

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

DELIVERANCE POKER, LLC,

Plaintiff,

vs.

MICHAEL MIZRACHI and TILTWARE,
LLC,

Defendants.

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

**DECLARATION OF GEORGE M. BELFIELD IN SUPPORT OF EXPEDITED
MOTION TO CONTINUE TRIAL DATE AND DISCOVERY CUTOFF OR BIFURCATE
OR SEVER CLAIMS AGAINST TILTWARE**

I, George M. Belfield, declare:

1. I am a shareholder in the law firm of Greenberg Traurig, LLP, counsel for Defendant Tiltware, LLC (“Tiltware”) in this action. As such, I have personal knowledge of the matters stated herein, and could and would competently testify to the same if called as a witness in this action.

2. On February 22, 2011, Tiltware complied with FRCP Rule 26(a) and served Defendant Tiltware, LLC’s Initial Disclosures. To my knowledge, Plaintiff Deliverance Poker (“Deliverance”) has not yet reciprocated and served Tiltware with its FRCP Rule 26(a) Initial Disclosures. On March 4, 2011, I asked Plaintiff’s counsel if the Rule 26 Initial Disclosures had been served, and if so, I asked for a copy. There has been no response to date. In other words, Deliverance has not to date even complied with its fundamental initial disclosure obligations under FRCP Rule 26(a) with respect to the newly named defendant Tiltware.

3. While Tiltware first appeared in this action on January 10, 2011, Deliverance and Tiltware have apparently also not held the FRCP Rule 26(f) meeting of counsel, and under FRCP Rule 26(d)(1) Tiltware is not yet even authorized to begin discovery, never mind comply with the March 25, 2011 discovery deadline. Deliverance and Tiltware have not discussed or agreed on a proposed discovery plan under FRCP Rule 26(f)(2).

4. On February 28, 2011, Tiltware filed a Motion to Dismiss the Fifth Claim for Relief, which is still pending. Tiltware has not answered the Third Amended Complaint or filed any counterclaim.

5. I have been a lawyer and member of the State Bar of California since 1981, practicing exclusively commercial litigation. It would, in my opinion, be highly prejudicial to Tiltware in these circumstances to force Tiltware to trial on April 25, 2011 -- less than 3 months after it initially appeared in this action -- and while its motion to dismiss is still pending, and before it can even answer or file any counterclaims. Moreover, Tiltware has obviously not had ample time and due process to conduct any, never mind sufficient, discovery in this action.

6. Deliverance has also not complied with FRCP Rule 26(a)(1)(A)(iii), which provides that a plaintiff must, without awaiting a discovery request, provide to the defendants “a computation of each category of damages claimed by the disclosing party - who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered”

7. On March 1, 2011, Tiltware was served with (a) Plaintiff’s Designation Of Potential Witnesses, Testifying Experts, And Proposed Exhibits, and (b) Plaintiff’s Disclosure Of Expert Testimony, true and correct copies of which are attached as Exhibits A and B,

respectively. I have reviewed Deliverance's March 1, 2011 expert report by Gary B. Wilcox, Ph.D., which is included in Exhibit B, and the \$3,275,037 "brand placement value" damages opinion. Since Deliverance had not yet complied with FRCP Rule 26(a)(1)(A)(iii), Tiltware was not properly informed that Deliverance was claiming such a novel category of damages, *i.e.*, the "brand placement value due to Deliverance" as a result of Mr. Mizrachi failing to wear Deliverance's logo during the September to December 2010 ESPN broadcasts of the 2010 WSOP tournament — at a time when Tiltware had already been dismissed from, and was no longer a party to, this action. Without proper notice, Tiltware was not able to anticipate this damages theory, and retain and prepare its own damages expert. Now, the two weeks allowed under the current Scheduling Order is certainly not in my opinion sufficient time to evaluate the new and novel damages theory and the new expert report, locate and retain a rebuttal damages expert, and give the expert sufficient time to evaluate Deliverance's expert's opinions, the facts of the case, and research and prepare his or her own opinion, never mind prepare and serve a written report on such a novel damages theory in compliance with the Court's March 15, 2011 deadline in the Scheduling Order.

8. Deliverance's fact witnesses include: Carlos Y. Benavides, III, Michael Mizrachi, Maurice Mills, Christopher Cosenzo, Peter Beshay, Reynaldo Jay Perales, and Chris Porter. Only Maurice Mills has been deposed to date. In my opinion, at least some, if not all, of these witnesses need to be deposed to properly prepare this case for trial.

9. Deliverance also identified for the first time six expert witnesses: Carlos Y. Benavides, III, Maurice Mills (also will now have to be deposed again regarding his expert opinions), Gary Wilcox, Ph.D., Reynaldo Jay Perales, Douglas M. Becker and John D. Jacks (apparently regarding a claim for attorneys' fees, the nature, amount and supporting documents

of which have also never been disclosed). Again, in my opinion, at least some, if not all, of these witnesses need to be deposed to properly prepare this case for trial.

10. Tiltware also intends, and is entitled, to take critical third party depositions of the following witnesses, who almost all reside outside of Texas, and will need to be subpoenaed through other federal district courts:

- (a) Sabre Asset Management S.A. (“Saber”) — a Panamanian entity which allegedly made the critical \$1,000,000 equity or debt contribution to Deliverance without which the “Promotional Representative Agreement” between Deliverance and Mizrachi, a true and correct copy of which is attached as Exhibit C, did not become “effective.” If the contract underlying this lawsuit is not “effective” under Section 1, then there is no contract, and (a) no breach of contract claim against Mizrachi, and (b) no interference with contract or economic relations claims against Tiltware. The owners of Sabre are apparently Maurice Mills, who has been deposed, and Real Deck or its principals -- who Mills refused to identify.
- (b) Las Vegas From Home (“LVFH”) (or its related company Real Deck) which Maurice Mills testified owns the poker software that Sabre contributed to Deliverance Poker that it contends is worth over \$1 million thereby allegedly causing the contract on which this entire action is based to become “effective.” The nature and value of that software is the critical issue in this case, and Deliverance has not produced any documents evidencing Deliverance’s rights derived from Saber, LVFH, or the related company Real Deck. LVFH is based in Vancouver, British Columbia.

Based upon the deposition testimony of Maurice Mills, it is not clear where Real Deck is located, but it may be Kent, Washington, Las Vegas, New York City or Panama.

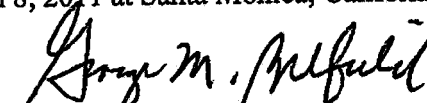
- (c) Barry Schell (located in Kent, Washington) who is, besides Mills, the only other employee, owner or investor in Real Deck and, according to Mills, the software “genius” behind the poker software contributed by Sabre and/or Real Deck to Deliverance.
- (d) The Denim Group which is the company that purportedly conducted the testing and analysis on the Deliverance/LVFH/Real Deck software source code, hardware, security and payment processing software. This deposition is necessary to test the value and functionality of the poker software that allegedly triggered the effectiveness of the Deliverance contract with Mizrachi.
- (e) Scott Broderhausen also apparently vetted the Deliverance/LVFH/Real Deck poker software and has knowledge and information regarding its functionality and value.
- (f) Neither Deliverance’s principal Carlos Benevides nor defendant Michael Mizrachi have been deposed. In my opinion, neither deposition should be taken until Deliverance provides its Rule 26(a) Initial Disclosures, and Tiltware gets responses to a follow-up set of routine document requests and interrogatories.

This list is not complete, and there are other material witnesses who should also be deposed to properly prepare this action for trial.

11. Finally, as the Court now knows, Tiltware has recently retained separate counsel, Greenberg Traurig, LLP. This has been in part necessary due to the conflict of interest for current counsel John Paul Henry in representing both defendants Michael Mizrachi and Tiltware, LLC. Indeed, the July 16, 2010 written agreement between Mr. Mizrachi and Tiltware specifically provides as follows:

I [Michael Mizrachi] hereby represent and warrant to Company [Tiltware] that the undersigned Player [Michael Mizrachi] is not under any obligation to any other party inconsistent with or in conflict with this Agreement or which would prevent, limit or impair in any way Player's obligations hereunder; and Player shall indemnify, defend and hold harmless Company and Licensee, and their respective officers, directors, members, agents, representatives, licensees, affiliates, contractors and employees, from and against any and all claims, liabilities, actions, suits, demands, losses, damages or expenses of whatsoever kind and nature, including attorneys' fees and costs, arising out of or related to same.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct and executed on March 8, 2011 at Santa Monica, California.



George M. Belfield

Respectfully submitted,
GREENBERG TRAURIG, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2011, a true and correct copy of the foregoing was served upon the following counsel via the Court's CM/ECF system or First Class Mail:

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