

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

DELIVERANCE POKER, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:10-CV-00664-JRN
	§	
MICHAEL MIZRACHI and	§	
TILTWARE, LLC,	§	
	§	
Defendants.	§	

**DEFENDANT’S TILTWARE, LLC’S ORIGINAL ANSWER TO PLAINTIFF’S  
SECOND AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Tiltware, LLC, (“Tiltware”) hereby files its *Original Answer to Plaintiff’s Second Amended Complaint* (“the SAC”) as follows:

A. PARTIES

1. Tiltware lacks sufficient information or knowledge to admit or deny the allegations in paragraph 1 of the SAC, therefore it denies each and every allegation therein.
2. Tiltware lacks sufficient information or knowledge to admit or deny the allegations in paragraph 2 of the SAC, therefore it denies each and every allegation therein.
3. Tiltware admits the allegations in paragraph 3 of the SAC.

B. JURISDICTION

4. Tiltware admits that it is a citizen of California. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 4 of the SAC, therefore it denies each and every allegation therein.

### C. VENUE

5. Tiltware lacks sufficient information or knowledge to admit or deny the allegations in paragraph 5 of the SAC, therefore it denies each and every allegation therein.

6. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 6 of the SAC, therefore it denies each and every allegation therein.

### D. CONDITIONS PRECEDENT

7. Tiltware denies that all conditions precedent have been performed or have occurred.

Before Tiltware entered an agreement with Defendant Mizrachi in 2010, Tiltware was informed and believed that Defendant Mizrachi did not have an agreement with Plaintiff because Plaintiff had not performed all its obligation under the Promotional Representation Agreement, including but not limited to Plaintiff's failure to close upon an offering of debt or equity interest in Plaintiff's company raising no less than one million dollars.

### E. FACTS

8. Tiltware admits that Defendant Mizrachi is a well known professional poker player.

Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 8 of the SAC, therefore it denies each and every allegation therein.

9. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 9 of the SAC, therefore it denies each and every allegation therein.

10. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 10 of the SAC, therefore it denies each and every allegation therein.

11. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 11 of the SAC, therefore it denies each and every allegation therein.

12. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 12 of the SAC, therefore it denies each and every allegation therein.

13. On information and belief, Tiltware admits that Defendant Mizrachi entered into an agreement with Plaintiff on or about July 2009, however Tiltware denies that said agreement was in effect at the time that Tiltware entered into an agreement with Defendant Mizrachi in 2010. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 13 of the SAC, therefore it denies each and every such allegation therein.

14. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 14 of the SAC, therefore it denies each and every allegation therein.

15. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 15 of the SAC, therefore it denies each and every allegation therein.

16. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 16 of the SAC, therefore it denies each and every allegation therein.

17. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 17 of the SAC, therefore it denies each and every allegation therein.

18. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 18 of the SAC, therefore it denies each and every allegation therein.

19. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 19 of the SAC, therefore it denies each and every allegation therein.

20. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 20 of the SAC, therefore it denies each and every allegation therein.

21. Tiltware admits that Defendant Mizrachi had success during the 2010 World Series of Poker (the "WSOP"). Tiltware lacks sufficient information or knowledge to admit or deny the

other allegations of paragraph 21 of the SAC, therefore it denies each and every such allegation therein.

22. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 22 of the SAC, therefore it denies each and every allegation therein.

23. Tiltware admits that the Main Event of the WSOP began on or about July 5, 2010. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 23 of the SAC, therefore it denies each and every such allegation therein.

24. Tiltware admits that it offered a deal to Mizrachi in 2010. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 24 of the SAC, therefore it denies each and every such allegation therein.

25. Tiltware admits that in July 2010 the WSOP Main Event field was narrowed to nine players and Mizrachi was one of the remaining nine players. Tiltware further admits that the tournament was recessed until November 2010. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 25 of the SAC, therefore it denies each and every such allegation therein.

26. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 26 of the SAC, therefore it denies each and every allegation therein.

27. Tiltware admits that Mizrachi wore the Full Tilt Poker logo during some portions of the Main Event of the WSOP. Tiltware further admits that Mizrachi eventually finished in fifth place in the Main Event. Tiltware lacks sufficient information or knowledge to admit or deny the other allegations of paragraph 27 of the SAC, therefore it denies each and every such allegation therein.

#### F. COUNT 1 – BREACH OF CONTRACT

28. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 28 of the SAC, therefore it denies each and every allegation therein.

29. Tiltware lacks sufficient information or knowledge to admit or deny the allegation of paragraph 29 of the SAC, therefore it denies each and every allegation therein.

30. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 30 of the SAC, therefore it denies each and every allegation.

31. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 31 of the SAC, therefore it denies each and every allegation therein.

32. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 32 of the SAC, therefore it denies each and every allegation therein.

#### G. COUNT 2 – PROMISSORY ESTOPPEL

33. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 33 of the SAC, therefore it denies each and every allegation therein.

34. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 34 of the SAC, therefore it denies each and every allegation therein.

35. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 35 of the SAC, therefore it denies each and every allegation therein.

#### H. COUNT 3 – MONEY HAD AND RECEIVED AND UNJUST ENRICHMENT

36. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 36 of the SAC, therefore it denies each and every allegation therein.

37. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 37 of the SAC, therefore it denies each and every allegation therein.

I. COUNT 4 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT

38. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 38 of the SAC, therefore it denies each and every allegation therein.

39. Answering paragraph 39 of the SAC, Tiltware denies each and every allegation contained therein.

40. Answering paragraph 40 of the SAC, Tiltware denies each and every allegation contained therein.

J. COUNT 5 – TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

41. Tiltware lacks sufficient information or knowledge to admit or deny the allegations of paragraph 41 of the SAC, therefore it denies each and every allegation therein.

42. Answering paragraph 42 of the SAC, Tiltware denies each and every allegation contained therein.

43. Answering paragraph 43 of the SAC, Tiltware denies each and every allegation contained therein.

K. DAMAGES

44. Tiltware denies that Plaintiff is entitled to any of the relief it requests in the SAC.

L. AFFIRMATIVE AND OTHER DEFENSES

45. In addition to the answers made above, Tiltware asserts the following defenses. Tiltware further reserves the right to raise any additional defenses which it may have against Plaintiff:

a. The SAC, or part thereof, fails to state any claim upon which relief can be granted.

b. The claims asserted in the SAC are barred by the applicable statute of limitations and/or statute of repose.

c. Each and every one of Plaintiff's alleged rights, claims, and obligations which it seeks to enforce against Tiltware are, by Plaintiff's conduct, agreement, or otherwise, barred by the doctrine of estoppel.

d. Each and all of Plaintiff's rights, claims, and obligations as set forth in the SAC, has, or have, by conduct, agreement or otherwise been waived.

e. The claims asserted in the SAC are barred, in whole or in part, because, at all times, Plaintiff failed to take reasonable efforts to mitigate its damages, if any.

f. Plaintiff is precluded from obtaining the asserted remedies as Plaintiff has not come before this Court with clean hands.

g. Any claims for damages which Plaintiff has against Tiltware, if valid, are offset by the claims which Tiltware has against Plaintiff.

h. Tiltware is entitled to set-off, contribution, and/or indemnity should any damages be awarded against it, in the amount of damages of settlement amounts received by Plaintiff with respect to the same alleged injuries. Tiltware is also entitled to have any damages that may be awarded to Plaintiff reduced by the value of any benefit or payment to Plaintiff from any collateral source.

i. The claims asserted in the SAC are barred, in whole or in part, by the doctrines of release and payment.

j. The claims asserted in the SAC are barred, in whole or in part, by res judicata (claim preclusion).

k. The claims asserted in the SAC are barred, in whole or in part, by an accord and satisfaction.

l. Any damage suffered by Plaintiff was a direct and proximate result of its own misconduct and actions.

m. Plaintiff's breach of duty causes of action are barred by its own negligence, which negligence was greater than Tiltware's, if any, and was a proximate cause of its injuries, if any.

n. Plaintiff has no cause of action for breach of duty because it assumed the risk for all damages alleged.

o. Tiltware did not breach any lawful duty owed to Plaintiff for the transaction and events which are the subject matter of the SAC.

p. Tiltware acted in conformity with commercial standards and within reasonableness in discharging its duties.

q. Plaintiff did not reasonably rely on affirmations, if any, made by Tiltware.

r. At all relevant times, Tiltware acted in good faith and in a lawful manner toward Plaintiff.

s. Plaintiff has not satisfied the conditions precedent to bringing its claims in this action.

t. Plaintiff breached any agreement it had with Defendant Mizrahi.

u. Plaintiff has not sustained any damages.

v. Plaintiff's damages, if any, are speculative and therefore unrecoverable.

w. 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.

x. Tiltware reserves the right to deny that the amount of Plaintiff's attorneys' fees is reasonable or necessary.

y. Tiltware hereby gives notice that it intends to rely upon any other defense that may become available or appear during the discovery proceedings in this case. Tiltware also hereby reserves the right to assert other and related defenses, as may become available in the



event of a determination that this action, or some part thereof, is governed by the substantive law of a state or jurisdiction other than the State of Texas.

WHEREFORE, Defendant Tiltware, LLC, prays that the SAC be dismissed with prejudice, that the Plaintiff take nothing by the SAC, that Tiltware be awarded its costs, disbursements, attorneys' fees, and expenses incurred herein; and that Tiltware be awarded such other and further relief as the Court may deem proper.

Respectfully submitted,

The Law Offices of John Henry, P.C.

By: /s/ John P. Henry\_\_\_\_\_

John P. Henry  
State Bar No. 24055655  
P.O. Box 1838  
Round Rock, Texas 78680  
(512)428-5448  
(512)428-6418 Facsimile  
ATTORNEYS FOR DEFENDANTS  
MICHAEL MIZRACHI & TILTWARE,  
LLC.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of January, 2011, I caused the foregoing *Defendant Tiltware, LLC's Original Answer to Plaintiff's Second Amended Complaint* to be delivered via facsimile and ECF to the following parties, through their attorney of record:

/s/ John P. Henry \_\_\_\_\_  
John P. Henry

Douglas M. Becker  
Gray & Becker, P.C.  
900 West Avenue  
Austin, Texas 78701  
(512) 482-0924  
**Attorneys for Plaintiff**