

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 TILTWARE, LLC'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Plaintiff Deliverance Poker, LLC, by and through its attorney of record, Douglas M. Becker, Gray & Becker, P.C., 800 West Avenue, Austin, Texas 78701.

Pursuant to the provisions of Rule 26 of the Federal Rules of Civil Procedure, Defendant Tiltware, LLC, submits its responses to Plaintiff Deliverance Poker, LLC's First Set of Interrogatories. Defendant has not fully completed the investigation of the facts relating to this case, and has not completed discovery. Accordingly, Defendant reserves the right to supplement is answers as additional information becomes known.

Respectfully submitted,

/s/ John P. Henry
John P. Henry
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Attorneys for Defendant Tiltware, LLC



CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2011, I caused the foregoing document to be delivered via facsimile 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

GENERAL OBJECTIONS

1. In responding to these Interrogatories, Defendant conducted and will continue to conduct a reasonable search for information or documents responsive to a particular Interrogatory. To the extent that a given Interrogatory contemplates some other type of search or response, including but not limited to ascertaining information or obtaining documents not within Defendant's possession, custody or control, Defendant objects to the request on the grounds that it is overbroad and unduly burdensome, and seeks information beyond the scope of Rules 26 and 33 of the Federal Rule of Civil Procedure.

2. Defendant generally objects to these Interrogatories and their Definitions to the extent that they may be construed as calling for documents or information subject to a claim of privilege or immunity, including, without limitation, the attorney-client privilege and work-product immunity. The inadvertent disclosure of any information subject to such privileges or protections is not intended to relinquish any privilege or protection and shall not be deemed to constitute a waiver of any applicable privilege or protection.

3. Defendant objects to these Interrogatories and their Definitions to the extent that they imply the existence of facts or circumstances that do not or did not exist and to the extent that they imply the existence of facts or circumstances that do not or did not exist and to the extent that they state or assume legal conclusions. In providing these responses and objections, Defendant does not admit the factual or legal premise of any of the Interrogatories or their Definitions.

4. Any statement herein that Defendant will produce documents or information responsive to a particular Interrogatory is not a representation that such documents or information responsive to a particular Interrogatory is not a representation that such documents or

information exist or are within Defendant's actual possession, custody or control. Rather, such a statement indicates that, if Defendant has responsive documents or information within its possession, custody or control, and the production of the documents or information is not otherwise objected to, it will produce them subject to its objections.

5. Defendant's decision to provide information or documents notwithstanding the objectionable nature of the Interrogatories should not be construed as any of (a) an acknowledgement that the material is relevant; (b) a waiver of the general objections or the specific objections asserted in response to specific interrogatories; or (c) an agreement that request for similar information will be treated in a similar manner.

6. These General Objections are incorporated into each specific response and objection set forth below, whether generally or as to each or any specific Interrogatory as if fully set forth, and may not be repeated in each specific response or objection. Where a General Objection is repeated or referred to in a specific response, it is for emphasis only.

7. The production of any information or documents pursuant to these Interrogatories is not, and shall not be construed as, an admission to the relevance of the subject matter of any of the individual Interrogatories and, moreover, is without prejudice to all objections to the use of any document or information produced or responses made by Defendant.

8. Defendant has not fully completed its investigation of the facts relating to this case, has not completed discovery, and has not completed their preparation for trial. Accordingly, Defendant reserves the right to supplement its answers as additional information becomes known. These General Objections are incorporated into and otherwise apply to any such supplementation or amendment, including any additional productions of documents or information.

RESPONSES

Defendant incorporated the General Objections, into each of its Responses to the First Set of Interrogatories below as though set forth full therein.

1. Identify all persons who you believe have knowledge of relevant facts and identify the issues upon which you believe they have knowledge.

RESPONSE: Subject to the General Objections the Defendant's respond as follows:

Carlos Benavides has knowledge regarding the negotiations between Plaintiff and Defendant Mizrachi and regarding Defendant Mizrachi's decision to endorse Defendant Tiltware in the 2010 World Series of Poker.

Michael Mizrachi has knowledge regarding the negotiations between Plaintiff and Defendant Mizrachi and regarding Defendant Mizrachi's decision to endorse Defendant Tiltware in the 2010 World Series of Poker.

Christopher Torina has knowledge regarding Defendant Mizrachi's negotiations with Plaintiff and regarding Defendant Mizrachi's endorsement deal with Defendant Tiltware.

Chris Porter has knowledge regarding the endorsement deal between Defendant Mizrachi and Defendant Tiltware.

Richard Bitar has knowledge regarding the endorsement deal between Defendant Mizrachi and Defendant Tiltware.

Robert Mizrachi, brother of Defendant Mizrachi, has knowledge regarding Defendant Mizrachi's negotiations to endorse Plaintiff's web site.

Donny Mizrachi, brother of Defendant Mizrachi, has knowledge regarding Defendant Mizrachi's negotiations to endorse Plaintiff's web site.

Eric Mizrachi, brother of Defendant Mizrachi, has knowledge regarding Defendant Mizrachi's negotiations to endorse Plaintiff's web site.

Lilly Mizrachi, wife of Defendant Mizrachi, has knowledge regarding the endorsement deal between Defendant Mizrachi and Defendant Tiltware.

2. If Tiltware, LLC, is improperly identified, give its proper identification and state whether you will accept service of an amended summons and complaint reflecting the information furnished by you in answer hereto.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Tiltware, LLC is not improperly identified.

3. If you contend that some other person or legal entity is, in whole or in part, liable to plaintiff in this matter, identify that person or legal entity and describe in detail the basis of said liability.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: At this point in the proceedings, before Defendant Tiltware has had the opportunity to conduct its own discovery, Defendant Tiltware is unaware of any other person or entity which is liable to Plaintiff in this matter. However, Defendant Tiltware reserves the right to supplement its response to this interrogatory if relevant facts come to light during the discovery process.

4. Identify all individuals and or companies owning, or purporting to own, the right to do business as "Full Tilt Poker," and identify all individuals and companies that contracted with Defendant Michael Mizrachi for him to wear "Full Tilt Logos," in any form, at the 2010 World Series of Poker ("WSOP").

RESPONSE: Subject to the General Objections, the Defendant responds as follows: No individuals contracted with Defendant Mizrachi for him to wear "Full Tilt Logos," in any form, at the 2010 World Series of Poker. Defendant Tiltware by its duly authorized representative Chris Porter entered into an endorsement agreement with Defendant Mizrachi for him to promote Full Tilt Poker during the Main Event of the 2010 WSOP.

5. Identify all persons involved in negotiating, on behalf of Tiltware, LLC, any agreement with Defendant Michael Mizrachi and describe in detail the transaction and the role each such person played in such negotiation.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Chris Porter was responsible for negotiating the endorsement deal points between with Defendant Mizrachi for the Main Event of the 2010 WSOP.

6. Do you contend that Tiltware, LLC did not enter into any contract or agreement with Defendant Michael Mizrachi? If yes, identify the person or entity you claim entered into a contract or agreement for Defendant Michael Mizrachi to wear logos of Full Tilt Poker during any part of the 2010 World Series of Poker.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: No, Defendant Tiltware does not contend that it did not enter into any agreement with Defendant Mizrachi.

7. State the legal and factual bases for your contention that Plaintiff's claims "are barred by the applicable statute of limitations and/or statute of repose."

RESPONSE: Subject to the General Objections, Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 7 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

8. State the legal and factual bases for your contention that “[e]ach 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.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Plaintiff is estopped from asserting its claims against Defendant Tiltware because there was no agreement in effect between Plaintiff and Defendant Mizrachi at the time Defendant Mizrachi entered into an agreement with Defendant Tiltware. Before Defendant Tiltware entered into 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 obligations 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.

9. State the legal and factual bases of your claim that “[e]ach and all of Plaintiff’s rights, claims and obligations set forth in the SAC, has, or have, by conduct, agreement or otherwise been waived.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Plaintiff waived its claims set forth in the SAC by failing to perform all its obligations 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.

10. State the legal and factual bases of your claim that “Plaintiff failed to take reasonable efforts to mitigate its damages, if any.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 10 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts. Further, Plaintiff failed to go live with its web site and application even though Plaintiff contends it could have done so. Plaintiff also failed to go live with its web site and application with other endorsers.

11. State the legal and factual bases for your claim that “Plaintiff has not come before this Court with clean hands.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Plaintiff has not come before this Court with clean hands because Plaintiff's conduct is responsible for the ineffective nature of the agreement between itself and Defendant Mizrachi, to wit, Plaintiff failed to perform all its obligations 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.

12. State the legal and factual bases for your claim that "[t]he claims asserted in the SAC are barred, in whole or in part, by the doctrine of release and payment."

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 12 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

13. State the legal and factual bases for your claim that "[t]he claims asserted in the SAC are barred, in whole or in part, by res judicata (claim preclusion)."

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 13 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

14. State the legal and factual bases for your claim that "[t]he claims asserted in the SAC are barred, in whole or in part, by an accord and satisfaction."

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 14 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

15. State the legal and factual bases of your claim that "[a]ny damage suffered by Plaintiff was a direct and proximate result of its own misconduct and actions."

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Any damage suffered by Plaintiff was a direct and proximate result of its failure to perform its obligations under the Promotional Representation Agreement it had with Defendant Mizrachi.

16. State the legal and factual bases for your claim that "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."

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 16 in

order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

17. State the legal and factual bases for your claim that “Plaintiff has no cause of action for breach of duty because it assumed the risk for all damages alleged.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware asserted the affirmative defense referenced in Interrogatory No. 17 in order to preserve its rights in this action. Discovery is ongoing and Defendant Tiltware will supplement this response if it becomes aware of relevant facts.

18. State the legal and factual bases for your claim that “Plaintiff has not satisfied the conditions precedent to bringing its claims in this action.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Plaintiff has not satisfied the conditions precedent to bringing its claims because it failed to perform all its obligations 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.

19. State the legal and factual basis for your claim that “Plaintiff breached any agreement it had with Defendant Mizrachi.”

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Plaintiff failed to perform all its obligations 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.

20. Identify each person answering these interrogatories, supplying information, or assisting in any way with the preparation of the answers to these interrogatories.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: John Henry, Esq. of the Law Offices of John Henry, P.C. Ian Imrich, Esq., Aimee Lane, Esq., and Valerie Elias of the Law Offices of Ian J. Imrich, Esq., A Professional Corporation.

21. Identify every person who is expected to be called to testify at trial, including your experts.

RESPONSE: Subject to the General Objections, the Defendant responds as follows: Defendant Tiltware has not yet identified or retained any experts in this matter. With respect to non-experts, Defendant Tiltware has not determined which witnesses it expects to call at the time of trial other than Mr. Chris Porter.