

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 BROOKLYN

4 -----X

PLEA AGREEMENT

5 UNITED STATES OF AMERICA,

6 - against -

Case No. 1:15-cr-00207-VMS

7 GERARD KRUSE,

8 Defendant.

9 -----X
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11 Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the
12 Environmental Crimes Section of the Environment and Natural Resources Division of the United
13 States Department of Justice (the “Government”) and GERARD KRUSE (“KRUSE”) agree to
14 the following:
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16 **1. Counts of Conviction.** The defendant KRUSE will waive indictment and plead guilty
17 to Counts One through Thirteen of the Information filed in the above-captioned matter, charging
18 misdemeanor violations of the Lacey Act, 16 U.S.C. §§ 3372(a)(1), 3372(a)(2)(A), 3373(d)(2).

19 Each of the charged counts carries the following statutory penalties:
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21 **Lacey Act Illegal Receipt and Transport of Wildlife**

22 a. Maximum Term of Imprisonment: 1 year.
23 (16 U.S.C. § 3373(d)(2));

24 b. Minimum Term of Imprisonment: 0 years.
25 (16 U.S.C. § 3373(d)(2));

26 c. Maximum Supervised Release Term: 1 year; if a condition of release is violated, the
27 defendant may be sentenced to up to 1 year without credit for pre-release
28 imprisonment or time previously served on post-release supervision;
(18 U.S.C. § 3583);

1 d. Maximum Term of Probation: 5 years; pursuant to numbered paragraph 8 *infra*, the
2 defendant agrees to be subject to six Special Conditions.
(18 U.S.C. § 3561(c)(2));

3 d. Maximum Fine: \$100,000 or twice the gross pecuniary gain/loss, whichever is greater.
4 (18 U.S.C. § 3571(b)(5), (d), and (e));

5 e. Restitution: Not applicable in this case.

6 f. Special Assessment: \$25.00.
7 (18 U.S.C. § 3013(a)(1)(A)(iii)).

8 **2. Elements of the Lacey Act (Underlying State Violation).** Counts One through
9 Twelve charge misdemeanor violations of the Lacey Act, 16 U.S.C. §§ 3372(a)(2)(A),
10 3373(d)(2). The elements of that offense are that:

11 (a) Within the Eastern District of New York;

12 (b) The defendant did knowingly receive or transport;

13 (c) Wildlife in interstate commerce;

14 (d) That was taken in violation of state law; and

15 (e) While in the exercise of due care should have known that the wildlife was taken in
16 violation of or in a manner unlawful under any underlying law, treaty, or regulation.

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18 **3. Elements of the Lacey Act (Underlying Federal Violation).** Count Thirteen charges
19 a misdemeanor violation of the Lacey Act, 16 U.S.C. §§ 3372(a)(1), 3373(d)(2). The elements of
20 that offense are that:

21 (a) Within the Eastern District of New York;

22 (b) The defendant did knowingly receive or acquire;

23 (c) Wildlife;

24 (d) That was transported in violation of federal law; and

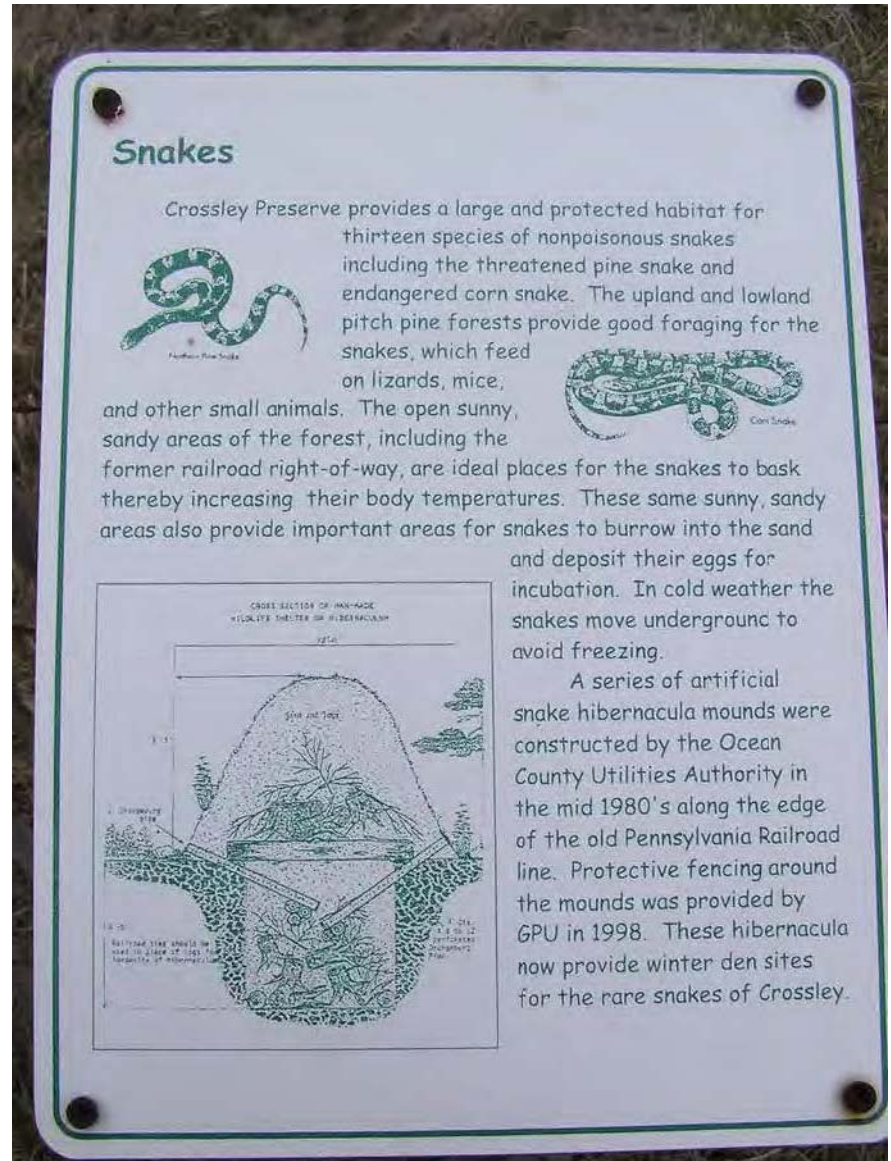
25 (e) While in the exercise of due care should have known that the wildlife was transported
26 in violation of or in a manner unlawful under any underlying law, treaty, or
27 regulation.
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1 **4. Factual Basis.** The defendant admits all of the charges and allegations contained in the
2 Information. The defendant affirms that he is pleading guilty because he is in fact guilty of
3 Counts One through Thirteen. Defendant KRUSE agrees that the following facts are true, and if
4 brought to trial, that the Government could prove the following facts beyond a reasonable doubt.
5 KRUSE agrees the following facts do not represent the entirety of the Government's evidence,
6 and that these stipulated facts are sufficient to support a conviction of all counts in the
7 Information:

8 **(a)** From the beginning of 2008 through the end of 2012, KRUSE participated in multiple
9 interstate Lacey Act violations involving the illegal collection, transport, and receipt of a variety
10 of snakes. Sometimes KRUSE would accept money for the snakes, while at other times, there
11 was a barter of snakes either close in time or at some future date. KRUSE understood that the
12 collection of wild snakes was a sporadic and uncertain enterprise; therefore, KRUSE attempted
13 to keep his purchasers or barter partners actively interested by keeping the flow of snakes going
14 during 2008-2012. The snakes that serve as the basis of the charged counts form only a portion
15 of the actual snakes that were involved in the ongoing conduct. During the four-year period of
16 2008 to 2012, KRUSE stipulates that he illegally collected, transported, shipped, or received 59
17 snakes that were taken in violation of state laws protecting those snakes. Although the charged
18 counts only require that KRUSE should have exercised due care as to the snakes' legality, *e.g.*,
19 lawful or unlawful collection under state law, in Counts One through Twelve, KRUSE actually
20 knew that the snakes were collected illegally. Evidence of this knowledge comes from
21 Defendant's statements, emails, and admissions. For example, prior to June 2010, KRUSE
22 visited a nature preserve and took a photograph of the sign detailing the protected status of New
23 Jersey corn and pine snakes. *See* photo on the following page. For Count Thirteen, KRUSE
24 actually knew that the poisonous rattlesnake that he asked for was going to be shipped by U.S.
25 Mail.

26 **(b)** With regard to Count One, on or about July 19, 2009, in Douglaston, New York,
27 KRUSE did knowingly transport three corn snake eggs (*Elaphe guttata guttata*), an endangered
28 species under New Jersey law, in interstate commerce from New Jersey to Douglaston, New

1 York. He personally collected the snake eggs from the wild in the Crossley Preserve, New
2 Jersey, and drove them to New York. At the time of collection, KRUSE knew that it was a
3 violation of New Jersey law to collect snake eggs. KRUSE knew that the eggs were either from a
4 corn snake or a snake that was otherwise endangered.
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26 **Photo 1. Sign on nature trail at Crossley Preserve, NJ.**

27 (c) With regard to Count Two, between July 19, 2009, and April 21, 2011, in Douglaston,
28 New York, KRUSE did knowingly transport and cause to be transported two corn snakes

1 (*Elaphe guttata guttata*), an endangered species under New Jersey law, in interstate commerce
2 from Douglaston, New York, to Bishop, California. These corn snakes were hatched from the
3 eggs that KRUSE illegally collected in New Jersey. He shipped two baby snakes to California by
4 a commercial package delivery service. KRUSE knew that the snakes were hatched from eggs
5 that he collected in violation of New Jersey law.
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7 (d) With regard to Count Three, on or about August 4, 2009, in Douglaston, New York,
8 KRUSE did knowingly receive one San Diego mountain kingsnake (*Lampropeltis zonata*
9 *pulchra*), a California species of special concern, that was shipped in interstate commerce from
10 Long Beach, California, to Douglaston, New York. The snake was shipped by a commercial
11 package delivery service. KRUSE knew that the snake was illegally taken under California law.
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13 (e) With regard to Count Four, on or about May 27, 2010, to June 2, 2010, in Douglaston,
14 New York, KRUSE did knowingly receive four Sierra mountain kingsnakes (*Lampropeltis*
15 *zonata multicincta*), that were shipped in interstate commerce from Bishop, California, to
16 Douglaston, New York. The snakes were shipped by a commercial package delivery service.
17 KRUSE knew that the snakes were illegally taken under California law. *See* photo of Sierra
18 Mountain kingsnakes *infra*.
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28 **Photo 2. Two of the illegally collected Sierra Mountain kingsnakes.**

1 (f) With regard to Count Five, on or about May 29, 2010, in Douglaston, New York,
2 KRUSE did knowingly transport one Northern pine snake (*Pituophis melanoleucus*
3 *melanoleucus*), a threatened species under New Jersey law, in interstate commerce from New
4 Jersey to Douglaston, New York. He personally collected the snake from the wild in New Jersey
5 and drove it to New York. KRUSE knew the species of the snake, and he knew it was a violation
6 of New Jersey law to collect it.
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8 (g) With regard to Count Six, on or about June 15, 2010, in Douglaston, New York,
9 KRUSE did knowingly transport wildlife, to wit: one pregnant Northern pine snake (*Pituophis*
10 *melanoleucus melanoleucus*), a threatened species under New Jersey law, and one Eastern
11 kingsnake, a species of special concern under New Jersey law, in interstate commerce from New
12 Jersey to Douglaston, New York. He personally collected the snakes from the wild in New
13 Jersey and drove them to New York. KRUSE knew the species of the snakes, and he knew it was
14 a violation of New Jersey law to collect them. See photo of Northern pine snake *infra*
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27 **Photo 3. Northern pine snake illegally collected by Kruse.**
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1 **(h)** With regard to Count Seven, between July 22, 2010, and April 30, 2011, in
2 Douglaston, New York, KRUSE did knowingly transport and caused to be transported seven
3 Northern pine snakes (*Pituophis melanoleucus melanoleucus*), a threatened species under New
4 Jersey law, in interstate commerce from Douglaston, New York, to locations in Arizona,
5 California, Pennsylvania, and Texas. KRUSE shipped the snakes by a commercial package
6 delivery service. KRUSE knew that the snakes were taken in violation of New Jersey law.
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8 **(i)** With regard to Count Eight, on or about January 18, 2011, in Douglaston, New York,
9 KRUSE did knowingly receive seven California mountain kingsnakes (*Lampropeltis zonata*), a
10 sensitive species under Oregon law, that were shipped in interstate commerce from Eugene,
11 Oregon, to Douglaston, New York. The snakes were shipped by a commercial package delivery
12 service. KRUSE knew that the snakes had been taken in violation of Oregon law.
13

14 **(j)** With regard to Count Nine, on or about December 4, 2011, in Douglaston, New York,
15 KRUSE did knowingly transport three California mountain kingsnakes (*Lampropeltis zonata*), a
16 sensitive species under Oregon law, in interstate commerce to a person in Nottingham,
17 Maryland. KRUSE knew that the snakes were taken in violation of Oregon law.
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19 **(k)** With regard to Count Ten, on or about April 25, 2011, KRUSE did knowingly receive
20 three San Diego mountain kingsnakes (*Lampropeltis zonata pulchra*) and one San Bernardino
21 mountain kingsnake (*Lampropeltis zonata parvirubra*), both being species of special concern
22 under California law, that were shipped in interstate commerce from Bishop, California, to
23 Douglaston, New York. The snakes were shipped by a commercial package delivery service.
24 KRUSE knew that the snakes were taken in violation of California law. *See* photos of San Diego
25 mountain kingsnakes *infra*.
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Photos 4 and 5. Two of the illegal California mountain kingsnakes received by Kruse.

(l) With regard to Count Eleven, on or about May 11, 2011, to August 23, 2011 in Douglaston, New York, KRUSE did knowingly receive three Outer Banks kingsnakes (*Lampropeltis getula sticticeps*), a species of special concern under North Carolina law, that were transported in interstate commerce from Cheshire, Connecticut, to Douglaston, New York. KRUSE stated that the snakes were shipped by a commercial package delivery service. KRUSE knew that the snakes were taken in violation of North Carolina law.

(m) With regard to Count Twelve, on or about June 18, 2011, in Douglaston, New York, KRUSE did knowingly transport and caused to be transported one Eastern kingsnake (*Lampropeltis getula getula*), a species of special concern under New Jersey law, in interstate commerce from New Jersey to Douglaston, New York. KRUSE personally collected the snake from the wild in New Jersey and drove it to New York. KRUSE knew that the snake was taken illegally under New Jersey law. See photo of the Eastern kingsnake on the following page.



Photo 6. Eastern kingsnake illegally collected by Kruse.

(n) With regard to Count Thirteen, on or about October 26, 2011, in Douglaston, New York, KRUSE did knowingly receive one Western diamondback rattlesnake (*Crotalus atrox*) and one black neck garter snake, shipped by U.S. Mail in interstate commerce from Cedar Park, Texas, to Douglaston, New York. KRUSE knew that the rattlesnake was going to be shipped by U.S. Mail. KRUSE also knew that it was a violation of federal law to ship venomous snakes in the mail. See photo of the rattlesnake on the following page.



Photo 7. Western diamondback rattlesnake shipped through U.S. Mail.

5. U.S. Sentencing Guidelines and Home Confinement. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (“Guidelines”) is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. §§ 3553(a), 3572 to arrive at an appropriate sentence in this case. The defendant acknowledges that although the parties have agreed on terms such as the Guidelines offense level, length of home detention, and Special Conditions of Probation, the sentencing Court is free to sentence the defendant up to and including the statutory maximums set forth in numbered paragraph 1 *supra*.

1 Notwithstanding the stipulated facts in numbered paragraph 4, the Government may advise the
2 Court and the Probation Office of additional information relevant to sentencing and such
3 information may be used by the Court in determining the defendant's sentence. A sentence in
4 excess of the stipulated Guidelines offense level or other penalty amounts shall not be a basis for
5 the defendant to withdraw his guilty plea. The parties agree that the defendant is at a Criminal
6 History Category I, though recognize that this could change if contrary information becomes
7 available.
8

9 The Government and KRUSE stipulate that the Guidelines calculation is as follows:

10 Base Offense Level (USSG §2Q2.1(a)) 6

11 Plus: Commercial Purpose/Pattern of Similar Violations
12 (USSG §2Q2.1(b)(1)) + 2

13
14 Less: If the defendant meets requirements of
15 USSG §3E1.1(a), he may be entitled to a two-level
16 reduction for acceptance of responsibility, provided that
17 he forthrightly admits his guilt, cooperates with the Court
18 and the Probation Office in any presentence investigation
19 ordered by the Court, and continues to manifest an acceptance
20 of responsibility through and including the time of sentencing. - 2

21 Adjusted Offense Level: 6

22 This offense level (6) is within Zone A and carries a range of imprisonment of 0 to 6
23 months. With the exception of not opposing the Government's recommendation regarding home
24 confinement, the defendant stipulates that no other adjustments, departures, enhancements, or
25 variances apply to the stipulated offense level, nor will the defendant argue for any such
26 adjustments, departures, enhancements, or variances. The defendant acknowledges that the
27 Government will advocate for a sentence of home confinement, with electronic monitoring, of
28 thirteen months, assuming the full application of USSG §3E1.1. The defendant agrees not to
oppose the Government's position and arguments in favor of a thirteen-month term of home

1 detention; nor shall the defendant argue for any sentence less than thirteen months of home
2 confinement. Both parties acknowledge that the home confinement sentence of thirteen months
3 could alternatively be reached by stacking months of home confinement for each charged count;
4 the defendant will not oppose such a sentence of thirteen consecutive months of home
5 confinement.
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7 The defendant further recognizes that the stipulated offense level is not binding on the
8 Probation Office or the Court. If the Guidelines offense level determined by the Probation Office
9 or the Court is for any reason, including error in calculation, different from the stipulated offense
10 level, KRUSE will not be entitled to withdraw his guilty plea and the Government will not be
11 deemed to have breached the Plea Agreement. The Government commits that, apart from its
12 judgment as to the application of USSG §3E1.1 (whether it applies), it will not advocate for a
13 sentence greater than thirteen months' home confinement.
14

15 **6. Fine.** The parties have not agreed on the criminal fine amount. Each party shall
16 advocate for its preferred fine amount, with the Government capped at the aggregate statutory
17 maximum of \$1,300,000. The fine shall be payable to the "Lacey Act Reward Account" at this
18 address: United States Fish and Wildlife Service, Division of Financial Management - Cost
19 Accounting Section, 7333 W Jefferson Ave Ste 300, Lakewood, CO 80235. No later than
20 fourteen days prior to the plea hearing, KRUSE shall provide a financial affidavit to the
21 Government and the U.S. Probation Office, which details the assets, liabilities, and cash flow of
22 his household (including his spouse) and any other of his businesses or entities over which he or
23 his spouse exercise financial control. This requirement is in addition to whatever information
24 might be required by the Court or Probation.
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26 **7. Community Service Payment.** Within 72 hours of sentencing, KRUSE shall make a
27 one-time community service payment to the "New Jersey Natural Lands Trust" at this address:
28 New Jersey Natural Lands Trust, Mail Code 501-04, P.O. Box 420, Trenton, NJ 08625-0420.

1 The amount of this payment shall be 25% of the criminal fine imposed and shall be in addition to
2 any fine imposed. The Trust is an independent agency, created by the New Jersey legislature in
3 1968 that is empowered to accept private donations of land and funds in order to preserve habitat
4 and natural areas in the state. The payment shall be used for the sole and exclusive purpose of
5 enhancing, restoring, preserving, acquiring, and/or researching the habitat and/or natural history
6 of one or more species of snakes native to New Jersey. Other than the limitations set forth in this
7 paragraph the Government will not direct the actual use of the funds. KRUSE shall not be
8 permitted to claim or receive any tax credit, refund, or deduction for the community service
9 payment.

10 **8. Special Conditions of Probation.** Defendant understands that the Government will
11 advocate for a sentence of probation of three to five years. In addition to the terms of home
12 confinement, KRUSE agrees to be bound by the following six Special Conditions of Probation,
13 in addition to whatever conditions of release are imposed by the Court:

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15 **Special Condition No. 1.** Within 48 hours of sentencing, the defendant must surrender
16 all reptiles and amphibians to the U.S. Fish and Wildlife Service. Defendant must provide
17 a list of all his reptiles and amphibians by the time the Plea Agreement is fully executed.
18 Defendant agrees not to acquire any additional reptiles or amphibians once he signs the
19 Plea Agreement. The only exception to this Special Condition is the dwarf Australian
20 spiny-tailed monitor lizard, “Nugget.”

21 **Special Condition No. 2.** With the exception of the dwarf Australian spiny-tailed
22 monitor lizard, Nugget, the defendant is prohibited from handling, possessing, or
23 touching reptiles and amphibians, or residing in a home with reptiles and amphibians.

24
25 **Special Condition No. 3.** The defendant is prohibited from engaging in the import,
26 export, sale, purchase, sale, barter, exchange, or gifting of reptiles, including directing
27 someone to conduct any of those activities, and from receiving any benefit from those
28 activities.

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Special Condition No. 4. The defendant is prohibited from operating, contributing to, posting to, and maintaining any reptile-oriented websites, including making reptile-oriented posts and comments to blogs, chat rooms, social media, and online forums.

Special Condition No. 5. The defendant is prohibited from molesting, disturbing, harassing, pursuing, harming, and touching any wild reptile or its eggs, nests, burrows, holes, dens, trees, logs, pits, or resting areas.

Special Condition No. 6. The defendant is prohibited from attending any reptile and/or exotic pet show, conference, or convention.

9. Community Service Hours. In addition to the sanctions set forth herein, the Government reserves the right to advocate for a sentence that includes the performance of community service hours. KRUSE reserves the right to oppose community service hours.

10. Special Assessment. The defendant shall pay a special assessment of \$425.00, which is due in full at sentencing.

11. Appellate and Other Waivers. Defendant KRUSE agrees to give up his right to appeal his conviction, the judgment, and orders of the Court. KRUSE also agrees to waive any right he might have to appeal any aspect of the sentence, including any orders relating to restitution. The defendant agrees not to file any collateral attack on the conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any time in the future after the defendant is sentenced. Nevertheless, the defendant may bring a post-conviction claim if the defendant establishes that ineffective assistance of counsel directly affected the validity of this waiver of appeal and collateral challenge rights or the validity of the guilty plea itself. Subject to the foregoing, the defendant reserves the right to bring a direct appeal of any sentence imposed (a) in excess of the statutory maximum, or (b) with a

1 term of incarceration greater than the greater of (i) 18 months, or (ii) the maximum number of
2 months (high end of range) specified by the final Guidelines offense level, as that level is
3 determined by the sentencing Court. Clause (b) in the foregoing sentence is a limited exception
4 to the defendant's waiver of appeal and shall not constitute an independent basis to establish that
5 a particular sentence is unjust, illegal, or otherwise contrary to law. Furthermore, if the defendant
6 is sentenced to a term of incarceration, the pursuit of an appeal under the limited exceptions to
7 the waivers herein shall not be used as a basis to stay or otherwise delay the initiation of the term
8 of incarceration. The foregoing waivers are binding without regard to the sentencing analysis
9 used by the Court. The defendant understands that the Government might not preserve any
10 physical or electronic evidence obtained in this case and in no way shall the defendant rely on
11 the Government preserving such evidence for any purpose. KRUSE hereby waives any claim to
12 any physical evidence, papers, electronically stored information, or electronic media in the
13 possession, custody, or control of the Government. The defendant waives any further disclosure
14 or discovery from the Government. KRUSE further waives any and all rights under the Freedom
15 of Information Act relating to the investigation and prosecution of the above-captioned matter
16 and further agrees not to file a request for case-related documents from any agency or
17 department of the Executive Branch. Further, the defendant waives any right to seek attorney's
18 fees or litigation expenses under 18 U.S.C. § 3006A (the "Hyde Amendment"), and the
19 defendant acknowledges that the Government's position in the instant prosecution was not
20 vexatious, frivolous, or in bad faith. The defendant waives all defenses and claims with regard to
21 statute of limitations, laches, or any other arguments that any aspect of the charges is time-
22 barred. Finally, the defendant waives any challenge to venue.
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1 **12. Government's Obligations.** The Government agrees not to file any additional
2 criminal charges against the defendant arising from or related to any and all conduct, such
3 conduct known to the Government as of the date the last person signed this Plea Agreement,
4 which concerned the sale, transport, receipt, or barter of reptiles that occurred from January 1,
5 2009, through June 1, 2014. Further, the Government agrees that the reasonable and appropriate
6 sentence in this case is set forth above, and the Government agrees not to advocate for a different
7 sentence unless the defendant violates the terms of the Plea Agreement.
8

9 **13. Parties Bound by the Plea Agreement.** This Plea Agreement is only binding upon
10 the defendant and the Environmental Crimes Section of the Environment and Natural Resources
11 Division of the U.S. Department of Justice, also known as the Government. This Plea Agreement
12 does not bind any other federal, state, or local prosecuting authority other than the Government.
13 The Plea Agreement does not preclude the initiation of any civil, tax, or administrative action
14 against the defendant by any authority.
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16 **14. Collateral Licensing Consequences.** The defendant acknowledges that pleading
17 guilty to these charges may have consequences with regard to his ability to maintain and/or
18 obtain governmental licenses and certifications. Nevertheless, KRUSE affirms that he desires to
19 plead guilty regardless of any licensing and certification consequences that may result from his
20 guilty plea.
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15. Complete Agreement. No promises, agreements, side deals, or conditions have been entered into by the parties other than those set forth in this Plea Agreement and none will be entered into unless memorialized in writing and signed by all parties. This Plea Agreement supersedes all prior promises, agreements, and conditions between the parties. To become effective, this Plea Agreement must be signed by all signatories listed below.

JOHN C. CRUDEN
ASSISTANT ATTORNEY GENERAL OF THE
ENVIRONMENT AND NATURAL RESOURCES
DIVISION
U.S. DEPARTMENT OF JUSTICE


Dated: July 31, 2015

By: 
Christopher L. Hale
Trial Attorney, Environmental Crimes Section

I have read the entire Plea Agreement and have discussed it with my attorney. I understand all of its terms and am entering into the Plea Agreement knowingly and voluntarily.


GERARD KRUSE
Defendant

7/23/15
Date


ANDREW FRISCH
Attorney for the Defendant

7/25/15
Date