IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 502017CA013620XXXXMB

GEORGE W. SCHAEFFER, an individual; GEORGE W. SCHAEFFER, AS TRUSTEE OF THE GEORGE W. SCHAEFFER LIVING TRUST DATED DECEMBER 16, 2008, AS AMENDED; GWS 2, INC., a Florida corporation. PEOPLE'S TRUST HOLDINGS, LLC, a Florida limited liability company; PEOPLE'S TRUST MGA, LLC, a Florida limited liability company; GS TWO, LLC, a Florida limited liability company; and GS DEERFIELD, LLC, a Florida limited liability company;

Plaintiff,

v.

EILEEN GOLD, an individual,

Defendant.
_____/

DEFENDANT EILEEN GOLD'S MOTION TO COMPEL DEPOSIT OF FUNDS INTO COURT REGISTRY

Defendant, Eileen Gold ("Eileen"), by and through undersigned counsel, hereby files this Motion to Compel Plaintiffs, GWS 2, Inc. ("GWS 2") and George W. Schaeffer as Trustee of the George W. Schaeffer Living Trust Dated December 16, 2008, ("Trust"), to deposit funds into court registry, and in support thereof, states as follows:

The Trust and GWS 2 must tender $9,450,000 into the Court's registry prior to proceeding with a claim for equitable relief. *See Freitag v. Simon*, 171 So.2d 918 (Fla. 3d DCA 1965) (holding that reformation could not be obtained without tendering the amount due on a note into the Court's registry); *see also Horvath v. Five Points Nat'l Bank of Miami*, 182 So.2d 22 (3d DCA 1966) (affirming dismissal of complaint seeking injunctive relief for failure to state a cause of action

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because Plaintiffs failed to tender into registry of court accrued interest on note, which Plaintiffs conceded was due).

On January 12, 2018, GWS 2 and the Trust filed their Amended Complaint asserting, *inter alia*, an equitable claim of Reformation of Purchase Agreement and Recourse Note (Count I). In Count I, Plaintiffs do not deny that pursuant to the contract they signed they must pay Eileen the $9 million they owe her. *See* Amended Complaint at ¶¶ 33-36 and Exhibits 3-8; *see also Hollywood Lakes Sec. Civic Ass'n, Inc. v. City of Hollywood*, 676 So. 2d 500, 501 (Fla. 4th DCA 1996) (citing *Warren v. Dairyland Ins. Co.,* 662 So.2d 1387, 1388 (Fla. 4th DCA 1995)) (holding exhibits attached to the complaint negate the allegations, "the plain language of the document will control and may be the basis for a motion to dismiss."). Instead, it is Plaintiffs' position that the purchase price of $30,000,000 contained in the purchase agreement, by this action, should be reformed to reflect a purchase price of $17,000,000 due to a "mutual mistake."

When the second $1 million payment became due on December 15, 2017, Mr. Schaeffer corresponded with Eileen, stating that "I am not paying anything else to you" and "we can either do this the 'easy way' or the 'hard way.'" A true and correct copy of the ultimatum from Mr. Schaeffer is attached hereto as Exhibit A (the "Ultimatum"). The "easy way," according to the Ultimatum is to "amend our prior deal… we have to change our deal to make clear that: (1) I don't owe you any further payments; and (2) you will not receive the share of any proceeds if/when I sell the company." The "hard way" is that Mr. Schaeffer would be "filing a lawsuit" against Eileen . . . The bottom line is that I can see this easily costing you close to $10 million. I don't want to go that route, especially since it will require me to share information about Mike that will be embarrassing. But I will do it if I have to." *Id.* at 2.

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It is settled law that he who seeks equity must do equity. *Jackson v. Singer,*221 So.2d 783 (Fla. 3d 1969). The promissory note attached as exhibit 5 to the Amended Complaint provides that if the Trust and/or GWS fails to make a payment pursuant to the this note that the then current indebtedness shall immediately become due and payable. The note also provides that within three days after a payment is due the holder is entitled to a late charge of 5%. As a result, Plaintiffs have admitted that $9,450,000 is currently due and owing.

Accordingly, Eileen Gold respectfully request that the Court require GWS 2 and the Trust must do equity by tendering the $9,450,000 to the Court's registry prior to proceeding with their equitable claim for reformation.

WHEREFORE, Defendant, Eileen Gold respectfully requests that this Honorable Court enter an order requiring Plaintiffs deposit $9,450,000 into the Court registry before its claim for reformation may proceed.

DATED: January 31, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 31, 2018, a copy of the foregoing was electronically filed through the Florida Courts E-Filing Portal which will send electronic notification of the above filing to all registered users.

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s/ Etan Mark

EXHIBIT A

PRIVILEGED & CONFIDENTIAL
INADMISSIBLE SETTLEMENT COMMUNICATION

To: Eileen Gold

From: George Schaeffer

- Since we did our deal back in 2014, a lot of information has come to light.

- First and foremost, I have learned that Mike made many misrepresentations to me regarding the health of the company in the years preceding his death. I learned that Mike mismanaged the company very badly, and that he hid it from me. Unfortunately, I also learned that Mike spent almost every day of the week at a casino and at a massage parlor. And it appears that he was using cash from the company to finance these activities. All of this happened while he was representing to me (as he asked for additional money over and over again) that the company was in great shape. That was a lie.

- I have also learned that the valuation that was prepared after Mike's death was absolutely incorrect and that I overpaid you for the company.

- Let me be clear – I fully trusted People's Trust executives (including Steve Martindale and Mitch Politzer) to handle the valuation process. But my recent review of documents – including internal company emails – confirms that Mitch and others within the company were actually working against my interests, and were seeking to obtain a valuation that was higher than the actual value of the company.

- As I have worked more closely with the company in recent years, I have found that it was a complete mess (contrary to what Mike always told me). Upon reviewing the books and records of the company, we have found that Mike had apparently engaged in CRIMINAL activity with the company, including the borrowing of funds from the insurance company. This is a crime. There are many other examples. But this company that was supposedly in good shape was actually in shambles, and lost $42 million last year alone.

- In light of these concerns, earlier this year I hired an independent forensic accounting firm named Berkowitz Pollack Brant to review the prior valuation; to review the records of the company that I have available now; and to provide me with an accurate valuation of the company as of June, 2014 when I bought your 50% share.

- The valuation that was used for our deal stated that the company was worth $88 million in 2014. The forensic accounting firm that just completed its review of the company records prepared a report showing that the company was actually worth $34 million.

- So, the most I would have ever had to pay you was $17 million. And yet I have already paid you $21 million; am supposed to pay you $9 million more; and on top of that I am supposed to pay you a percentage of the company if I should ever sell. But given that we now know the value of the company was much less than we thought, the prior deal is simply unfair and we have to change it. To put it simply, I am not paying anything else to you.

- Given our situation, the bottom line is simple – We have to fix this. And we can either do this the "easy way" or the "hard way":

    - **Easy way** – in light of this new valuation, my attorneys have prepared documents that amend our prior deal. Even though you owe me money – and potentially LOTS of money – I am willing to walk away right now. But we have to change our deal to make clear that: (1) I don't owe you any further payments; and (2) you will not receive the share of any proceeds if/when I sell the company. In other words, our business relationship ends right now and neither of us have any further obligations to the other person. Period.

    - **Hard way** – if you will not agree to revise our deal, then I am filing a lawsuit against you. In that case, I will ask a judge to cancel our deal and order that I do not owe you anything else. But I am also going to ask the judge to have you pay me back the money that you owe me. Right now, I have overpaid you at least $4 million. After our forensic accountants review everything, I am sure it will be more. Of course, you will also have to pay attorneys to defend the case (which I expect to last years) AND pay my attorneys when we win the case. The bottom line is that I can see this easily costing you close to $10 million. I don't want to go that route, especially since it will require me to share publicly information about Mike that will be embarrassing. But I will do it if I have to.

- The choice is up to you. I need an answer by 5:00 PM (ET) on December 14, 2017.