiff. During these

tournaments, he wore hats and other items that prominently featured Plaintiff's name and logo.

12. Defendant Mizrachi subsequently entered into a separate contract with Defendant Tiltware ["Tiltware Contract"]. This second contract essentially replaced Plaintiff as Defendant Mizrachi's official sponsor, thereby resulting in damages to Plaintiff.

#### F. Request for Preliminary Injunction

13. Plaintiff will suffer irreparable injury if Defendant Mizrachi is not enjoined while this suit is pending. This injury will result from Defendant Mizrachi's promotion of Defendant Tiltware, a competing company in the same (or in a materially similar) industry. This injury is imminent insofar as Defendant Mizrachi has already begun publicly participating in tournaments in which he has sponsored Defendant Tiltware. This sponsorship is irreparable insofar as Plaintiff is not receiving the benefit of its bargain, to wit: the televised advertisement of Deliverance Poker by Defendant Mizrachi. Additionally and/or alternatively, it is irreparable because the benefit that is being accrued by Defendant Tiltware to Plaintiff's detriment cannot be recouped by Plaintiff. Additionally and/or alternatively, the damages incurred as a result of Defendant Mizrachi's conduct cannot be accurately measured and/or the Plaintiff cannot be adequately compensated in damages for Defendant Mizrachi's conduct.
14. Plaintiff has no adequate remedy at law if Defendant Mizrachi is not enjoined from continuing to promote a competing company in violation of his contractual obligations. In other words, Plaintiff cannot acquire additional advertisements from Defendant Mizrachi that will reach an international audience in the event that he is not enjoined from promoting a competing company. Further, Plaintiff cannot undo the harm inflicted by Defendant Mizrachi's advertisement of a competing company. Instead, Plaintiff requires an injunction preventing Defendant Mizrachi from promoting Plaintiff's competitor so that Plaintiff may 1) receive the benefit of its bargain and 2) receive televised exposure via Defendant Mizrachi's advancement within (*inter alia*) the World Series of Poker tournament.

15. There is a substantial likelihood that Plaintiff will prevail on the merits because Plaintiff and Defendant Mizrachi entered into a binding and unambiguous contract. Said contract provided that Defendant Mizrachi would exclusively promote Plaintiff. Defendant Mizrachi has breached this contract and is presently promoting Defendant Tiltware. As a result, there is a substantial likelihood that Plaintiff will prevail on the merits.
16. The harm faced by Plaintiff in the event the preliminary injunction is denied outweighs the harm that would be sustained by Defendant if the preliminary injunction were granted.
17. Issuance of a preliminary injunction would not adversely affect the public interest. This is a private dispute between Plaintiff and Defendant Mizrachi. Given the fact that the public has no discernible interest in this matter, the issuance of a preliminary injunction would not adversely affect the public interest.
18. Plaintiff is willing to post a bond in the amount the court deems appropriate.
19. Plaintiff asks the court to set its application for preliminary injunction for hearing at the earliest possible time and, after hearing the request, to issue a preliminary injunction against Defendant Mizrachi.

#### G. Request for Permanent Injunction

20. Plaintiff asks the court to set its application for injunctive relief for a full trial on the issues in this application and, after the trial, to issue a permanent injunction against Defendant Mizrachi.

#### H. Prayer

21. For these reasons, Plaintiff asks for judgment against Defendants for the following:
  - a. A temporary injunction;
  - b. A permanent injunction; and
  - c. All other relief the court deems appropriate.

Respectfully submitted,

By: 

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