

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 14-80201-CR-HURLEY/HOPKINS**

**UNITED STATES OF AMERICA**

**v.**

**ELITE ESTATE BUYERS, INC. d/b/a  
ELITE DECORATIVE ARTS, and  
CHRISTOPHER HAYES,**

**Defendants. /**

**GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING**

The Government, by and through the attorneys below, respectfully submits this consolidated memorandum in connection with the sentencing of defendants Christopher Hayes ("Hayes") and Elite Estate Buyers, Inc. d/b/a Elite Decorative Arts ("Elite"), which is scheduled for 9:45 a.m. on April 23, 2015.

The Presentence Investigation Report ("PSR") prepared by the United States Probation Department ("Probation Department"), dated March 19, 2015, for Defendant Hayes correctly calculated the applicable United States Sentencing Guidelines ("Guidelines" or "U.S.S.G.") as being a total offense level of 21, with a corresponding Guidelines range of 37 to 46 months' imprisonment, and concluded that there are no circumstances requiring a departure or variance. Likewise, the PSR for Defendant Elite, dated March 20, 2015, appropriately provided the sentencing options, noting that the parties have stipulated that Elite pay a fine to the Lacey Act Reward Fund in the sum of \$1,500,000.

I. **Overview of the Case**

Criminal violations of wildlife statutes harm the public and our natural resources. They create demand, and a market for, the exploitation of endangered species such as the highly endangered black rhinoceros. Wildlife crimes, especially those involving the use of a legitimate business, such as an auction house, are notoriously difficult to detect. The means used to commit these crimes, such as the sale of endangered and protected species to foreign nationals and others, knowing that those individuals intend to smuggle the wildlife out of the United States, and the falsification of documents and disguised packaging, undermine conservation efforts and the government's efforts protect our natural resources.

The Government's prosecution of Elite and Hayes is part of a multi-district law enforcement operation known as Operation Crash.<sup>1</sup> Operation Crash is an ongoing effort to detect, deter and prosecute those engaged in the unlawful trafficking of rhinoceros horns and other protected species. Rhino horn can sell for more than gold and is just as rare, but rhino horn and elephant ivory are more than mere commodities. Each illegally-traded horn or tusk represents a dead animal, poaching, bribery, smuggling and/or organized crime. While the PSR is correct, that there is no "victim" of this crime in the classic sense, it is a crime that has a significant adverse impact on both society and the future of a species of pre-historic origin which today stands on the brink of extinction. Operation Crash is being conducted by the U.S. Department of the Interior's Fish and Wildlife Service ("FWS"), in coordination with other federal, state and foreign law enforcement agencies and it has resulted in more than two dozen arrests, including prosecutions in the Southern District of Florida, Southern District of New

---

<sup>1</sup> A "crash" is the term for a herd of rhinoceros.

York, Eastern District of New York, District of New Jersey, Eastern District of Texas, and Central District of California, among others.

Defendant Hayes was the owner, operator and President of Elite, a Florida auction house specializing in the consignment and sale of Asian artifacts. JFS at 1. Hayes was in the business of soliciting and accepting items on consignment and selling those items to winning bidders throughout the world at his auction. Elite and Hayes also sold consigned items directly to individuals through private sales. Id. Hayes represented himself to be an expert in Asian antiques, including objects made from protected species of wildlife such as rhinoceros horn, elephant ivory, and coral. Id.

In pleading guilty, Defendant Hayes and his corporation have admitted that they directed buyers to two nearby shipping companies to aid them in smuggling the wildlife out of the United States. JFS at 2. The defendants knowingly aided and abetted foreign customers in smuggling by helping to falsify records and shipping documents related to the purchases and in order to conceal their illegal business. Id.

As part of his business, Defendant Hayes knowingly sold endangered and protected wildlife to foreign nationals who they knew intended to export the wildlife outside the United States. Often, the purchase price was paid by wiring funds from a foreign bank to the auction house, and the export of the merchandise was arranged without the purchaser ever traveling to the United States. Hayes and Elite turned a blind eye the illegal exportation, despite knowing the ultimate destination of the wildlife.

The defendants' illegal conduct helped to support a market where endangered and protected species are illegally traded across international borders and which has fueled an

epidemic of illegal poaching of wild animals. This has devastated existing populations, and made it much more difficult to change course before these magnificent animals – among the largest remaining mega-fauna on earth – and all sub-species are extinct in the wild. The unparalleled greed of these defendants and others like them undermines the entire system by which the United States and the rest of the world regulate the trade in endangered species.

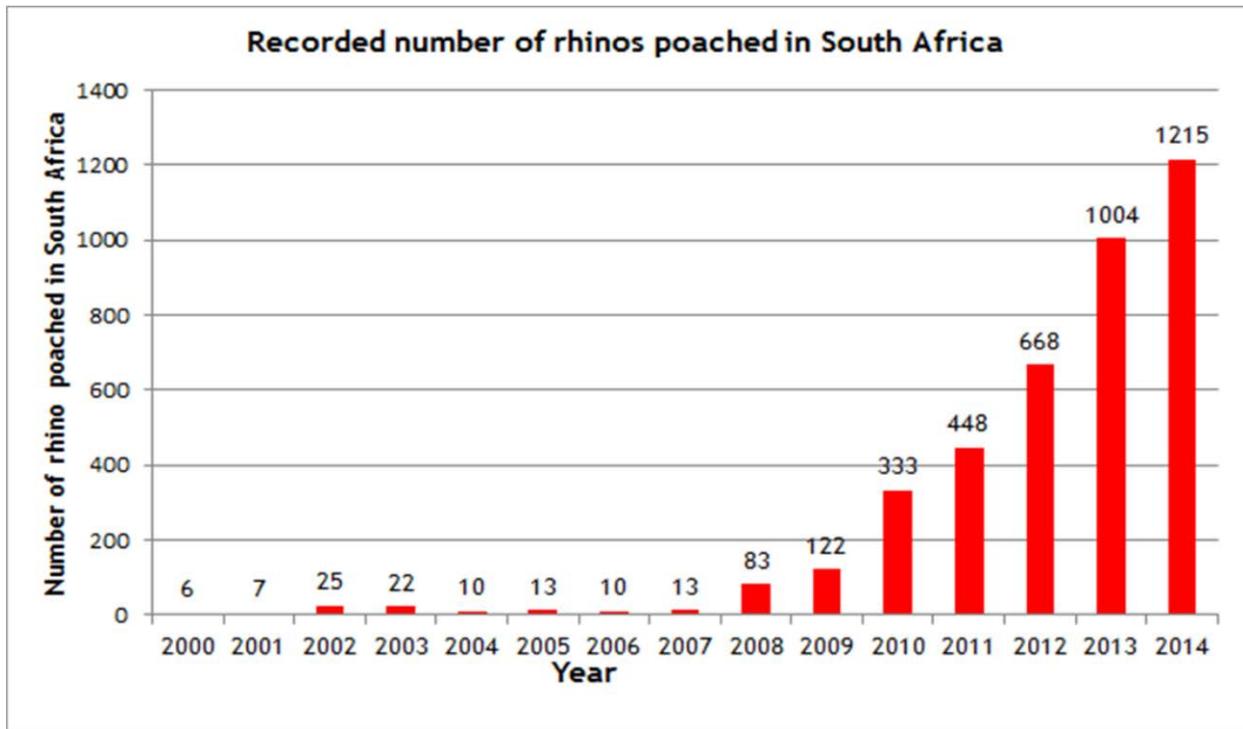
In pleading guilty, Elite and Hayes also admitted to selling in excess of 19 lbs. of rhinoceros horns, with an estimated market value in excess of \$400,000. As part of their plea, the defendants admitted to selling several rhinoceros horns to residents of Texas. Shortly after defendants sold the rhino horns to a dealer in Texas, the horns were smuggled to Zhifei Li, a Chinese national living in the People’s Republic of China. Li was convicted in the District of New Jersey, where he was sentenced to a 70-month term of incarceration. See *United States v. Zhifei Li*, Crim Nos. 13-0013 and 13-00552-001, District of New Jersey (2014)(charges originating in the Southern District of Florida were included in this resolution pursuant to a Rule 20, Fed. R. Crim. P. transfer).

Additionally, Defendants Elite and Hayes admitted to selling a rhinoceros horn and objects made from elephant ivory to Xiao Ju Guan a/k/a Tony Guan, a Canadian national who owned a small auction house in Canada. In pleading guilty, Hayes and Elite have admitted to knowingly aiding and abetting Guan to smuggle those wildlife items out of the United States. Guan was convicted in the Southern District of New York, where he was sentenced to a 37-month term of incarceration. See *United States v. Xiao Ju Guan a/k/a Tony Guan*, 1:14-cr-00506, Southern District of New York (2015).

**II. Background**

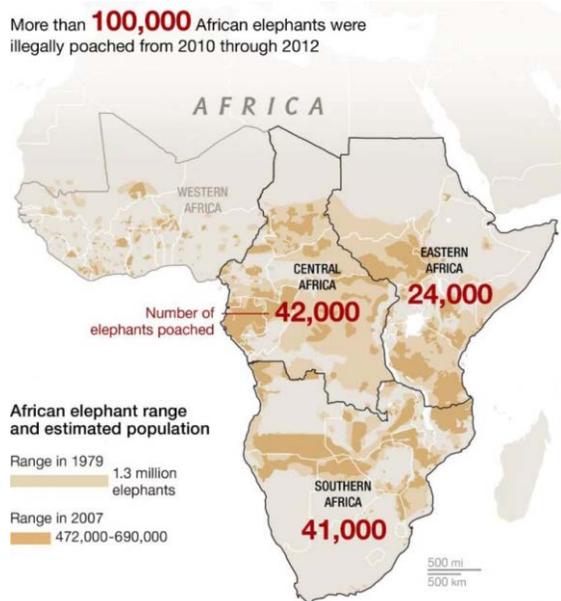
**A. Wildlife Trafficking of Rhinoceros Horn, Elephant Ivory and Coral**

The trade in rhinoceros horn and elephant ivory, as reflected in the rate of poaching, has climbed sharply in recent years. Demand for, and commercial value of, rhinoceros horn has increased dramatically in recent years. Unscrupulous profiteers like Hayes and Elite have chosen to illegally supply rhinoceros horn to meet this growing demand. More than 3,000 rhinos have been poached in South Africa alone since 2008, a more than 7,000 percent increase compared to the previous 17 years. See, <http://www.fws.gov/wildlife-trafficking-questions-and-answers.html> (last viewed May 21, 2014). Last year, 1,215 rhinoceros were poached illegally in South Africa, the most on record.



Source: [http://www.savetherhino.org/rhino\\_info/poaching\\_statistics](http://www.savetherhino.org/rhino_info/poaching_statistics) (last viewed March 16, 2015).

The situation of African elephants is similarly dire:



Source:<http://news.nationalgeographic.com/news/2014/08/140818-elephants-africa-poachingcites-census/> (last viewed March 14, 2015).

Elephants are not only in jeopardy as a protected species, but their demise due to poaching to fund the illicit ivory trade threatens other wildlife because they are a “keystone” species that play a pivotal role in the survival of the ecosystem and other animals. They clear paths, fell trees, and dig water holes that are then used by humans and other animals.

Although Elite and Hayes may not have personally slaughtered a rhino or an elephant, they nevertheless share direct culpability for the illegal trade. Without people capitalizing on the skyrocketing price of rhinoceros horn, and continuing to drive up demand as they did, there would not be such a crisis for the existence of these stoic creatures. Without markets for endangered species products, there is no demand. Without demand, there is no market or profit in supply. Without profit, there is no motive to kill, or reward for killing, endangered species in the wild.

Coral, a living organism that forms a natural habitat for numerous species of marine life, is also threatened due to an increasing demand for coral and objects made from it. Coral is the equivalent of the rain forest of the sea supporting entire ecosystems. The illegal trade in coral, in which Elite and Hayes also participated, threatens not only remaining coral reefs, but the fish that inhabit them and other wildlife that depend upon this habitat.

On July 1, 2013, President Barak Obama issued an Executive Order entitled “Combating Wildlife Trafficking.” Section 1 of the President’s EO states:

The poaching of protected species and the illegal trade in wildlife and their derivative parts and products (together known as “wildlife trafficking”) represent an international crisis that continues to escalate. Poaching operations have expanded beyond small-scale, opportunistic actions to coordinated slaughter commissioned by armed and organized criminal syndicates. The survival of protected wildlife species such as elephants, rhinos, great apes, tigers, sharks, tuna, and turtles has beneficial economic, social, and environmental impacts that are important to all nations. Wildlife trafficking reduces those benefits while generating billions of dollars in illicit revenues each year, contributing to the illegal economy, fueling instability, and undermining security. Also, the prevention of trafficking of live animals helps us control the spread of emerging infectious diseases. For these reasons, it is in the national interest of the United States to combat wildlife trafficking.

<https://www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combating-wildlifetrafficking> (last viewed March 16, 2015).

Rhinoceros horn and elephant ivory have been regulated, since 1976, by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), a treaty signed by over 170 countries around the world, including the United States. Nevertheless, as described above, the demand for rhinoceros horn and elephant ivory, and the black market prices they command, have skyrocketed in recent years due to the value some cultures have placed on ornamental carvings, good luck charms, or alleged medicinal purposes, leading to a decimation of global populations of these animals. Various stakeholders, including law enforcement and

wildlife preservation groups have become increasingly concerned about the serious criminal activities involved in illegal wildlife trade, involving organized criminal groups, money laundering, corruption of officials and sophisticated smuggling across international borders. *See*, Exhibit 1 (June 2013 issue of *Criminal Nature*, focusing on the global security implications of illegal wildlife trade).

Specifically with regard to rhinoceros, a significant proportion of the trade is illegal. An estimated minimum of 1,500 rhinoceros horns entered illegal international trade from Africa to Asia from 2006 - 2009. This increased demand has also led to increased sourcing of rhinoceros horns from pre-existing private ownership. These horns generally enter international trade for destinations in consuming countries in East Asia. Significantly, this increased sourcing of horns has coincided with a rise in rampant poaching in South Africa, which has led to the rapid depletion of the species and, therefore, an increase in the value of rhinoceros horn. The increase in value of these horns has resulted in the trafficking of both raw and carved horns. According to both INTERPOL and EUROPOL, trade in rhinoceros horn has become so lucrative that organized crime groups are involved at various levels from poaching, to trafficking, to even robbing museums and private dealers.<sup>2</sup>

While increased law enforcement and conservation efforts have decreased the slaughter somewhat, continued efforts are needed to keep rhinoceros, and, in particular, the black rhinoceros, from becoming extinct.

The rise in poaching has also coincided with the increase in the number and value of antiques, alleged (i.e., fake) “antiques,” and raw horns being sold at auction houses and in private

---

<sup>2</sup> *See, e.g.*, <https://www.europol.europa.eu/content/press/europol-and-ireland-identify-organised-crimegroup-active-illegal-trading-rhino-horn-9> (Last viewed March 14, 2015).

sales. And, the rise in poaching has coincided with criminal smuggling, including that of this defendant and others engaged in similar crimes.

B. Defendants' Wildlife Trafficking

As part of the plea, the parties have submitted a joint factual statement summarizing defendant's criminal activity, much of which has been incorporated into the PSR. The following is a brief summary of the defendants' conduct:

1. Sales of Endangered Species

- In January 2012, defendants sold a horn from a Black rhinoceros for \$80,500, to Ning Qiu, a dealer who defendants knew resided in Texas. JFS at 2-3. A photograph of this horn is attached as Exhibit 2.
- In May 2012, accepted the consignment of a Black rhinoceros horn from an individual they knew resided in New York. Defendants then sold the horn for \$69,000 to an undercover UFWS Agent, who defendants knew was located in the Commonwealth of Virginia. JFS at 3. A photograph of this horn is attached as Exhibit 3.
- In June 2012, the defendants sold several items, including a horn from a Black rhinoceros, and objects made from ivory and coral, for a total of almost \$38,000, to Tony Guan, a Canadian national, who smuggled those items out of the United States. Defendants knew the individual intended to smuggle the items to Canada and they aided and abetted the individual. JFS at 3-4. Photographs of these items are attached as Exhibits 4 - 9.
- In October 2012, the defendants sold a horn from Black rhinoceros to an undercover USFWS Agent for \$36, 800, knowing the agent was located in the Commonwealth of Virginia. JFS at 4-5. A photograph of the horn sold is attached as Exhibit 10.
- In December 2012, the defendant accepted consignment of two horns from a Black rhinoceros from an undercover USFWS Agent, knowing the agent resided in Colorado, and that the horns had been transported by the agent from Colorado. In January 2013, the defendants sold those horns in a private sale to Ning Qiu for \$55,000, who they knew was a resident of Texas. A photograph of these horns is attached as Exhibit 11.

2. Other Wildlife Sold by Defendants and Smuggled from the United States

<b>Date</b>	<b>Type of Wildlife</b>	<b>Description</b>	<b>Price Paid</b>	<b>Smuggled To</b>
01/18/2011	Elephant Ivory	Carving (Lot 72)	\$1,600	Belgium
03/13/2012	Elephant Ivory	Carving (Lot 265)	\$6,700	Hong Kong
04/09/2012	Elephant Ivory	Carving (Lot 216)	\$1,000	UAE
05/31/2012	Elephant Ivory	Carvings (Lots 129, 137, 351, 380, 404, 215, 261)	\$5,425	Thailand
07/09/2012	Elephant Ivory	Carvings (Lots 262, 624, 264)	\$1,300	Thailand
11/29/2012	Elephant Ivory	Carving (Lot 214, 216)	\$1,450	Russia
11/23/2012	Elephant Ivory	Carvings (Lots 225, 239)	\$625	Thailand
01/18/2013	Elephant Ivory	Carving (Lot 145)	\$1,700	Taiwan

C. Statements by Defendant Hayes

The USFWS undercover agent's communications with Elite employees and Hayes during and following the consignment of the raw horn were electronically recorded. During those communications, Elite employees and Hayes made the following statements:

- (1) On February 21, 2013, an employee/manager of Elite stated that Hayes sold the horns that the USFWS agent consigned to a "private buyer" for \$46,750. The Elite employee/manager indicated that Hayes made the decision to sell the horns to a private buyer, because the "provenance" was lacking, and Elite had information that USFWS was investigating the sale of Black rhinoceros horns and Hayes was concerned that if USFWS searched Elite, the horns would have been seized.
- (2) On February 27, 2013, Hayes stated that many horns are now being confiscated by USFWS and that selling the consigned horns to a private buyer

was a judgment call. Hayes also indicated that if USFWS came into Elite, it would seize the horns, so he decided to sell it to a private buyer. Hayes also stated that the sale was for almost \$47,000 and he just could not let that go, given that the horns were dried and, in his experience, the horns would not have commanded that much money. Hayes stated that he “had to go to another big Asian deal in Milan,” which was the reason he “had to do the deal quickly.” Hayes went on to state “even though I did a private deal, if anyone tries to take these out of the country, we could have an issue. If any issues do occur, they are going to come to me, and I will do my best to fix it, without it coming back to you.”

- (3) On February 27, 2013, Hayes stated: “The horns could be going out of the country, but the law is strict and it is not supposed to go outside the United States and not even outside the State of Florida. I do not like the killing of the rhinoceros, but I sell the horns because it is done already, we are not selling new horns. But the law says you have to prove the horn was 100 years old, and with the consigned horns, there was no way we could have done that, so if USFWS came into the store, the horns would have been seized and I would have had to tell you that we have sold them in the past without issues, but this time we could not do anything.”
- (4) On February 27, 2013, Hayes stated that “someone” visited Elite, but he did not want to give [the USFWS undercover agent] details, because “the less you know, the better it is for you.” The USFWS undercover agent asked what he should tell USFWS if he was contacted about the horns, and Hayes stated “all you have to tell them is that you do not know a thing, that you gave them to Elite.” Hayes stated that if USFWS asked him, he would not hide anything, but he tell them he “was just so sorry and that he made a mistake” and that he “would suffer the consequence if there is one, and hope for a slap on the wrist.” Hayes also indicated that he has all the paperwork ready and “will deal with it, if need be” and “take the responsibility if there is any recourse, because he [Chris Hayes] should have written ‘100 years’ on your paper even though the state law from the 1970s, they are not going by that one.”
- (5) On February 27, 2013, Hayes stated: “All I can do is try to work it out the best I can and pay a fine and do whatever has to be done and not sell any more unless the documentation is perfect. No one wants the rhinos and the elephants dead, but I feel that if someone went legitimately hunting and legally it was done, what are these families supposed to do 40, 50, 60 years afterwards, let them reap their reward now. Let’s not kill anything else, but there’s a fine line there, because if the horns bring big numbers, that’s what have poachers killing the animals. Especially the fresh horn, they grind them up and use them in a tea bag. If the horns cross state lines, you’re smuggling.

There is no one in the state of Florida that buys these, very few.” When asked if what they had done was illegal, an Elite employee/manager stated “it is a grey area.” To that, Hayes added “It is, but I’d lean towards what you just said.”

### III. Argument

A Guidelines sentence is warranted in this case. This is a criminal wildlife trafficking case in which the defendant’s conduct knowingly and deliberately violated the regime designed to protect some of the last remaining mega fauna from extermination. Criminal violations of wildlife statutes harm the public and our natural resources. They create demand and a market for the exploitation of endangered species such as rhinoceros and elephants. For all the reasons set forth below, a Guidelines sentence is appropriate in this case.

#### A. Applicable Law

##### 1. The Guidelines

After making the initial Guidelines calculation, a sentencing judge must then consider seven factors outlined in Title 18, United States Code, Section 3553(a): “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); the four legitimate purposes of sentencing, see *id.* § 3553(a)(2); “the kinds of sentences available,” *id.* § 3553(a)(3); the Guidelines range itself, see *id.* § 3553(a)(4); any relevant policy statement by the Sentencing Commission, see *id.* § 3553(a)(5); “the need to avoid unwarranted sentence disparities among defendants,” *id.* § 3553(a)(6); and “the need to provide restitution to any victims,” *id.* § 3553(a)(7). See *Gall*, 128 S. Ct. at 596 & n.6. In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, including:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2). To the extent a District Court imposes a sentence outside the range recommended by the Guidelines, the Court must “consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *Cavera*, 550 F.3d at 189 (quoting *Gall*, 128 S. Ct. at 596).

## 2. Hayes’ Role and the Role of Enhancement

With regard to Hayes’ role, Section 3B1.1(a) of the Guidelines provides for a two-level increase in offense level if “the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in [the other subsections of that section].” U.S.S.G. § 3B1.1(c). The sentencing court must make a factual determination that the defendant organized, led, managed or supervised at least one other participant in a criminal activity. *Id.* Note 1, 2.

Here, as part of the plea agreement, the parties have agreed that Hayes’ role in the trafficking conspiracy was that of an organizer, leader, manager, or supervisor. Thus, the 2-level enhancement under Section 3B1.1(a) applies.

## **IV. No Variance is Warranted – the § 3553(a) Factors Support an Guidelines Sentence**

### **A. Section 3553(a)(1) – Nature and Circumstances of the Offense and the History and Characteristics of the Defendant**

1. Nature and Circumstances of the Offense

A sentence within the Guidelines range is supported by the nature and circumstances of the offense. 18 U.S.C. § 3553(a)(1). As the Court is aware, the 9-page Joint Factual Statement signed and accepted by defendant Hayes and defendant Elite offers numerous examples of their criminal conduct, some of which are repeated in the PSR. These are only examples. While the full scope of the defendants' criminal conduct is unknown, what is known demonstrates that their offenses were pervasive, extensive, intentional, and significant.

As set forth in the JFS, defendant Hayes' criminal conduct did not involve a solitary violation or mistake that might be explained as a single instance of bad judgment or even a limited scope of misconduct. Rather, the offenses committed by this defendant took place over a long period of time and he had full knowledge that he was breaking the laws of the United States and other jurisdictions. The defendant's unlawful activity involved extensive planning, the use of a legitimate business to conceal the illegal conduct, numerous individuals, various crimes, international coordination and concealment. In sum and substance:

- Hayes represented himself to be an expert in Asian antiques, including objects made from rhinoceros horn, elephant ivory, and protected coral.
- Hayes operated Elite as an auction house, which was in the business of accepting items on consignment and selling those items to winning bidders through auction.
- Through Elite's website and Elite's employees, Hayes directed winning bidders and private buyers of items that they believed to be rhinoceros horns, and objects made from elephant ivory and protected coral to two shipping companies ("the Shippers") that were located in the vicinity of Elite's office.
- Together with those shipping companies, Hayes and Elite knowingly aided and abetted in the falsification of records and shipping documents related to the purchases of rhinoceros horns, objects made from elephant ivory, and protected coral, in order to avoid government scrutiny.

- Hayes knew the buyers of the rhinoceros horns intended to export the horns from the United States.

## 2. History and Characteristics of the Defendant

A sentence within the advisory Guidelines range is also supported by “the history and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1). Afforded every opportunity – a profitable business, family support, and relative wealth – to live a law-abiding life, Hayes chose to make his money by buying and selling the body parts of critically vulnerable species and circumventing the laws of both this country and others in order to do so.

### B. The § 3553(a)(2) Factors

#### 1. Seriousness of the Offense, Respect for the Law and Just Punishment

Given Hayes’ offenses and history, a sentence in the advisory Guidelines range is needed “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense. 18 U.S.C. § 3553(a)(2)(A). For more than five years, Hayes operated a criminal enterprise that, for profit, deliberately undermined a legal regime designed to protect some of the last iconic species from extermination and, in the course of doing so, also undermined the integrity of customs and border enforcement at home and abroad.

##### a. Impact on Wildlife Protection

As discussed in detail above, defendants’ conduct has a tremendous impact on the market that profits from the destruction of these wildlife populations.

##### b. Hayes’ Role in the Offense

As discussed above, Hayes’ conduct was all the more serious because he was much more than a mere participant in a criminal organization. In addition to presiding over the auction

house, Hayes involved a family member and employees of the business in the illegal conduct. Those that worked for Elite and Hayes were directly involved in the consignments and sales of wildlife. Hayes had full knowledge and even encouraged his employees to communicate with consignors and with buyers, in person, as well as on the telephone and with email, to promote the business. Moreover, the parties and the PSR have agreed that as the owner and operator of Elite, through which Hayes sold endangered and protected wildlife others he knew intended to export the wildlife from the United States, Hayes conduct warrants a 2-level enhancement for his role as an organizer and manager of the trafficking scheme.

2. Need to Protect the Public From Further Crimes of the Defendant and Afford Adequate Deterrence to Criminal Conduct

A sentence consistent with the Guidelines sentence is needed in order to protect the public from further crimes of the defendant and afford adequate deterrence to criminal conduct. 18 U.S.C. § 3553(a)(2)(B) and (C).

Hayes was fully aware that his conduct was criminal in nature and that if caught, he faced the likelihood of a substantial period of incarceration. Additionally, Hayes was specifically on notice that the type of business in which he was engaged was the current focus of law enforcement efforts. Indeed, he quickly sold the horns consigned by the undercover agent to a known co-conspirator and smuggler in order to avoid detection and/or seizure. In summary, Hayes' actions demonstrate not only his consciousness of guilt, but the fact that he was undeterred. A guideline sentence is necessary in order to deter and punish this defendant, as well as to deter others.

### 3. Need to Avoid Unwarranted Sentencing Disparities

Imposition of a sentence within the advisory Guideline range best serves “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). In creating the Guidelines, “Congress sought *uniformity* in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct.” *Rita*, 551 U.S. at 349. Even after *Booker*, “uniformity remains an important goal of sentencing.” *Kimborough v. United States*, 553 U.S. 85, 107 (2007). The Guidelines “help avoid excessive sentencing disparities,” *id.*, because avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges,” *Gall*, 552 U.S. at 54, and because most defendants are sentenced within the Guidelines ranges, see *Peugh*, 133 S.Ct. at 2084.

There are many examples of significant sentences in wildlife cases based on the market value of the wildlife, including the following: *United States v. Tania Siyam*, No. 1:04-CR-00098 (N.D. Ohio) (upward departure in 2008, 60 months for Lacey Act and smuggling charges involving ivory with market value of \$158,000); *United States v. Olivia Terrance et al.*, No. 8:12-CR-00376 (N.D. N.Y.) (18 months for Lacey Act and ESA conspiracy to smuggle reptiles out of the U.S.); *United States v. Dennis E. Rodebaugh et al.*, No. 1:10-CR-00444 (D. Colo.) (41 months for Lacey Act violations involving hunting of elk and deer); *United States v. Tamba Kaba*, No. 1:09-CR-00858 (E.D.N.Y.) (33 months for Lacey Act and smuggling involving smuggling of ivory); *United States v. Ivan and Gloria Chu*, No. 10-CR-0003 (D.V.I.) (30 and 20 month sentences for smuggling black coral); *United States v. David Place et al.*, Nos. 1:08-CR-

10098 and 1:09-CR-10152 (D. Mass.) (33 months for Lacey Act and smuggling violations involving sperm whale teeth and narwhal tusks); *United States v. Steven Patrick Garcia, Jr.*, No. 12-CR-00039 (D. Mont.) (24 months for Lacey Act and MBTA violations involving sale of eagle feathers); *United States v. Eliodoro Soria Fonseca*, No. 3:11-CR-03328 (S.D. Calif.) (24 months for smuggling iguana meat); *United States v. James Bobby Butler, Jr., et al.*, No. 6:10-CR-10089 (D. Kansas) (41 and 27 month sentences for Lacey Act interstate trafficking and other offenses related to deer hunting); *United States v. Enrique Gomez De Molina*, No.1:11-CR-20808 (S.D. Fla.) (20 months for smuggling wildlife for taxidermy pieces); *United States v. Karen Blyth et al.*, No. 1:10-CR-00011 (S.D. Ala.) (33, 24 and 13 month sentences for Lacey Act and other violations related to smuggling and mislabeling of seafood); *United States v. Danny Parrott*, No. 2:09-CR-00045 (S.D. Ohio) (21 months for Lacey Act violations involving deer hunting); *United States v. Christopher Rowland*, No. 5:08-CR-00001 (D. Alaska.) (37 months for Lacey Act and Marine Mammal Protection Act violations involving hunting and export of sea otters, sea lions and seals); *United States v. Herman Oyagak*, No. 04-CR-00034 (D. Alaska) (84 months for illegally taking walruses); *United States v. George Waters*, No. 03-CR-230 and 231 (S.D. Iowa) (57 months for Lacey Act violations involving poaching of deer and elk); *United States v. Arnold Bengis et al.*, No. 1:03-CR-00308 (S.D.N.Y.) (46, 30 and 12 month sentences for Lacey Act violations involving smuggling of rock lobster and toothfish); *United States v. Michael Barrera et al.*, Nos. 03-CR-166 and 04-CR-203 (M.D. Fla.) (37 and 24 month sentences for reptile smuggling); *United States v. Robert Gehl et al.*, No. 93-CR-300 (N.D.N.Y.) (Lacey Act and other offenses resulting in sentences of 87 and 70 months in conspiracy to sell tainted salmon roe); *United States v. Lawrence Wee Soon Chye*, No. 6:03-CR-166 (M.D. Fla.) (37 months for

smuggling reptiles); *United States v. Tony Silva*, 94-CR-760 (N.D. Ill.) (82 months and \$100,000 fine for smuggling CITES protected wildlife and tax charges). *United States v. David H. McNab et al.*, No. 00-CR000079 (S.D. Ala.) (97 months for Lacey Act, smuggling and other offense in sale of undersized spiny lobsters from Nicaragua). *United States v. George Waters*, No. 03-CR-230 and 231 (S.D. Iowa) (57 months Lacey Act offenses for illegal hunting of deer and elk); *United States v. Anson Wong*, No. 98-CR-165 (N.D. Cal.) (71 months for Lacey Act and other offense related to trafficking in reptiles); *United States v. Tsimbal*, (S.D. Fla)(42 month sentence for smuggling caviar); *United States v. Mariusz Chomicz*, No. 03-CR-20915 (S.D. Fla) (30 months for smuggling caviar); *United States v. Panhandle Seafood et al.* N.D. Fla (51 months for Lacey Act and other offenses for illegal import of catfish). Similarly, a review of sentences of incarceration for all violations of 18 U.S.C. § 554, for the time period in or about 2008 to 2014, regardless of the items smuggled, shows 453 cases with periods of incarceration where the *average* period of incarceration was 43 months.

In fact, as discussed above, two individuals involved in purchasing rhinoceros horns from Defendant Hayes and Elite – Zhifei Li and Tony Guan – were given Guidelines sentences of 70 months and 30 months.<sup>3</sup>

**V. Elite Estate Buyers, Inc.**

As part of the corporate plea agreement, Defendant Elite and the Government have agreed to jointly recommended that Defendant Elite be sentenced to a term of probation of three years with the following special conditions of that probation: (1) a \$1,500,000 fine; and (2) to be

---

<sup>3</sup> Guan was given a 7-month variance for being a model prisoner while he was detained, and for expressing genuine remorse.

banned from the trade in endangered or protected wildlife, including rhinoceros horn, elephant ivory, and red coral.

**VI. Conclusion**

For the foregoing reasons, the Government respectfully submits that a sentence with respect to defendant Hayes in the Guidelines range of 37 to 46 months is sufficient, but not greater than necessary, to meet the goals of Section 3553(a), and that the jointly recommended sentence with respect to defendant Elite is consistent with the sentencing principles enunciated in Section 3553(a).

Respectfully submitted,

JOHN C. CRUDEN  
Assistant Attorney General  
Environment & Natural Resources Division  
United States Department of Justice

WIFREDO A. FERRER  
United States Attorney  
Southern District of Florida

By: /s/Gary N. Donner  
Trial Attorney  
Environmental Crimes Section

By: /s/Thomas A. Watts-FitzGerald  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 20<sup>th</sup>, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Thomas A. Watts-FitzGerald

**SERVICE LIST - ALL SERVICE BY CM/ECF**

**UNITED STATES OF AMERICA v. ELITE ESTATE BUYERS, INC. d/b/a ELITE  
DECORATIVE ARTS, and CHRISTOPHER HAYES,**

**Case No. 14-80201-CR-HURLEY/HOPKINS**

Benedict P. Kuehne, Esq.  
100 S.E. 2<sup>ND</sup> Street, Ste. 3550  
Miami, FL, 33131-2112  
Telephone: 305-789-5989  
Facsimile: 305-789-5987  
Attorney for Defendants