

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA :

- v. - : 16 Cr. 193 (JPO)

JOSEPH CHAIT, : **SUBMITTED UNDER SEAL**

Defendant. :

----- X

GOVERNMENT’S SENTENCING MEMORANDUM

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States of America

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

Elizabeth A. Hanft
Assistant United States Attorney

Richard A. Udell
Senior Litigation Counsel
Environmental Crimes Section
U.S. Department of Justice

The Government respectfully submits this memorandum in connection with the sentencing of defendant Joseph Chait (“Chait” or the “defendant”), which is scheduled for June 22, 2016 at 10 a.m. The Presentence Investigation Report (“PSR”) prepared by the United States Probation Department (“Probation Department”), dated May 31, 2016, has correctly calculated the applicable United States Sentencing Guidelines (“Guidelines” or “U.S.S.G.”) total offense level of 19, with a Guidelines range of 30 to 37 months’ imprisonment, and concluded that there are no circumstances warranting a departure or variance. The Probation Department recommends a sentence of 30 months’ imprisonment. PSR at 21.

The defendant seeks a noncustodial sentence involving community service. Consistent with the Probation Department’s recommendation, and for the reasons set forth below, including the nature and circumstances of the offense and the need in this case to promote respect for the law and deterrence and to ensure just punishment, the Government submits that a sentence within the applicable Guidelines range is sufficient to achieve the goals of sentencing.

I. Overview of the Case

Chait, the Senior Auction Administrator of the I.M. Chait Gallery in Beverly Hills, California (the “Gallery”) pled guilty pursuant to an Information on March 9, 2016. The Information charged Chait with: (1) conspiracy to illegally smuggle wildlife out of the United States, in violation of Title 18, United States Code, Section 554, and to violate the Lacey Act by (a) illegally trading in protected wildlife, in violation of Title 16, United States Code, Sections 3372(a)(1) and 3373(d)(1), and (b) submitting false documents, in violation of Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(i); and (2) submitting false documents in violation of Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(i).

The investigation began in March 2011 during “Asia Week” in New York City. The Gallery held annual auctions in Manhattan during Asia Week; those auctions catered largely to foreign buyers. The Gallery was offering for sale numerous items made from ivory and a bowl carved from a rhinoceros horn. The Government had received allegations that modern carvings made from rhinoceros horn were being marketed by various auction houses within the United States. An undercover agent with the U.S. Department of the Interior’s Fish & Wildlife Service (“FWS”), posing as a potential consigner, inquired about the value of a carving of the goddess Guanyin made from a black rhinoceros horn, which had been seized from a different auction house because it was believed to be a modern carving and not an antique (defined as an item more than 100 years old). An employee of the Gallery immediately told the undercover agent that the Gallery “loved rhino.” The owner of the Gallery, I.M. Chait, who is also the defendant’s father, inspected the carving and, after stating that it was not an antique, offered to purchase it outright or to accept it for consignment and sale at a future auction. The defendant was the undercover agent’s principal point of contact and the Guanyin carving was sold at an auction held in Beverly Hills, CA, on September 25, 2011, for a total price of \$231,800. The winning bidder was a different undercover agent with the FWS who also had recorded conversations with the defendant – who remained the Gallery’s principal point of contact.

After the Guanyin sold at auction, the undercover agent who purchased the item informed the defendant that his client had asked him to get the item to Canada, where it would thereafter be taken to China. A few days after the item was sold, the defendant offered to provide the buyer with a false invoice to aid in the smuggling. The false invoice stated that the item was a

“Plastic Carved Figure of a Seated Deity” which had sold for \$108.75, rather than a rhinoceros horn carving that had actually sold for \$231,800.

In January 2013, agents executed a search warrant at the Gallery. The investigation is ongoing and has uncovered various crimes, including those in which the defendant was involved and those in which he was apparently not involved. The evidence, which includes recordings, emails and documents prepared by the defendant, shows that the defendant knowingly and willfully conspired to smuggle protected wildlife (*e.g.*, rhinoceros horn, elephant ivory and coral) out of the United States contrary to law, and that he intentionally created and used false records, and also used various other means, to aid in smuggling the Gallery’s merchandise out of the United States and to its foreign customers. The false invoice he created for the undercover buyer of the Guanyin was by no means the first time Chait had committed this offense. Chait had been involved in smuggling and aiding and abetting the smuggling of his customers for many years. According to the defendant, he did so in accordance with his father’s general mantra not to “mess up the sale.” Sentencing Memorandum on Behalf of Joseph Chait dated June 8, 2016 (“Def. Sent. Memo.”) 20. While the Government does not question the truth of this assertion, the evidence also shows that the defendant engaged in numerous acts of smuggling without specific direction or orders from any other person.

In sum and substance, and as set forth in the PSR and below, the defendant’s charged conduct includes at least four methods of smuggling. First, the defendant personally prepared false shipping documents, including required customs declarations, and shipped items out of the country without declaring them to the FWS and without required export permits. The false documents described rhinoceros and ivory as wood, bone, or plastic and greatly undervalued the

actual cost. Second, wildlife purchased by foreign buyers was variously sent to third-party shippers in the United States, or provided to third-party shippers for pick up at the Gallery, with the knowledge that the wildlife would be re-shipped to the foreign buyers without the required declaration and permits. Third, wildlife sold to foreign buyers was also shipped to addresses of customers' friends or family members in the United States, with the knowledge that it would be re-shipped out of the United States without the required declaration and permits. Fourth, foreign buyers were encouraged to attend auctions in person and the Gallery assisted them in smuggling their wildlife purchases out of the country. The Gallery asked for passports and flight itineraries from customers who wished to avoid California's nine percent sales tax by proving that the item would be taken out of California within the next several days; those documents demonstrated to the Gallery, however, that the items were being smuggled out of the United States, given the lengthy period of time necessary to obtain the required permits. In some instances, foreign customers with near-term departures were provided packing materials.

One significant example concerns the sales of large quantities of ivory to a regular customer of the Gallery, even after the defendant knew he had been arrested in China with ivory purchased from the Gallery and smuggled out of the United States. Because this individual was unable to continue traveling to the United States, he sent an assistant from China to pick up the merchandise. The Gallery continued to sell ivory to this buyer by either providing it to the buyer's assistant or shipping it to him care of a UPS store in Massachusetts.

II. Background

A. Operation Crash

The Government's prosecution of Chait is part of a multi-district law enforcement operation known as Operation Crash.¹ Operation Crash is an ongoing effort to detect, deter and prosecute those engaged in the illegal killing of rhinoceros and elephants and the unlawful trafficking of rhinoceros horns, elephant ivory and other protected species. Operation Crash is being conducted by the FWS, in coordination with the Department of Justice and other federal, state and foreign law enforcement agencies. It has resulted in more than two dozen arrests, including prosecutions in the Southern District of New York (*United States v. Hausman*, *United States v. Wang*, *United States v. Guan*, and *United States v. Liao*), Eastern District of New York (*United States v. Slattery*), and the District of New Jersey (*United States v. Li*).

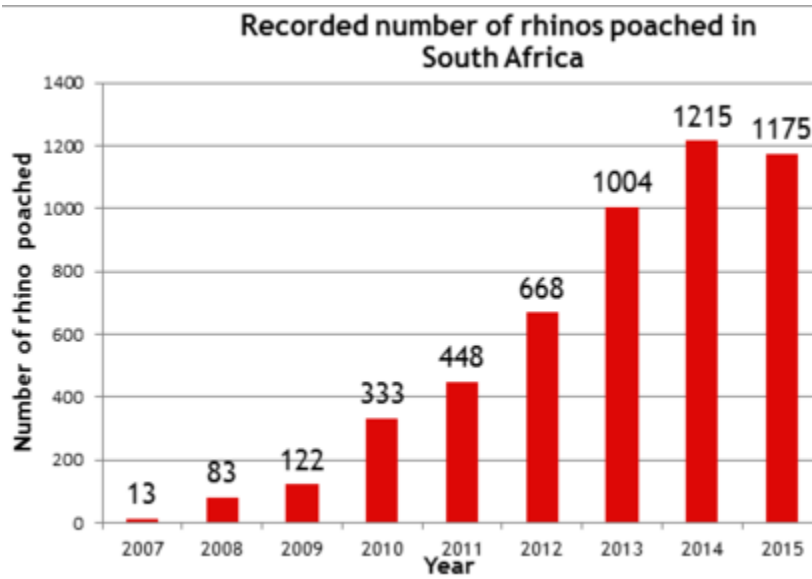
B. Wildlife Trafficking of Rhinoceros Horn, Elephant Ivory and Coral

Chait's conduct, as well as that of his co-conspirators, violated and 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. Among the goals of our nation's wildlife protection laws is the elimination of the commercial trade in endangered species. 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.

The trade in rhinoceros horn and elephant ivory, as reflected in the rate of poaching, has climbed sharply in recent years. Demand for rhinoceros horn, and, accordingly, the price of such horn, have increased dramatically in recent years. In just the year 2015, at least 1,338 African

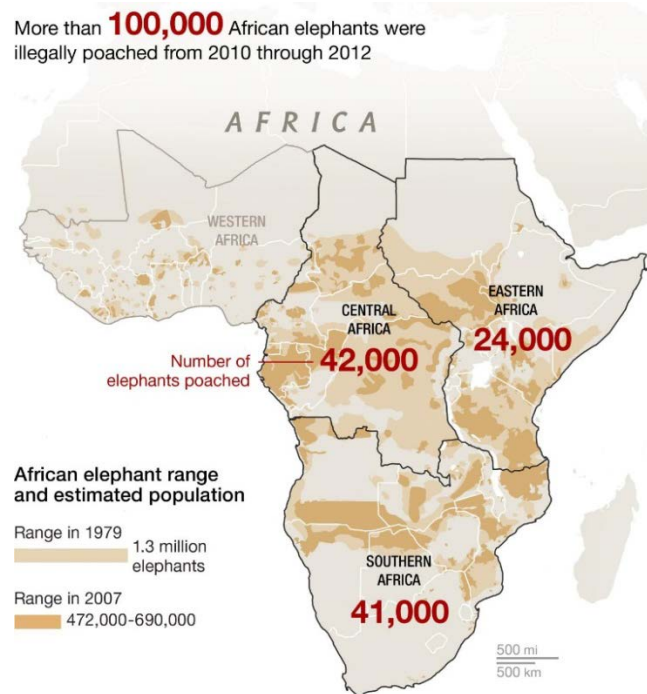
¹ A "crash" is the term for a herd of rhinoceros.

rhinoceros were killed by poachers across Africa; more than 5,000 rhinoceros have been poached in South Africa alone since 2008.



See https://www.savetherhino.org/rhino_info/poaching_statistics (last viewed June 15, 2016).

The situation of African elephants is similarly dire:



See <http://news.nationalgeographic.com/news/2014/08/140818-elephants-africa-poaching-cites-census/> (last viewed June 16, 2016). Elephants are not only in jeopardy as a protected species, but their demise due to poaching that funds the illicit ivory trade threatens other wildlife, because they are a “keystone” species that plays 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.

On July 1, 2013, President Barack 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.

See <https://www.whitehouse.gov/the-press-office/2013/07/01/executive-order-combating-wildlife-trafficking> (last viewed June 16, 2016).

Since 1976, long before the President's recent call to action, rhinoceros horn and elephant ivory have been regulated under 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 and Canada, to protect fish, wildlife, and plants that are or may become imperiled due to the demands of international markets. Nevertheless, as described above, the demand for rhinoceros horn and elephant ivory, and black market prices for them, have skyrocketed in recent years due to the value some cultures have placed on ornamental carvings, good luck charms, or the alleged medicinal benefits of these items, 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 surrounding illegal wildlife trade, involving organized criminal groups, money laundering, corruption of officials and sophisticated smuggling across international borders.

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. *See, e.g.*, <https://www.europol.europa.eu/content/press/europol-and-ireland-identify-organised-crime-group-active-illegal-trading-rhino-horn-9> (last viewed June 15, 2016). Sustained and increased law enforcement and conservation efforts are critical 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 sales. The rise in poaching has also coincided with criminal smuggling, including that of this defendant and others engaged in similar crimes.

C. Chait’s Smuggling

As Senior Auction Administrator at the Gallery, Chait’s responsibilities included handling phone bids and absentee bids, working at auctions, which were held in Beverly Hills, California, New York City, New York, and Asia, dealing with buyers and consignors, handling incoming wire transfers, and working with customers on matters related to shipping. *See* PSR ¶¶ 6-8. The Gallery specialized in Asian art and antiques, and actively sought out foreign customers living in Asia. PSR ¶ 8. The Gallery advertised in Asia; solicited foreign buyers to

bid at live auctions or to place absentee bids or bids through the Internet; and hired foreign language speakers (including Chinese speakers in particular) to assist foreign buyers. *Id.*

Despite his knowledge that wildlife exports must be declared, accurately described on customs declarations and, in certain cases, accompanied by CITES export permits, the defendant regularly sold wildlife and participated in transactions in which those core requirements were violated. *See id.* Although the defendant and the Gallery sometimes “officially” told customers that the Gallery would not ship wildlife items out of the country, in reality, they were willing to do so, or to otherwise provide direct assistance to aid and abet the smuggling of those items out of the country. The defendant was aware of and participated in this illegal conduct as outlined above. The gravamen of defendant’s criminal conduct was smuggling. Some examples include the following:

1. Guanyin (Lot 305)

As set forth above, the defendant was the Gallery’s primary representative in the consignment and in the sale of the non-antique Guanyin carved from a rhinoceros horn. Chait actively pursued the consignment in various ways. He boasted to the undercover consigner that the Gallery specifically catered to foreign buyers in China and that 75 percent of the Gallery’s live auction bidders resided in mainland China. PSR ¶ 11. Chait also told the undercover consigner that the Gallery already possessed clients in China who were specifically interested in rhinoceros horn. Chait promised that the Guanyin would be advertised for sale in China and that it would be placed on the cover of the Gallery’s auction catalogue. *See Exhibit 1.* In short, the entire goal of soliciting and obtaining the consignment was to sell the rhinoceros horn in foreign

commerce to a foreign buyer who would pay the highest amount, thereby maximizing the Gallery's profit.

When the undercover agent informed the defendant that another auction house was unwilling to accept the item, because it was less than 100 years old and made of black rhinoceros (an endangered species that could not be sold in foreign commerce at all regardless of its age), the defendant responded that other auction houses "ha[d] to be really legal about this stuff." *Id.*

The total sale price of the Guanyin was \$231,800, which included a 22 percent commission for the Gallery.² PSR ¶ 12. It sold to another undercover agent, who informed the defendant that he was purchasing the item for a Chinese buyer who lived in Canada and who planned to transport the item to China.³ *Id.* The defendant offered to provide the undercover

² The "hammer price," before applying the commission, was \$190,000. The Government did not artificially inflate the price of the statue as suggested by the defendant. Sentencing Memorandum on Behalf of Joseph Chait dated June 8, 2016 ("Def. Sent. Memo.") 22 n.12. Within a two-minute period during the auction, 28 bids were placed on the item. The Gallery maintained a list of "underbidders" in case the winner backed out of a deal. In this instance, the auction sheets show six "underbidders." The final underbidder was a foreign national participating in the auction by phone. Additionally, the defense memorandum incorrectly places credence in the estimated price of an item. As the defendant is well aware, it was a regular practice of the Gallery to deliberately provide low estimates of the anticipated auction price as part of a strategy to induce attendance and bidding on items. On or about the time of the sale, rhinoceros horn carvings were being sold at record prices and in record amounts. The final sale price of this rhinoceros horn carving was not inconsistent with the sale prices of other objects carved from rhinoceros horn being sold in the United States.

³ The defendant states in his response to the draft PSR dated May 6, 2016, attached to the defendant's sentencing submission as Exhibit J, that, after having been told by the undercover agent that the buyer was planning to take the item to Beijing (whereas he had initially stated that the item would be going to Canada), the defendant's first response was "Oh, boy." Def. Sent. Memo. Ex. J. That response, particularly when placed in the larger context, does not detract from the fact that the defendant was well aware that the vast majority of items were intended for China, and was willing to help buyers achieve that result. In any event, the defendant volunteered to facilitate the undercover agent's smuggling of the item out of the country, as he had done many times in the past. Exhibit J also quotes an excerpt in which the defendant tells the undercover agent about a "person who owns a gallery in Vancouver and has an address in Seattle, and we ship the ivory to [him in] Seattle." Def. Sent. Memo. Ex. J. That excerpt omits

buyer with falsified documents in order to assist the buyer in smuggling the item out of the country. *Id.* The defendant told the buyer that he would “call it plastic or resin carving or something like that,” and explained that he would send an actual certificate of authenticity for the item as well as a “little hundred dollar receipt” separately from the item. *Id.* That was because, as the defendant explained, he “would rather not put any paperwork with the package just in case someone decides to look at the paperwork and look and see what’s inside.” *Id.* Consistent with that statement, in October 2011, the defendant made and sent to the buyer a false invoice for a “Plastic Carved Figure of a Seated Deity,” which stated that the item was made of plastic (instead of rhinoceros horn) and had sold for \$108.75, rather than the \$231,800 for which it had actually sold. *See* Exhibit 2. There is no evidence to suggest that the defendant was directed by anyone else to falsify this document or that any other co-conspirator was even aware that he had done so.

2. Rhinoceros Horn Walking Cane (Lot 229)

In August 2010, the defendant and his co-conspirators auctioned and sold Lot 229, a walking cane made from rhinoceros horn, to a customer in Shanghai, China. PSR ¶ 13. A few months later, in October 2010, the defendant emailed that customer’s assistant, writing: “[B]ecause of possible customs problems, we cannot state that it is rhino horn on the invoice. We have to call it something else like wood, or bone, etc.” *Id.* The defendant emailed the same assistant the next day, stating:

We will ship to the Hong Kong address. There should be no problems with customs. Hong Kong is very easy to deal with as compared to mainland China.

the following comment, in which the defendant remarked: “[W]hat he does from that point on I don’t want to know. I assume that once he gets it to Seattle he just takes it, puts it in his car and drives it across the border.”

In my experience, we have not had any problems with shipping something and calling it something else other than Rhino horn. We have done it before and never had a problem.

Id.

Approximately one week later, the defendant shipped Lot 229 to China, without the required CITES permit and without declaring the shipment. *Id.* The defendant instead made and signed a false customs declaration, which stated that the item was made of wood and had a total value of \$100. *Id.* In reality, the invoice stated that the item was made of rhinoceros horn and that its total price, including a 22 percent commission, was \$5,490. *Id.*

3. Chait's Statements

In addition to the transactions mentioned above and others, multiple emails demonstrate the defendant's culpable state of mind with regard to his conduct. For example, in an email sent to a foreign customer in Germany, the defendant wrote that it was illegal to ship items out of the country. The buyer therefore had two choices, according to the defendant: "1) Give us an address [o]f your friend or relative in the USA that we can ship the piece to"; or "2) Take a risk and ask us to ship the item to you in Germany, but not call it ivory and call it something else." In another example, the defendant emailed a foreign customer who had purchased an item made of ivory, explaining that

[i]vory of any kind (except for Mammoth ivory) is illegal to export outside the USA. If you want us to put something simple like "art deco figures" or just "figurines" I can do this, however there are some risks involved. If US customs or your local customs looks at the box and finds any ivory, they could be seized and we, as the shipper, would suffer the penalty.

The defendant had full knowledge that the conduct in which he was engaged was illegal.

There is no indication that the defendant consulted with co-conspirators or was otherwise directed to carry out any particular act of smuggling or aiding and abetting the smuggling of others. He performed these acts in accordance with the overall method, means, and goals of the conspiracy and consistent with the Gallery's business practices.

III. Argument

Consistent with the recommendation of Probation, a sentence that includes some period of incarceration is appropriate in this case. This is not a case based on a few isolated instances of criminal conduct. Rather, the defendant engaged in smuggling and other illegal conduct consistently for a period of at least five years. The defendant and his co-conspirators deliberately violated the regime designed to protect some of the last remaining mega fauna from extermination, harming the public and our natural resources, and thwarted export and other requirements in a way that undermines the integrity of our export system more generally. For all the reasons set forth below, a sentence consistent with the Guidelines is necessary to achieve the goals of Title 18, including general deterrence.

A. Applicable Law

Although they are no longer mandatory, the Guidelines provide strong and relevant guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). “[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range” – that range “should be the starting point and the initial benchmark.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007). As the Second Circuit has remarked *en banc*, although the Guidelines do not dictate a presumptively reasonable sentence, they are not merely a “body of casual advice.” *United States v. Cavera*,

550 F.3d 180, 189 (2d Cir. 2008) (internal quotation marks omitted). The Guidelines' relevance throughout the sentencing process stems in part from the fact that, while they are advisory, "the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives," *Rita v. United States*, 127 S. Ct. 2456, 2463 (2007), and the Guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," *Gall*, 128 S. Ct. at 594; *see also Rita*, 127 S. Ct. at 2464.

After making the initial Guidelines calculation, a sentencing judge must then consider the seven factors outlined in Title 18, United States Code, Section 3553(a), including, among others, the nature and circumstances of the offense, the history and characteristics of the defendant, and the need to avoid unwarranted sentencing disparities.

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 the 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).

B. The Nature and Circumstances of this Offense

The defendant's criminal conduct spanned a period of at least five years. Although the Government has cited only to certain instances of the defendant's smuggling and Lacey Act violations, the evidence demonstrates that this conduct was committed in the normal course of business and that Chait was a willing participant notwithstanding the mitigating facts set forth in the defendant's sentencing memorandum.

The defendant argues that he "did not make any personal profit" on the illegal sales of wildlife items. Def. Sent. Memo. 23. But Chait was part of a small family business and the profits gained from the illegal wildlife trade comprised a significant part of that family business. The defendant may not have received a commission, but there is no doubt that the Gallery from which the defendant drew his salary, and by extension the Chait family, profited from the criminal conduct at issue here. That the defendant may have been one step removed from the profit, and that he exerted no control over his salary, *see id.*, should not obscure the true purpose animating the conspiracy in which the defendant actively and willingly participated – financial profit.

The defendant's submission claims that he had "no decision-making authority." Def. Sent. Memo. 19. That contention is overstated. At the same time, the Government acknowledges that the defendant's father supervised the family business closely, and was aware of, if not directing, much of the criminal conduct. But as an initial matter, the evidentiary record does not show that the defendant sought permission for, or even informed his father of, multiple instances of smuggling that he facilitated. Furthermore, as with any criminal conspiracy, an individual remains responsible for the actions he takes provided he has the requisite state of

mind, whether or not he is the ultimate authority directing those actions. The evidence in this case demonstrates that the defendant knew that his actions violated the law, and that he willingly made the decision to participate and to continue to participate in a criminal conspiracy. That another individual may have had greater culpability or ultimately have been setting the direction of the conspiracy does not render the defendant a minor player. His role in the conspiracy was a significant one, for which he should be held accountable.

C. **Chait's History, Characteristics, and Cooperation, While Compelling, Do Not Absolve Him of Responsibility for His Offenses**

The defendant's submission provides a compelling and sympathetic account of his personal struggles, his upbringing and family life, and the abuse he encountered as a result of his family's adherence to the Church of Scientology. He has also provided numerous letters that attest to his character, generosity, and desire to make a fresh start.

There is no question that the defendant was in an unfortunate position, as his submission details, and it is possible that he will continue to suffer collateral consequences from his conviction, in addition to any sentence imposed by the Court. The defendant's submission, as well as the opinion of a psychotherapist and the views of witnesses who have observed at close proximity both how the Gallery and how the Chait family operate, similarly explain (though do not excuse) how an array of factors may have combined to render the defendant disinclined to challenge authority, particularly in the context of his father's actual and perceived wishes.

The defendant also points to his efforts at cooperation with the Government, arguing that, although the defendant's cooperation fell short of what is necessary to qualify for a departure pursuant to U.S.S.G. § 5K1.1, the Court should nevertheless consider the defendant's cooperation in determining an appropriate sentence pursuant to 18 U.S.C. § 3553(a).

The Government agrees that the defendant was willing to cooperate and to do so proactively; it also agrees that he did cooperate proactively to a limited extent. The defendant sent and received emails and phone calls, to which the Government was provided access.

The defendant participated in two proffers, each of which took place over two days. He proffered extensively, and also made himself available to the Government to answer additional questions. In his proffers, the defendant forthrightly admitted to his own misconduct. In addition to the proactive cooperation mentioned above, the defendant expressed a willingness to cooperate against other individuals, and volunteered information regarding others engaged in possible misconduct on several different occasions.

While the defendant's cooperation has not resulted in the conviction of other individuals to date, his proffers, his guilty plea, and his admissions in pleading guilty were nonetheless helpful to the Government. As a senior manager of the Gallery, his admitted acts and omissions are also attributed to the corporation. Accordingly, the Government anticipates that the defendant's cooperation will continue to be of assistance in the ongoing investigation.

The Government submits that the nature, extent, and timing of the defendant's efforts to cooperate do not warrant a substantial variance pursuant to 18 U.S.C. § 3553(a), however. The defendant did not proffer or cooperate prior to February 2015 – two full years after the execution of a search warrant at the Gallery and long after the Government presented its case, which included undercover recordings, to the defense. Ultimately, he was not able to provide substantial assistance to the Government, and among the reasons for that – though not the sole reason – was the lateness of his offer to cooperate.

The defendant's submission asserts that the defendant helped to lure "a prominent government target" into the United States. Def. Sent. Memo. 24. That characterization is inaccurate. The defendant did disclose to the Government that an individual of interest had plans to visit the United States, but there was no lure. In addition, the Government would have learned of that visit through other sources. The defendant's disclosure, however, did provide the Government with additional time to plan for the individual's arrival. At the Government's request, the defendant aided investigators in establishing contact with the individual, who was involved in purchasing ivory from the Gallery's auctions as well as raw rhinoceros horns via private sales. The defendant asserted that he had no knowledge regarding the private sales of raw rhinoceros horn made by the Gallery and by one of his brothers. Accordingly, he was unable to cooperate with respect to the private sale of raw rhinoceros horns.⁴

The Government agrees that the defendant was willing to cooperate in general and that he appeared earnest in his desire to do so, albeit belatedly. The Government also acknowledges that such a decision was likely difficult in light of the attendant personal consequences.⁵

⁴ The defendant asserts that in April 2014, even before the arrival of the individual of interest from Asia, "the prosecutors confirmed that Joey already had provided substantial assistance to warrant a sentencing departure motion by the government pursuant to a U.S.S.G. § 5K1.1 Letter." That statement is inaccurate. Without divulging Rule 11 negotiations or statements made during the defendant's proffers, it is undisputed that no plea agreement containing a 5K1.1 provision was ever provided to the defendant. Furthermore, even if the defendant had been offered a plea agreement containing a cooperation provision, the agreement would not have promised that the defendant would receive a 5K1.1 letter prior to the conclusion of his cooperation, let alone prior to the date of the plea or sentencing.

⁵ The Government disagrees, however, with any suggestion that the defendant's shortcomings as a potential cooperator were based on his not having been a substantial participant in the criminal conspiracy. The defendant was certainly a "player" in this space," Def. Sent. Memo. 26, and indeed one at the upper echelon of the conspiracy.

In summary, this case is no different from one in which a defendant, caught red-handed with substantial evidence (including undercover tape recordings and extensive documentary evidence), pleads guilty but is unable to provide substantial assistance warranting a cooperation agreement. The defendant did provide some cooperation by proffering, by expressing a willingness to cooperate proactively, and by cooperating proactively in a limited fashion. Ultimately, however, the nature, extent and timing of the defendant's cooperative efforts did not provide substantial assistance to the government and do not warrant a substantial variance pursuant to Section 3553. While the defendant's efforts at cooperation warrant some consideration by the Court, it is the Government's position that they should not spare him from facing any consequences whatsoever.

D. The Need to Promote Respect for the Law, to Ensure Just Punishment, and for Deterrence in This Case

There is a critical need in this case to promote respect for the law and to provide general deterrence. Particularly in the context of smuggling and wildlife cases, which are relatively less common than other types of criminal cases and are closely watched by a limited community of individuals in certain fields, it is important to demonstrate to would-be wrongdoers the severe consequences that accompany smuggling and other violations. Defendant's acts and omissions on behalf of a major auction house dealing in wildlife products were unfortunately not unique. His conviction has the potential to have a major impact on others.

The defendant argues that the goal of general deterrence should play less of a role in this case "because few defendants in . . . wildlife cases will come before any court with the mitigating circumstances present here." Def. Sent. Mem. 39. But while certain aspects of the defendant's circumstances may be unusual, many of the factors that the defendant urges the

Court to consider, such as his having been raised in a family where criminal conduct was pervasive, having been under the influence of a domineering parent, and having violated a legal regime that may be more complicated than some, are common to a large number of cases. As to those aspects, the issue of general deterrence looms large.

A Guidelines sentence in this case would have an important general deterrent effect.

E. A Probationary Sentence Would Result in an Unwarranted Sentencing Disparity

The defendant erroneously asserts that a probationary sentence would be in line with the majority of sentences in wildlife cases. *See* Def. Sent. Memo. 32. That argument is flawed in multiple respects. The statistic cited is from the Sentencing Commission, which lumps together pollution and wildlife cases, and does not distinguish between comparatively minor prosecutions involving misdemeanor violations and serious felonies involving smuggling. The statistic cited by the defendant also fails to take into account those cases in which credit for substantial assistance was given. A comparison to smuggling cases would prove far less favorable.

There are four recent wildlife smuggling cases in this district: *United States v. Hausman*, 12 Cr. 576 (JPO); *United States v. Wang*, 13 Cr. 452 (KBF); *United States v. Guan*, 14 Cr. 506 (LTS); and *United States v. Liao*, 15 Cr. 420 (LGS). Each of these individuals received a sentence that included a period of incarceration, notwithstanding some variance in all but one case.

F. A Fine and Forfeiture

In connection with the defendant's plea, the defendant agreed to abandon all right, title, and interest that he may have or come to have in Lot 287 ("Important Antique Rhinoceros Cup") and Lot 211 ("Two Carved Black Rhinoceros Horns"), and to sign an abandonment form with

the U.S. Fish & Wildlife Service memorializing that agreement. He has also agreed to a lifetime ban on the import, export, trade, purchase, or sale of any items made from or containing CITES-listed wildlife species and species identified as endangered under the Endangered Species List, including rhinoceros horn, elephant ivory, and coral. At Guidelines level 19, the applicable fine range is \$10,000 to \$100,000. In addition to a Guidelines sentence of incarceration, the Government respectfully suggests that the Court impose an appropriate fine.

G. Conclusion

For the foregoing reasons, the Government respectfully submits that a sentence within the Guidelines range of 30 to 37 months is sufficient to achieve the purposes of sentencing.

Respectfully Submitted,

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

PREET BHARARA
United States Attorney

By: ___/s/_____
Richard A. Udell
Senior Litigation Counsel
Environmental Crimes Section
(202) 305-0361

By: ___/s/_____
Elizabeth A. Hanft
Assistant United States Attorney
(212) 637-2334

EXHIBIT 1

I.M. CHATT
GALLERY / AUCTIONEERS



ASIAN & INTERNATIONAL
FINE ARTS AUCTION
SUNDAY, SEPTEMBER 25, 2011 11AM PDT

305 RARE CARVED RHINOCEROS HORN GUANYIN

Rare and finely carved, Chinese rhinoceros-horn figure of Guanyin seated in the position of "Royal Ease", holding a lotus scepter in her right hand, with exquisite facial features and dressed in hooded robes atop a lotus base; the horn ranging from deep brown to attractive honey and caramel tones. H. 8 5/8"

\$30,000-50,000



EXHIBIT 2

I M Chait Gallery/Auctioneers

9330 Civic Center Drive
 Beverly Hills, CA 90210
 Phone: (800) 775-5020 Uri: www.chait.com

Bidder #

5

INVOICE

Sale Date: 09/25/2011

To:



Copy

Invoice No.: RF00010060
 Invoice Date: 09/25/2011
 Sale: FA1109
 Client No.: 79878
 Sale Details:
 Asian & International Fine Arts Auction
 Sale Date: 09/25/2011 11:00 AM

Resale No: Tax Waived

Lot No.	Description	Price
305	RARE CARVED RHINOCEROS HORN GUANYIN	\$190,000.00

Ship To:

Total Hammer Price: \$190,000.00
 Total Premium:(22%) 41,800.00
 Sub-Total: \$231,800.00
 Other Charges: 0.00
 Sales Tax: 0.00
 Invoice Total: \$231,800.00

ALL SALES FINAL
Customer Copy

LICENSE #1910-1073
 BOND #137151900871



I. M. CHAIT GALLERY

INVOICE

Item # 3475-2011

Plastic Carved Figure of a Seated Deity

Base Price - \$100.00
 CA Sales Tax - \$8.75
 Grand Total - \$108.75

PAID

10/12

9330 Civic Center Drive
 Beverly Hills, California 90210
 Tel. (310) 285-0182
 Fax: (310) 285-9740