

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

DELIVERANCE POKER, LLC, §  
Plaintiff, §  
v. §  
MICHAEL MIZRACHI and §  
TILTWARE, LLC, §  
Defendants §

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

**PLAINTIFF’S MOTION FOR LEAVE TO RESPOND TO REPLY OF  
TILTWARE, LLC’S CONTINUANCE MOTION**

Plaintiff Deliverance Poker, LLC (“Deliverance Poker”) files this motion for leave to respond to Tiltware, LLC’s Reply Regarding Expedited Motion to Continue Trial Date and Discovery Cutoff or Bifurcate or Sever (“Tiltware’s Reply”), which was filed on March 16, 2011.

1. In its Reply, Tiltware raises several issues not addressed in its initial motion, either because it did not consider them important or because the event had not yet occurred. Accordingly, Deliverance Poker has not had an opportunity to address these issues. Deliverance Poker requests leave to address these issues in order to assist the Court in determining the merits of Tiltware’s motion.

2. Included in Tiltware’s Reply are the following issues raised by Tiltware to which Deliverance Poker has not had an opportunity to address:

- a. Tiltware acknowledges in its Reply that its “Los Angeles counsel, Ian Imrich,” participated on December 16, 2010—the meeting of counsel required by Federal Rule of Civil Procedure 26(f)—but

claims that counsel was merely a passive listener on that call. In support of this claim, Tiltware claims that it was served “only . . . through the Texas Secretary of State,” implying that Tiltware did not possess the pleadings in the case at the time of the call.

- b. Tiltware claims in its Reply that its rebuttal expert “will . . . need a reasonable amount of time to evaluate and prepare a written report” to the written report of Deliverance Poker’s expert, implying this could not be accomplished under the current scheduling order.
- c. Tiltware claims in its Reply that Deliverance Poker only recently identified “three new key witnesses” because it “apparently anticipat[ed] the proof and evidence problems” and suggests that these witnesses evaluated the software contributed by Sabre Asset Management, S.A. for its value.

3. Deliverance Poker strongly disagrees with each of these statements and believes the Court will be assisted in its ruling on Tiltware’s continuance motion by considering Deliverance Poker’s position on each of these issues.

4. A copy of Deliverance Poker’s proposed response is attached.

5. Counsel for Deliverance Poker conferred with counsel for Defendants as to whether they oppose. Counsel for Tiltware opposes the motion they “don’t think it’s necessary, given the current record, for the court to make a decision.” Counsel for Michael Mizrachi does not oppose the motion.

For the foregoing reasons, Deliverance Poker requests leave to file a response to Tiltware’s Reply.

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  
Telephone: (512) 482-0061  
Facsimile: (512) 482-0924  
**COUNSEL FOR PLAINTIFF**  
**DELIVERANCE POKER, LLC**

**CERTIFICATE OF CONFERENCE**

I certify that on Thursday, March 17, 2011, I conferred with counsel for Defendants as to whether they oppose the foregoing motion. Counsel for Tiltware opposes this motion because they “don't think it's necessary, given the current record, for the court to make a decision.” Counsel for Michael Mizrachi states that he does not oppose this motion.

/s/ John D. Jacks  
John D. Jacks

**CERTIFICATE OF SERVICE**

I certify that on 3/17/2011, I caused Plaintiff's Motion for Leave to Respond to Tiltware, LLC's Reply Regarding Expedited Motion to Continue Trial Date and Discovery Cutoff or Bifurcate or Sever 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 Defendants Michael Mizrachi and Tiltware, LLC:

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

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300 West Sixth Street, Suite 2020  
Austin, Texas 78701

/s/ Douglas M. Becker

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AUSTIN DIVISION

DELIVERANCE POKER, LLC,  
Plaintiff,

v.

MICHAEL MIZRACHI and  
TILTWARE, LLC,  
Defendants

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

**PLAINTIFF'S RESPONSE TO TILTWARE, LLC'S REPLY  
REGARDING EXPEDITED MOTION TO CONTINUE TRIAL DATE AND  
DISCOVERY CUTOFF OR BIFURCATE OR SEVER**

Plaintiff Deliverance Poker, LLC ("Deliverance Poker") files this Response to Tiltware, LLC's Reply Regarding Expedited Motion to Continue Trial Date and Discovery Cutoff or Bifurcate or Sever (Clerk Docket No. 67) ("Tiltware's Reply"), which was filed on March 16, 2011.

A. **Tiltware received Plaintiff's Second Amended Complaint more than one week prior to the Rule 26(f) conference call on December 16, 2010, and Tiltware's Los Angeles counsel, Ian Imrich, was more than a passive listener on that call.**

On December 8, 2010, the day following the filing of Plaintiff's Second Amended Complaint, counsel for Deliverance Poker provided by email to Tiltware's Los Angeles counsel, Ian Imrich, a copy of Plaintiff's Second Amended Complaint and requested that he accept service for his client. Only when counsel for Tiltware, Ian Imrich, failed to promptly respond did Deliverance Poker serve Tiltware through the Texas Secretary of State. Thus, notwithstanding that Tiltware was served through the Texas Secretary of

State on December 8, 2010, counsel for Tiltware was in possession of Plaintiff's Second Amended Complaint even before Deliverance Poker served it through the Texas Secretary of State.

The Rule 26(f) conference occurred on December 16, 2010, eight days after Tiltware's Los Angeles counsel was provided with Plaintiff's Second Amended Complaint. At the suggestion of counsel for Plaintiff, Tiltware's Los Angeles counsel agreed that a conference call would "be a good idea." See Emails dated December 13, 2010, attached as Exhibit A. Tiltware's Los Angeles counsel was a full participant in that conference, even representing that Tiltware would file a motion for continuance<sup>1</sup> as well as counterclaims and third-party claims. Of course, Tiltware's Texas counsel—or who would become Tiltware's Texas counsel—John P. Henry, was also on the December 16, 2010 conference call.

**B. Tiltware has already served the written report of Robert H. Wolf in rebuttal to Deliverance Poker's written expert report.**

On March 15, 2011, Tiltware served the written report of their expert, Robert H. Wolf. Mr. Wolf has apparently evaluated the written report of Deliverance Poker's expert, because he is highly critical of it in his written report.

**C. Deliverance Poker did not recently disclose "three key witnesses" nor does it anticipate a proof problem.**

On March 14, 2011, counsel for all the parties conferred on a schedule for depositions. *Tiltware* expressed a desire to depose one or more people from the Denim

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<sup>1</sup> Tiltware did eventually file its motion for continuance, but not until approximately two months after filing its answer.

Group, a computer technology company. In the spirit of cooperation, counsel for Deliverance Poker agreed to try to identify who at the Denim Group actually did the evaluation of the software, and after doing that added them as a supplementation of witnesses in Deliverance Poker's initial disclosures. Deliverance Poker believes these witnesses have little, if any, relevance to this suit and, for this reason, has not listed them as potential witnesses. Tiltware seeks this testimony to attempt to establish a value of the software provided by Sabre Asset Management, S.A., but the Denim Group was not hired to express an opinion as to the value of the software and it did not express an opinion as to the value of the software. Their sole function, as set forth in their report,<sup>2</sup> was to report on the security features of the software.

The Denim Group's relevance to this case, in the opinion of Deliverance Poker, is tangential, at best. As to the value of the software acquired by Deliverance Poker, the Denim Group's analysis bears only on whatever incremental value can be gleaned from the security features of the software, which, again, the Denim Group expresses no opinion of any such value. By contrast, Maurice Mills, who owns the patent to the software and sold it to Deliverance Poker, and Carlos Benavides, III, who acted on behalf of Deliverance Poker in purchasing the software, both have opinions as to the value of the software.<sup>3</sup> The technical parsing of the source code to the software by questioning employees of the Denim Group, Sabre Asset Management, and Las Vegas From Home,

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<sup>2</sup> Also in the spirit of cooperation, Deliverance Poker produced on March 9, 2011, the Denim Group's report to Defendants and approximately another 500 pages of documents in response to Tiltware's request for production. Responses to Tiltware's request for production are not due until March 25, 2011, but Deliverance Poker provided these documents as a courtesy to Defendants so they could review them prior to the depositions scheduled for the week of March 21, 2011.

<sup>3</sup> Maurice Mills testified as to the value of the software in his deposition taken in this case on February 17, 2011.

may be of interest to Tiltware, but it has nothing to do with the value placed on the software by the seller and buyer of the software.

Nonetheless, rather than contest whether Tiltware is entitled to any of this discovery, counsel for Deliverance Poker agreed to cooperate where reasonable. Tiltware seeks to use the fact of Deliverance Poker's cooperation to suggest that this discovery is critical to the case. Tiltware is incorrect. The testimony of any of the employees of the Denim Group, Sabre Asset Management, or Las Vegas From Home over the technical aspects of the software, in the opinion of Deliverance Poker, will have no bearing as to the value placed on it by the two people that mattered in the transaction.

Tiltware should not be allowed to set up a "straw man" to gain a continuance of the trial date and the cutoff for discovery or to bifurcate or sever claims against it, and Deliverance Poker should not suffer unfavorable consequences for cooperating with Tiltware.

For the foregoing reasons and those previously stated, Plaintiff opposes Tiltware's expedited motion to continue trial date and discovery cutoff or bifurcate or sever claims against Tiltware and requests that the Court deny the motion.

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.**

900 West Avenue

Austin, Texas 78701



Telephone: (512) 482-0061  
Facsimile: (512) 482-0924  
**COUNSEL FOR PLAINTIFF**  
**DELIVERANCE POKER, LLC**

**CERTIFICATE OF SERVICE**

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Jordan Grotzinger  
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300 West Sixth Street, Suite 2020  
Austin, Texas 78701

/s/ Douglas M. Becker

## John Jacks

---

**From:** Ian Imrich [ian@ijilaw.com]  
**Sent:** Monday, December 13, 2010 9:03 PM  
**To:** John Jacks  
**Cc:** John Henry; Doug Becker  
**Subject:** RE: Scheduling Order

A conference call would be a good idea. Do you guys have any available slots Wednesday afternoon? Let me know...

-1

Law Offices of Ian J. Imrich, Esq.  
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10866 Wilshire Boulevard, Suite 1240  
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**From:** John Jacks [mailto:John.Jacks@graybecker.com]  
**Sent:** Monday, December 13, 2010 2:54 PM  
**To:** Ian Imrich  
**Cc:** John Henry; Doug Becker  
**Subject:** Scheduling Order

Mr. Imrich,

Attached is the Scheduling Order the Court entered today. I spoke to Mr. Henry about this last week, and although he does not believe the schedule gives us adequate time to prepare for trial, I believe he is agreeable to working together to work toward getting whatever the parties need in the way of discovery in a timely fashion. I will, of course, work with both you and Mr. Henry in order for the parties to obtain needed discovery for trial. Please feel free to call if you would like to discuss this. It would likely be beneficial for the three of us to get on a conference call to discuss this.

I will send out today our client's initial disclosures as required by Rule 26. I am still working with my client representative to obtain additional information and documents and will supplement our initial disclosures promptly upon receipt of same.

Sincerely,

John


John Jacks



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## John Jacks

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**From:** Ian Imrich [ian@ijilaw.com]  
**Sent:** Tuesday, December 14, 2010 2:08 PM  
**To:** John Jacks  
**Cc:** John Henry; Doug Becker  
**Subject:** RE: Scheduling Order

How 'bout 11am PT / 1pm CT for you guys on Thursday?

Law Offices of Ian J. Imrich, Esq.  
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**From:** John Jacks [mailto:John.Jacks@graybecker.com]  
**Sent:** Tuesday, December 14, 2010 11:25 AM  
**To:** Ian Imrich  
**Cc:** John Henry; Doug Becker  
**Subject:** RE: Scheduling Order

We aren't available tomorrow afternoon, but we are available today, tomorrow morning, and pretty much any time on Thursday. Please let me know what works for everyone.

John Jacks

**GRAY & BECKER, P.C.**  
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Sincerely,

John

John Jacks

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