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AUG 10 2021	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY 	DEPUTY

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,
12 vs.
13 Frank Capri,
14 Defendant.
15

No. CR 20-00096-001-PHX-JJT
PLEA AGREEMENT

16 The United States and Defendant Frank Capri agree to dispose of this matter on the
17 following terms and conditions:

18 **1. PLEA**

19 Defendant will plead guilty to: count 16 of the indictment, charging Defendant with
20 conspiracy, a class D felony offense in violation of 18 U.S.C. § 371; and count 1 of the
21 information, charging Defendant with tax evasion, a class D felony offense in violation of
22 26 U.S.C. § 7201.

23 **2. MAXIMUM PENALTIES**

24 a. Conspiracy under 18 U.S.C. § 371 is punishable by a maximum fine of either
25 \$250,000 or twice the gross pecuniary gain or loss, a maximum term of imprisonment of 5
26 years, or both, and a term of supervised release of 3 years. Tax evasion under 26 U.S.C.
27 § 7201 is punishable by a maximum fine of \$100,000, a maximum term of imprisonment
28 of 5 years, or both, and a term of supervised release of 3 years. The maximum terms of

1 imprisonment for both offenses may run consecutively, and the maximum fines for both
2 offenses may be combined. The maximum term of probation is five years.

3 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
4 Reform Act of 1984, the Court shall order the defendant to:

5 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
6 § 3663 and/or 3663A, unless the Court determines that restitution would not be
7 appropriate;

8 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
9 fine is not appropriate;

10 (3) serve a term of supervised release when required by statute or when a
11 sentence of imprisonment of more than one year is imposed (with the understanding that
12 the Court may impose a term of supervised release in all other cases); and

13 (4) pay upon conviction a \$100 special assessment for each count to
14 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

15 b. The Court is required to consider the Sentencing Guidelines in determining
16 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
17 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
18 by statute for the crimes of conviction, unless there are stipulations to the contrary that the
19 Court accepts.

20 **3. AGREEMENTS REGARDING SENTENCING**

21 a. Stipulations. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),
22 the United States and Defendant stipulate that: (1) the loss associated with Defendant's
23 fraudulent conduct is between \$9.5 million and \$25 million; and (2) any prison sentences
24 imposed for the two offenses shall run concurrently.

25 b. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, Defendant
26 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
27 event more than \$18,012,703, to all victims associated with count 1 of the indictment who
28 were directly or proximately harmed by his "relevant conduct," including conduct

1 pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3,
2 regardless of whether such conduct constitutes an “offense” under 18 U.S.C. §§ 2259, 3663
3 or 3663A. In addition, Defendant agrees to pay restitution to the Internal Revenue Service
4 for tax due and owing for 2013, 2014, and 2015, totaling \$1,528,079. Defendant
5 understands that such restitution will be included in the Court’s Order of Judgment and that
6 an unanticipated restitution amount will not serve as grounds to withdraw his guilty plea
7 or to withdraw from this plea agreement.

8 c. Assets and Financial Responsibility. The defendant shall make a full
9 accounting of all assets in which the defendant has any legal or equitable interest. The
10 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
11 transfer any such assets or property before sentencing, without the prior approval of the
12 United States (provided, however, that no prior approval will be required for routine, day-
13 to-day expenditures). The defendant also expressly authorizes the United States Attorney’s
14 Office to immediately obtain a credit report as to the defendant in order to evaluate the
15 defendant’s ability to satisfy any financial obligation imposed by the Court. The defendant
16 also shall make full disclosure of all current and projected assets to the U.S. Probation
17 Office immediately and prior to the termination of the defendant’s supervised release or
18 probation, such disclosures to be shared with the U.S. Attorney’s Office, including the
19 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
20 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
21 under this agreement and the law.

22 d. Acceptance of Responsibility. If the defendant makes full and complete
23 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant’s
24 commission of the offense, and if the defendant demonstrates an acceptance of
25 responsibility for this offense up to and including the time of sentencing, the United States
26 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
27 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
28

1 the United States will move the Court for an additional one-level reduction in the applicable
2 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

3 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

4 a. The United States shall dismiss the remaining charges in the indictment
5 against Defendant and shall not pursue criminal tax charges for tax years 2016-2019.

6 b. This agreement does not, in any manner, restrict the actions of the United
7 States in any other district or bind any other United States Attorney's Office.

8 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

9 a. If the Court, after reviewing this plea agreement, concludes that any
10 provision contained herein is inappropriate, it may reject the plea agreement and give the
11 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
12 11(c)(5).

13 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
14 vacated, or reversed at any time, this agreement shall be null and void, the United States
15 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
16 any charges that have been dismissed because of this plea agreement shall automatically
17 be reinstated. In such event, the defendant waives any and all objections, motions, and
18 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
19 restrictions in bringing later charges or proceedings. The defendant understands that any
20 statements made at the time of the defendant's change of plea or sentencing may be used
21 against the defendant in any subsequent hearing, trial, or proceeding subject to the
22 limitations of Fed. R. Evid. 410.

23 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

24 The defendant waives (1) any and all motions, defenses, probable cause
25 determinations, and objections that the defendant could assert to the indictment or
26 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
27 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
28 judgment against the defendant, or any aspect of the defendant's sentence, including the

1 manner in which the sentence is determined, including but not limited to any appeals under
2 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
3 (habeas petitions), and any right to file a motion for modification of sentence, including
4 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
5 collateral attack, or other motion the defendant might file challenging the conviction, order
6 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
7 bar an otherwise-preserved claim of ineffective assistance of counsel or of “prosecutorial
8 misconduct” (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

9 **7. DISCLOSURE OF INFORMATION**

10 a. The United States retains the unrestricted right to provide information and
11 make any and all statements it deems appropriate to the U.S. Probation Office and to the
12 Court in connection with the case.

13 b. Any information, statements, documents, and evidence that the defendant
14 provides to the United States pursuant to this agreement may be used against the defendant
15 at any time.

16 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
17 cooperation shall include providing complete and truthful responses to questions posed by
18 the U.S. Probation Office including, but not limited to, questions relating to:

- 19 (1) criminal convictions, history of drug abuse, and mental illness; and
20 (2) financial information, including present financial assets or liabilities
21 that relate to the ability of the defendant to pay a fine or restitution.

22 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

23 Nothing in this agreement shall be construed to protect the defendant from
24 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
25 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
26 monetary penalties, including restitution imposed by the Court, shall be due immediately
27 upon judgment, shall be subject to immediate enforcement by the United States, and shall
28 be submitted to the Treasury Offset Program so that any federal payment or transfer of

1 returned property the defendant receives may be offset and applied to federal debts (which
2 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
3 payments, the schedule of payments shall be merely a schedule of minimum payments and
4 shall not be a limitation on the methods available to the United States to enforce the
5 judgment.

6 **9. ELEMENTS**

7 **Conspiracy, 18 U.S.C. § 371**

8 Between about January of 2011 and June of 2016, in the District of Arizona and
9 elsewhere:

10 1. There was an agreement between two or more persons to commit the crime
11 of wire fraud, in violation of 18 U.S.C. § 1343;

12 2. Defendant became a member of the conspiracy knowing of at least one of its
13 objects and intending to help accomplish it; and

14 3. One of the members of the conspiracy performed at least one overt act in
15 furtherance of the conspiracy.

16 **Wire Fraud, 18 U.S.C. § 1343**

17 Between about January of 2011 and June of 2016, in the District of Arizona and
18 elsewhere:

19 1. Defendant or a co-conspirator knowingly executed or attempted to execute a
20 scheme or plan to defraud or for obtaining money or property by means of fraudulent
21 pretenses, representations, promises, or omissions;

22 2. The statements made or facts omitted were material; that is, they had a natural
23 tendency to influence or were capable of influencing, a person or entity to part with money
24 or property;

25 3. Defendant or a co-conspirator acted with the intent to defraud; that is, the
26 intent to deceive or cheat; and

27 4. Defendant or a co-conspirator used, or caused to be used, wires in interstate
28 commerce to carry out or attempt to further the scheme.

Tax Evasion, 26 U.S.C. § 7201

On or about April 15, 2016, in the District of Arizona and elsewhere:

1. Defendant owed more federal income tax for calendar year 2015 than was declared due on Defendant's income tax return for that calendar year;
2. Defendant knew that more federal income tax was owed than was declared due on his income tax return;
3. Defendant made an affirmative attempt to evade or defeat such additional tax; and
4. Defendant acted willfully.

10. FACTUAL BASIS

Defendant admits that the following facts are true and that if this matter were to proceed to trial the United States could prove the following beyond a reasonable doubt:

At all relevant times, Defendant exercised full control and direction over the businesses at issue – including Boomtown Management, LLC, and its related entities, and RF Investments, LLC, and its related entities. These businesses were nominally owned by various trusts held in the names of Defendant's relatives, of which Defendant was the beneficiary. In about 2008, Defendant acquired a licensing agreement granting him the exclusive right to negotiate with property developers to construct and operate a chain of restaurants related to musician T.K. ("Branded Restaurant"). Defendant and others opened the first Branded Restaurant in Mesa, Arizona, in 2009. By 2011, the business had expanded to include five Branded Restaurants, with more locations under lease or in construction. The restaurants were consolidated under the entity Boomtown Management, LLC, an umbrella company for all operating and prospective Branded Restaurants.

Defendant had no prior experience building, owning, or operating restaurants. Defendant and others negotiated construction and lease agreements for each prospective Branded Restaurant with property development companies around the United States. The agreements required the property developers to pay tenant improvements funds ("TI funds") to Boomtown for construction of the restaurants according to a schedule outlined

1 in the lease agreement, which was generally based on percentage of completion of the
2 project. Defendant and others provided inflated financial projections to property
3 developers during lease negotiations and agreed to pay significantly increased rental
4 amounts, so the developers would agree to larger TI fund amounts. Defendant then
5 instructed others to find ways to reduce actual construction costs so Boomtown could retain
6 the difference between the TI funds amount and actual construction cost. Defendant and
7 others also inflated the reported cost of construction on paperwork provided to the property
8 developers.

9 In early 2011, Boomtown began acting as its own general contractor, in violation
10 of the signed lease agreements. At Defendant's direction, Boomtown employees fabricated
11 construction draw paperwork submitted to the property developers for the release of TI
12 funds. With Defendant's knowledge, Boomtown employees created a list of fictitious
13 general and sub-contractors to use on the construction draw paperwork. Many of the
14 fictitious contractors had names that were similar to real contractors who did work on other
15 Boomtown projects. Boomtown employees photo-shopped the fraudulent draw
16 paperwork, to include fabricated general contractors, fabricated subcontractors purporting
17 to certify completed work, false lien releases with forged signatures, and false notary
18 stamps.

19 In response to concerns raised by property developers about the paperwork,
20 Defendant and others took steps to enhance its appearance of authenticity. For example,
21 virtual offices with addresses and phone numbers were set up in the event a property
22 developer attempted to verify information listed on the fraudulent draw paperwork. As a
23 result of this scheme, between 2011 and 2015, property developers disbursed \$12,997,478
24 in TI funds to Boomtown accounts for Branded Restaurants that never completed or
25 opened.

26 Defendant frequently directed Boomtown employees to divert funds out of the
27 individual restaurant and main Boomtown bank accounts for his personal use, including to
28 purchase luxury vehicles, expensive real estate, and jewelry. From 2011 through 2015,

1 Defendant spent more than \$2,700,000 of Boomtown funds on jewelry purchases. In
2 addition, Defendant frequently used debit cards from Boomtown accounts to pay his
3 personal expenses. By 2012, Defendant was diverting as much as \$250,000 a week from
4 Boomtown accounts for personal expenses. Defendant also diverted Boomtown funds to
5 a personal TD Ameritrade account.

6 Despite earning millions of dollars each year from Boomtown, between 2013 and
7 2015, Defendant reported no such income on his individual income tax returns, Forms
8 1040, that he signed and filed with the IRS. Specifically, on or about April 15, 2016,
9 Defendant signed and filed a Form 1040 for tax year 2015 that he knew failed to list money
10 diverted purely for his personal use that he knew he was required to report to the IRS. In
11 tax year 2013, 2014, and 2015, Defendant underreported his income by \$1,540,447,
12 \$1,091,382, and \$1,844,753 respectively. The total amount of tax due and owing, without
13 penalties and interest, is \$1,528,079: \$218,917 for 2013, \$535,940 for 2014, and \$773,222
14 for 2015.

15 In early 2015, Defendant and others negotiated a licensing agreement to construct
16 and operate a new chain of restaurants related to the musical group R.F. ("Second Branded
17 Restaurant"). The new venture was called RF Investments, LLC and was held in the name
18 of a third party to conceal Defendant's and Boomtown's involvement from prospective
19 property developers. The lease agreements associated with the Second Branded
20 Restaurants were substantially similar to the lease agreements with the Branded
21 Restaurants, including the payment schedule of TI funds. To further conceal Defendant's
22 involvement, third parties were represented to property developers and landlords as the
23 principals of the business and signed all documentation associated with the business.
24 However, Defendant maintained full control and decision-making authority. Defendant
25 instructed his business partner to submit fraudulent construction draw paperwork for work
26 that was not completed. As a result of this scheme, property developers disbursed
27 \$5,035,225 in TI funds to RF Holdings accounts for Second Branded Restaurants that never
28

1 opened. Defendant's involvement was eventually discovered, and pending lease
2 agreements were cancelled.

3 Defendant shall swear under oath to the accuracy of this statement and, if called
4 upon to testify about this matter in the future, any intentional material inconsistencies in
5 Defendant's testimony may subject him to additional penalties for perjury or false
6 swearing, which may be enforced by the United States under this agreement.

7 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

8 I have read the entire plea agreement with the assistance of my attorney. I
9 understand each of its provisions and I voluntarily agree to it.

10 I have discussed the case and my constitutional and other rights with my attorney.
11 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
12 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
13 present evidence in my defense, to remain silent and refuse to be a witness against myself
14 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
15 to be presumed innocent until proven guilty beyond a reasonable doubt.

16 I agree to enter my guilty plea as indicated above on the terms and conditions set
17 forth in this agreement.

18 I have been advised by my attorney of the nature of the charges to which I am
19 entering my guilty plea. I have further been advised by my attorney of the nature and range
20 of the possible sentence and that my ultimate sentence shall be determined by the Court
21 after consideration of the advisory Sentencing Guidelines.

22 My guilty plea is not the result of force, threats, assurances, or promises, other than
23 the promises contained in this agreement. I voluntarily agree to the provisions of this
24 agreement and I agree to be bound according to its provisions.

25 I understand that if I am granted probation or placed on supervised release by the
26 Court, the terms and conditions of such probation/supervised release are subject to
27 modification at any time. I further understand that if I violate any of the conditions of my
28 probation/supervised release, my probation/supervised release may be revoked and upon

1 such revocation, notwithstanding any other provision of this agreement, I may be required
2 to serve a term of imprisonment or my sentence otherwise may be altered.

3 This written plea agreement, and any written addenda filed as attachments to this
4 plea agreement, contain all the terms and conditions of the plea. Any additional
5 agreements, if any such agreements exist, shall be recorded in a separate document and
6 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
7 be in the public record.

8 I further agree that promises, including any predictions as to the Sentencing
9 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
10 (including my attorney) that are not contained within this written plea agreement, are null
11 and void and have no force and effect.

12 I am satisfied that my defense attorney has represented me in a competent manner.

13 I fully understand the terms and conditions of this plea agreement. I am not now
14 using or under the influence of any drug, medication, liquor, or other intoxicant or
15 depressant that would impair my ability to fully understand the terms and conditions of this
16 plea agreement.

17
18 Date

7-20-21

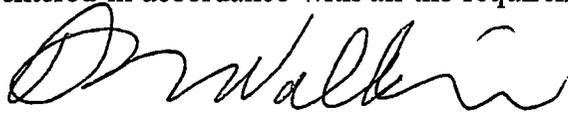

FRANK CAPRI
Defendant

19
20 **APPROVAL OF DEFENSE COUNSEL**

21 I have discussed this case and the plea agreement with my client in detail and have
22 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
23 constitutional and other rights of an accused, the factual basis for and the nature of the
24 offense to which the guilty plea will be entered, possible defenses, and the consequences
25 of the guilty plea including the maximum statutory sentence possible. I have further
26 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
27 assurances, promises, or representations have been given to me or to the defendant by the
28 United States or any of its representatives that are not contained in this written agreement.

1 I concur in the entry of the plea as indicated above and that the terms and conditions set
2 forth in this agreement are in the best interests of my client. I agree to make a bona fide
3 effort to ensure that the guilty plea is entered in accordance with all the requirements of
4 Fed. R. Crim. P. 11.

5 7/28/21
6 Date


7 STEVE WALLIN
8 Attorney for Defendant

9 **APPROVAL OF THE UNITED STATES**

10 I have reviewed this matter and the plea agreement. I agree on behalf of the United
11 States that the terms and conditions set forth herein are appropriate and are in the best
12 interests of justice.

13 GLENN B. MCCORMICK
14 Acting U.S. Attorney, District of Arizona

15 MONICA KLAPPER Digitally signed by MONICA KLAPPER
Date: 2021.07.27 09:59:53 -0700

16 _____
17 Date

18 _____
19 MONICA B. KLAPPER
20 Assistant U.S. Attorney

21 **ACCEPTANCE BY THE COURT**

22 _____
23 Date

24 _____
25 HON. JOHN J. TUCHI
26 United States District Judge