

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

DELIVERANCE POKER, LLC,
 Plaintiff,

v.

MICHAEL MIZRACHI and
 TILTWARE, LLC,
 Defendant

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

PARTIES' SUBMISSIONS OF PROPOSED SCHEDULING ORDERS
PURSUANT TO LOCAL RULE CV-16

Plaintiff Deliverance Poker, LLC (“Deliverance Poker”) and Defendant Michael Mizrachi (“Mizrachi”) submit their proposed scheduling orders pursuant to Local Rule CV-16.

1. Deliverance Poker submits the proposed scheduling order attached as Exhibit A. Mizrachi submits the proposed scheduling order attached as Exhibit B.

2. The parties have endeavored to agree on the contents of a proposed scheduling order, but have been unable to do so. Deliverance Poker agrees that the deadlines proposed by Mizrachi are reasonable and would agree to Mizrachi’s proposed scheduling order except for the Court’s Order Denying Joint Motion to Extend Time for Submitting Proposed Scheduling Order Required by Local Rule CV-16(c) in which the Court stated that the “final pretrial conference will be set no later than **April, 2011.**” (Clerk’s Dkt. #30). In light of the Court’s order, Deliverance Poker is concerned that Mizrachi’s proposed scheduling order will not be approved.

3. Mizrachi believes that the parties cannot adequately prepare for trial by April 2011. Mizrachi and other witnesses in this case live in Florida and Tiltware is headquartered in California, presumably with its witnesses in California. Additionally, potential non-party witnesses are in Canada (Sabre Asset Management, SA and Maurice Mills), Nevada (Luciano

Pellegrino), and New York (Bobby Wallace and Wallace International). Given that many potentially key witnesses are scattered so far across the United States and Canada, Mizrachi does not believe it is possible to gather relevant written discovery, depose witnesses, and otherwise prepare for trial prior to April 2011.

4. Defendant Tiltware, LLC (“Tiltware”) was served on December 8, 2010, by service on the Texas Secretary of State, the day after the Court permitted filing to allow Tiltware to be joined as a party.¹ On December 8, 2010, counsel for Deliverance Poker, by email, sent Mr. Imrich, the attorney for Tiltware, a draft of its proposed scheduling order and invited his input on same. Mr. Imrich indicated that he could not participate in a proposed scheduling order, but did voice concern that the deadlines proposed by Deliverance Poker were too short.

Respectfully submitted,

By: /s/ Douglas M. Becker

Douglas M. Becker

Texas State Bar No. 02012900

John D. Jacks

Texas State Bar No. 00785986

GRAY & BECKER, P.C.

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Austin, Texas 78701

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COUNSEL FOR PLAINTIFF

DELIVERANCE POKER, LLC

¹ Counsel for Deliverance Poker called Ian Imrich, the attorney for Tiltware, on December 7, 2010, to ask if he would be willing to accept service for Tiltware, but had to leave a message. When counsel for Deliverance Poker did not hear from Mr. Imrich, counsel for Deliverance Poker emailed Mr. Imrich Plaintiff’s Second Amended Complaint and the Court’s two orders dated December 7, 2010 (Clerk Dkt. #s30 and 31) on the morning of December 8, 2010, and asked in the email if Mr. Imrich would accept service for Tiltware. When counsel for Deliverance Poker did not hear from Mr. Imrich by noon on December 8, 2010, counsel for Deliverance Poker had the summons and Plaintiff’s Second Amended Complaint served on the Texas Secretary of State. Mr. Imrich later responded to the inquiries, but stated he could not accept service for Tiltware at this time.

By: /s/ John P. Henry

John P. Henry

Texas State Bar No. 24055655

P.O. Box 1838

Round Rock, Texas 78680

Telephone: (512) 428-5448

Facsimile: (512) 428-6418

COUNSEL FOR DEFENDANT

MICHAEL MIZRACHI

CERTIFICATE OF SERVICE

I certify that on 12/10/2010, I caused the Parties' Submissions of Proposed Scheduling Orders Pursuant to Local Rule CV-16(c) to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel for Defendant Michael Mizrachi:

John P. Henry
The Law Offices of John Henry, P.C.
P.O. Box 1838
Round Rock, Texas 78680

I further certify that on 12/10/10, I caused Parties' Submissions of Proposed Scheduling Orders Pursuant to Local Rule CV-16(c) to be served on counsel for Defendant Tiltware, LLC by fax and email as follows:

Ian J. Imrich
10866 Wilshire Boulevard, Suite 1240
Los Angeles, California 90024
310.481.4475 (Fax)
ian@ijilaw.com

/s/ John D. Jacks

John D. Jacks

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR THE
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DELIVERANCE POKER, LLC,
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CIVIL ACTION NO. 1:10-CV-00664-JRN

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following Scheduling Order:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by January 4, 2011.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by January 7, 2011, and each opposing party shall respond, in writing, by January 14, 2011.
3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by January 14, 2011.
4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed. R. Civ. P. 26(a)(2)(B) by March 1, 2011. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed. R. Civ. P. 26(a)(2)(B) by March 15, 2011. All designations of rebuttal experts shall be filed within 14 days of receipt of the report of the opposing expert.

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within 10 days of receipt of the written report of the expert's proposed testimony, or within 10 days of receipt of the transcript of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before March 25, 2011. Counsel may be agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed no later than March 25, 2011. Dispositive motions as defined in Local Rule CV-7(h) and responses to dispositive motions shall be limited to 20 pages in length.

8. This case is set for trial and jury selection on _____. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of trial.

SIGNED AND ENTERED this ____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE

Exhibit B

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

DELIVERANCE POKER, LLC,
Plaintiff,

v.

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

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following Scheduling Order:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by January 15, 2011.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by January 15, 2011, and each opposing party shall respond, in writing, by January 30, 2011.
3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by January 30, 2011.
4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed. R. Civ. P. 26(a)(2)(B) by February 15, 2011. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Fed. R. Civ. P. 26(a)(2)(B) by March 15, 2011. All designations of rebuttal experts shall be filed within 14 days of receipt of the report of the opposing expert.

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within 10 days of receipt of the written report of the expert's proposed testimony, or within 10 days of receipt of the transcript of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before July 15, 2011. Counsel may be agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed no later than August 15, 2011. Dispositive motions as defined in Local Rule CV-7(h) and responses to dispositive motions shall be limited to 20 pages in length.

8. This case is set for trial and jury selection on December ____, 2011. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of trial.

SIGNED AND ENTERED this ____ day of _____, 2010.

UNITED STATES DISTRICT JUDGE