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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

UNITED STATES OF AMERICA)
) No. 11 CR 0342-2
 vs.)
)
 FRANK CONSTANT)

FILED
 FEB 16 2012
 FEB 16 2012
 Judge Gary Feinerman
 United States District Court

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant FRANK CONSTANT, and his attorney, JACKIE JACOBSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The indictment in this case charges defendant with seven counts of wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2(Count One through Seven).
3. Defendant has read the charges against him contained in the indictment, and the charges has been fully explained to him by his attorney.
4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the indictment, which charges defendant with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning no later than in or around June 2006, and continuing until in or around November 2010, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant FRANK CONSTANT, along with co-defendant Michael Morawski, devised and participated in a scheme to defraud investors and prospective investors, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by means of material omissions.

Defendant CONSTANT, with co-defendant Morawski, operated a number of real estate investment companies, including Michael Franks, LLC, Michael Franks Holding, LLC, and Assurance Property Management, LLC (collectively "Michael Franks"). Defendant CONSTANT and co-defendant Morawski were each principals and co-owners of Michael Franks. Michael Franks was located at 800 East Northwest Highway, Suite 201, Palatine, Illinois 60074. Michael Franks was in the business of real estate investment, including purchasing real estate properties, such as apartment complexes, operating the properties as rental units, renovating these properties, and then selling the properties. In order to help finance the purchase, operation, and renovation of these properties, defendant CONSTANT

and co-defendant Morawski solicited and caused to be solicited investors to invest funds into Michael Franks.

Defendant CONSTANT and co-defendant Morawski offered and sold and caused to be offered and sold two forms of investments to the public through Michael Franks. The first form of investment was an interest in the acquisition, improvement, and operation of a specific apartment complex property for a period of three to five years. The defendants represented that investors would earn between 7% to 9% annual returns and potentially more upon the sale of the property. The second investment, executed through a promissory note, was an interest in "real estate-based funds" such as the Michael Franks Alternative Fund, LLC, the Structured Equities Fund, LLC and the Stone Creek Ventures Fund, LLC. The defendants represented and caused to be represented to these investors that their investment would be spread among different real estate properties, with an annual interest payment of between 8% and 30% per annum. Defendant CONSTANT and co-defendant Morawski represented to many of the investors who invested in Michael Franks that the returns on their investment agreements would be generated from the operating revenue of the real estate properties and paid to them on a monthly or quarterly basis.

Defendant CONSTANT knew that, shortly after opening Michael Franks in or about June 2006, that one of the only ways defendant and co-defendant Morawski could make monthly or quarterly return payments to existing investors was through the use of new investor funds coming into Michael Franks. This was because many of the properties were

not generating sufficient revenue and had significant debt. Nevertheless, defendant CONSTANT and co-defendant Morawski continued to solicit and caused the solicitation of new investors based upon false representations that their investment funds would be used to invest in real estate development projects or to purchase specific real estate project. However, defendant CONSTANT and co-defendant Morawski intended to and did use these new invested funds to make Ponzi-type payments to existing investors

In addition, defendant CONSTANT knew that he and his co-defendant had falsely represented to certain investors that the investors' funds would be used to operate a specific real estate property, such as a designated residential apartment complex. However, defendant CONSTANT and co-defendant Morawski used investors' funds to operate other, unrelated real estate projects that were performing poorly and needed investor funds to continue operating.

Furthermore, defendant CONSTANT and co-defendant Morawski also used investor funds for the general expenses of Michael Franks, including administrative and payroll expenses, for payments to defendants CONSTANT and Morawski, and to open, fund, and operate Lanis Securities, a broker dealer entity formed and operated by defendant CONSTANT and co-defendant Morawski. Defendant CONSTANT knew that many of these expenditures were not disclosed to investors and was contrary to representations to investors that their funds would be invested in real estate only.

Defendant CONSTANT and co-defendant Morawski also falsely represented to investors in the Michael Franks Alternative Fund LLC that this investment offered the opportunity for "guaranteed" monthly or quarterly returns on the investment and that it was secured by a "personal guarantee" that was "leveraged against personal net worth into the millions." Defendant CONSTANT knew that one of the only way defendants could ensure that investors received monthly or quarterly returns was through the use of Ponzi-type payment to investors, and that defendant CONSTANT and his co-defendant did not have net worth in the millions by which they could personally guarantee the payment of investor returns.

Defendant CONSTANT and co-defendant Morawski also recruited investors with promises of annual returns between 14% and 30% per annum in certain investments to be paid monthly or quarterly from the net operating revenue of the real estate properties. Defendant CONSTANT knew that Michael Franks was not generating sufficient revenue to fund these returns and that the only way they could make these promised payments was through the use of Ponzi-type payments to investors.

Defendant CONSTANT and co-defendant Morawski also concealed the risk involved in the investments offered by Michael Franks by not disclosing to investors that defendants did not have sufficient revenue to pay the monthly or quarterly returns to investors or to operate certain real estate properties, that defendants needed to use Ponzi-type payments to continuously fund the periodic payments to the investors, and needed to use new investor

funds from unrelated real estate properties to fund the operations of the poorly-performing properties.

Defendant CONSTANT and co-defendant Morawski, to cause investors to invest additional funds and not to withdraw their investment, took steps to lull investors into believing their investments were doing well, including by continuously sending and causing to be sent periodic Ponzi-type payments to investors and by falsely representing to investors that Michael Franks was a successful real estate investment company when it was not.

On December 2, 2009, the Illinois Department of Securities issued a Temporary Order of Prohibition that found that defendant CONSTANT and co-defendant Morawski, through their offer and sale of promissory notes, were engaging in the unregistered sale of securities in Illinois and prohibited Michael Franks, and Morawski and CONSTANT from offering or selling securities in or from Illinois until further order. However, defendant CONSTANT and co-defendant Morawski raised at least an additional \$2.4 million in new investments after this order was entered.

As a result of the scheme, defendant CONSTANT and co-defendant Morawski fraudulently obtained approximately \$18,000,000 of investor funds and caused over 300 investors to lose their entire investment, except for the Ponzi-type payments made to certain investors as part of defendants' scheme, for an estimated loss of approximately \$14,000,000.

On or about December 31, 2008, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant CONSTANT, for the purpose of executing the scheme to defraud,

did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an interstate wire funds transfer of approximately \$47,300 from Mechanics Bank, located in Richmond, California through the Fedwire system in New Jersey to Lake Forest Bank & Trust Company, Lake Forest, Illinois, which funds represented Investor E's investment with Michael Franks.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2011 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The amount of loss involved in the substantive offense is approximately \$14,000,000, which is over \$7,000,000 but less than \$20,000,000 which, pursuant to Guideline § 2B1.1(b)(1)(K), increases the base offense level by 20 levels.

iii. Pursuant to Guideline §2B1.1(b)(2)(C), the offense level is increased by an additional 6 levels because the offense involved more than 250 victims.

iv. The base offense level is increased by an additional 2 levels, pursuant to §2B1.1(b)(8)(C), because defendant's offense conduct violated a cease-and-desist order issued by the Illinois Department of Securities on December 2, 2009.

v. The base offense level is increased by an additional 2 levels, pursuant to §3B1.3 because defendant abused a position of private trust in committing the offense by soliciting and recruiting investors to invest funds with defendant, by representing to investors their expertise in the area in soliciting investor funds, and in obtaining and maintaining discretion over the disposition of investor funds.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources

efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 34, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 151 to 188 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline

calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

Agreements Relating to Sentencing

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this plea agreement, then the government shall move the Court, pursuant to Guideline § 5K1.1, to depart downward from the low end of the applicable Guideline range, and shall recommend a sentence that includes a term of imprisonment in the custody of the Bureau of Prisons of 66 percent of the low end of the applicable Guideline range. Defendant shall be free to recommend any sentence. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

13. If the government does not move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart from the applicable Guideline range, as set forth above, the preceding paragraph of this plea agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to § 5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline § 5K1.1.

14. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the

sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

15. Regarding restitution, defendant acknowledges that the total amount of restitution owed to victims is approximately \$14,400,490, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution in the amount outstanding at the time of sentencing.

16. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the forfeiture allegation as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

19. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 0342.

20. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

21. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could

require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, affords a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, if the government makes a motion at sentencing for a downward departure pursuant to Sentencing Guideline § 5K1.1 and to the extent that any sentence of imprisonment falls within or below the applicable guideline range, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), and including any order of restitution, in exchange for the concessions made by the United States in this Plea Agreement. In addition, if the government makes a motion at sentencing for a downward departure pursuant to Sentencing Guideline § 5K1.1 and to the extent that any sentence of imprisonment falls within or below the applicable guideline range, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and his attorney's alleged failure or refusal

to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

22. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the

Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

24. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

25. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing

financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

26. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

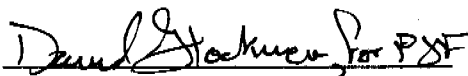
27. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

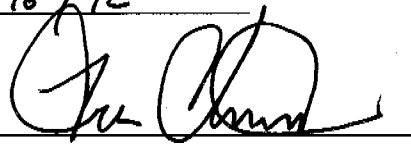
28. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.


29. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

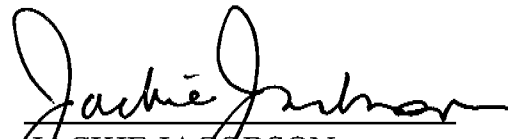
30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 2/16/12


PATRICK J. FITZGERALD
United States Attorney


FRANK CONSTANT
Defendant


SUNIL R. HARJANI
Assistant U.S. Attorney


JACKIE JACOBSON
Attorney for Defendant