

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

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CONSERVATION FORCE, DALLAS SAFARI CLUB,)	
HOUSTON SAFARI CLUB, Corey KNOWLTON, the)	
CAMPFIRE ASSOCIATION, and the TANZANIA)	
HUNTING OPERATORS ASSOCIATION,)	COMPLAINT FOR
)	DECLARATORY AND
Plaintiffs,)	INJUNCTIVE RELIEF
)	AND DAMAGES
v.)	
)	Case No. 15-cv-3348
DELTA AIR LINES, INC.,)	
)	
Defendant.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Wildlife does not exist by accident today. Human populations are rapidly expanding, especially in sub-Saharan Africa, where the human population has almost quadrupled since 1965.¹ Given this growth, peaceful coexistence of people and wildlife requires a concerted management effort by range states. Tourist safari hunting is one component of this effort – a carefully-designed conservation strategy that protects habitat, gives wildlife value, and benefits the people who live with wildlife and ultimately determine its survival. Southern and parts of Eastern Africa have excelled in conservation as a result of sustainable use. Successful tourist safari hunting programs are in place in the Southern and Eastern African range states with the largest populations of lion, leopard, elephant, rhino, buffalo (together, the “Big Five”), and other wildlife. But Defendant Delta Air Lines’ (“Delta”) embargo on transport of hunting trophies

¹ The human population of sub-Saharan Africa has grown from approximately 257 million to 973 million at a rate of over 278%. Comparatively, the U.S. population grew by 64%, and the German population grew by less than 6.5%. Source: The World Bank, <http://data.worldbank.org/indicator/SP.POP.TOTL/countries/BW?display=default>.

threatens this successful conservation strategy and the benefits it provides to range state governments, local people, the wildlife, and the Plaintiffs here.

2. The benefits include habitat preservation, wildlife management, and anti-poaching. Hunting areas are far larger than other protected areas in African range states. For example in Tanzania, hunting areas are five times larger than the national parks; in Zimbabwe they are almost three times larger than the national parks. Delta's embargo seeks to reduce hunting and thereby, to rob wildlife habitat of its economic value, encourage habitat conversion to agriculture, grazing, and industry, and undercut range states' tried-and-true conservation strategy.

3. Tourist hunting revenue is the backbone of anti-poaching in Africa. Hunting fees make up the lion's share of operating budget revenue for national and local wildlife authorities, which dedicate the largest share of their budgets to rangers and equipment. Hunting revenue also underwrites the anti-poaching units maintained by individual safari operators and the community game scouts providing additional boots on the ground. All three levels of anti-poaching (wildlife departments, operators, and community scouts) are sustained by the user-pay conservation system. If there are fewer users, as Delta's embargo envisions, there are fewer boots on the ground and reduced security for elephant, rhino, and other at-risk wildlife.

4. Tourist safari hunting also generates funds for remote villages where photo tourists do not travel and local people are most affected by crop-raiding elephant and livestock-eating lion. Hunting revenue incentivizes those people to protect their wildlife as an asset – not to kill it as a nuisance, danger, or black-market commodity. As a resident of Sankuyo village in Botswana said recently to the *New York Times*: “Before, when there was hunting, we wanted to protect those animals because we knew we earned something out of them ... Now we don't

benefit at all from the animals. The elephants and buffaloes leave after destroying our plowing fields during the day. Then, at night, the lions come into our kraals.”²

5. Tourist hunting has led to conversions of land from livestock to wildlife, because local communities take a significant share of hunting fees. For instance in Namibia, they receive 100%. In Tanzania, their share recently increased to 75% of the block and permit fees. In Zimbabwe, communities receive 100% of fees: hunting operators make direct deposits of at least 55% of the fees into CAMPFIRE ward accounts; 41% of the fees goes to rural district councils; and 4% goes to the CAMPFIRE Association. In Zambia, communities split fees 50-50 with the government wildlife authority. This revenue is used for village distributions, building classrooms and clinics, enhancing water infrastructure and digging boreholes, obtaining medicines and training clinical staff, paying school fees and purchasing books, and many more tangible benefits. In addition, villages typically receive voluntary contributions from hunting operators of food, wheelchairs, sports equipment, building materials, books, transportation, etc. All these enabling incentives depend on a healthy tourist safari hunting industry. Delta’s embargo threatens the tourist safari hunting industry’s entire user-pay, sustainable use-based conservation paradigm.

6. It would be catastrophic to people and wildlife to eliminate the most habitat, prey base, operating budget revenue, and community incentives. Wildlife numbers will plummet. But this will occur if Delta continues to discriminate against the cargo of U.S. hunters. Rather than celebrating the conservation contributions of U.S. tourist safari hunters, Delta is vilifying them by refusing to transport the fruits of the hunt: trophies of the prized Big Five (elephant, rhino, lion, leopard, and buffalo). Delta is treating these legally acquired trophies as if they were

² Norimitsu Onishi, *A Hunting Ban Saps a Village’s Livelihood*, NY Times (Sept. 13, 2015), available at www.nytimes.com/2015/09/13/world/a-hunting-ban-saps-a-villages-livelihood.html?_r=0.

contraband. America's business, professional, and civil leaders – many of whom are frequent fliers – should not be lumped with traffickers (unlawful trade). The stigma will understandably affect their willingness to hunt in Africa. Because it dissuades lawful hunters, Delta's embargo jeopardizes the benefits of tourist hunting and its centrality in the conservation programs of African range states. And worse, the embargo deprives Big Five species of essential conservation funding and support.

7. Because of the risks posed by Delta's embargo, Plaintiffs bring this suit. Not only is Delta's embargo unconscionable – it is illegal. Delta is failing to fulfill its obligations as a common carrier, and this failure injures and will continue to injure Plaintiffs until the unlawful embargo is lifted.

8. Plaintiffs ask the Court to declare that Delta has violated its federal common law duties as a common carrier. Delta cannot discriminate against passengers or cargo. Trophies of the Big Five are not dangerous goods. Delta's irresponsible embargo appears to be based on mis-information and a misunderstanding of the legal status of these goods, and motivated by a desire to placate a noisy and ill-advised group of Facebook posters, at the expense of conservation programs, wildlife, and livelihoods of local peoples, and the interests of Plaintiffs.

9. The suit also asks this Court to declare that Delta has tortiously interfered with the actual and prospective business relations of Plaintiffs and to award damages therefor. Delta's embargo deters U.S. hunters from going to Africa and engaging in commerce that economically sustains range states, communities, safari operators and the related service industries, habitat, and wildlife. The unlawful embargo destroys business prospects and sparks cancellations, robbing communities of income on which they depend. The embargo cuts the funding available for safari operator anti-poaching units and community game scouts, which threatens to increase poaching

and reduce the wildlife base. And the embargo diminishes wildlife authority operating revenue that would otherwise be used for anti-poaching and wildlife management.

10. Delta's unlawful embargo burdens licensed, regulated hunters by discriminating against them and causing delay and greater expense. For example, U.S. hunter Corey Knowlton legally harvested a black rhino in Namibia in a hunt supported by the African Rhino Specialist Group and Sustainable Use and Livelihoods Specialist Group of the world's largest conservation organization, IUCN, and explicitly authorized by resolution of the 180+ Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). Mr. Knowlton was then unable to ship his rhino back to the U.S. on Delta and had to use a different carrier. All of these injuries are caused by an unlawful embargo that has no lawful justification.

11. Plaintiffs seek to hold Delta accountable for its failure to abide by U.S. law and its abject dismissal of international law. The unlawful embargo violates federal common law and the regulations and the conditions of Delta's operating certificate. The embargo is also contrary to quotas set and Resolutions enacted by the CITES Parties. CITES regulates international trade of elephant, rhino, lion, and leopard (but not Cape buffalo, which are not listed) because the Parties recognized explicitly that lawful, regulated trade can benefit these species and the people who live next to them. International trade in Big Five trophies is endorsed by CITES, with quota Resolutions enacted by the Parties for leopard, rhino, and elephant. Delta's embargo on this beneficial trade directly conflicts with both CITES and, for elephant, black rhino, and leopard, with U.S. implementing laws and regulations, under which import permits are issued only after the U.S. Fish and Wildlife Service ("FWS") finds that the import "enhances" the survival of the that species.

12. Because Delta's embargo is unlawful and against public policy as evidenced in U.S. law and CITES Resolutions, Plaintiffs ask this Court to immediately enjoin Delta from enforcing it, to require Delta to comply with U.S. and international law, and to compensate Plaintiffs' losses to the extent they are measurable through money damages.

PARTIES

13. Plaintiff Conservation Force is a non-profit 501(c)(3) public foundation formed for purposes of conserving wildlife and wild places. Conservation Force is a leader in the use of user-pay, sustainable use programs to enhance the survival of listed species and has established such programs for African elephant, African lion, leopard, white and black rhinoceros, Sulaimon markhor, Canadian wood bison, and other species. Conservation Force's directors and officers are leaders in the CITES and Endangered Species Act ("ESA") communities, and its member-supporters are hunter-conservationists (both individuals and organizations) who engage in user-pay, regulated, sustainable hunting, and then import trophies back to the U.S. Conservation Force works closely with and represents range state wildlife authorities and environmental ministries, including those threatened by Delta's trophy embargo. It also works closely with and represents the safari hunting operators who provide anti-poaching support, and local communities who live with wildlife and benefit from its sustainable use. At the core, Conservation Force's name illustrates a belief that the sustainable use of wildlife, particularly licensed and regulated sport-hunting, has been a crucial force for wildlife and habitat conservation for over a century, and remains so today. Plaintiffs Dallas Safari Club ("DSC"), Houston Safari Club ("HSC"), and Corey Knowlton are all member supporters of Conservation Force, which appears on its own behalf and on behalf of its member supporters that rely on lawful tourist hunting and trophy trade.

14. Dallas Safari Club is a non-profit conservation, education, and hunter advocacy organization based in Dallas, Texas. Its mission is to conserve wildlife and wilderness lands; to educate youth and the public; and to promote and protect the interests of hunters worldwide. DSC is a membership organization representing thousands of individual hunters and service businesses including hunting operators, who support the user-pay, sustainable use-based programs. DSC's primary sources of income are from membership fees and its annual convention, at which it rents booth space to African hunting operators and holds auctions of African hunts. Its members hunt elephant, rhino, lion, leopard, and buffalo, among other species. Its logo is the African elephant. DSC has contributed tens of millions of dollars to conservation initiatives and habitat protection in support of its mission. DSC appears on its own behalf and as a representative on behalf of its members. DSC and its members are at risk of losing hundreds of millions of dollars due to the embargo.

15. Plaintiff Houston Safari Club ("HSC") is a 501(c)(4) non-profit, volunteer organization whose mission is to preserve the sport of hunting through education, conservation and protection of hunters' rights. Since 1972 HSC has provided millions of dollars for conservation, education, and sporting rights initiatives worldwide to ensure the longevity of the sport and the sustainability of sporting resources, for generations to come. HSC's primary source of income is from membership fees and its annual convention, at which it rents booth space to African hunting operators and holds auctions of African hunts. HSC's members are largely African safari hunters and related service providers including hunting operators. Its logo is the African elephant. HSC is domiciled in Texas. HSC appears on its own behalf and as a representative on behalf of its members. HSC and its members are at risk of losing tens of millions of dollars due to the embargo.

16. Plaintiff Mr. Corey Knowlton is a hunter-conservationist domiciled in Texas, a life member of DSC, and a supporting member of Conservation Force. He has hunted all the Big Five and, in May 2015 hunted a black rhino in Namibia. To participate in this hunt, Mr. Knowlton contributed \$350,000 to Namibia's Game Products Trust Fund, to be used exclusively for black rhino protection and recovery. Namibia's Ministry of Environment and Tourism would not use these funds until Mr. Knowlton's trophy was imported into the U.S. Delta unlawfully refused Mr. Knowlton's request to ship the trophy from Southern Africa, further delaying the import and the Ministry's expenditure of these much-needed conservation funds.

17. The Community Areas Management Programme for Indigenous Resources ("CAMPFIRE") is a community-based natural resources management program designed to support conservation of natural resources by providing rural people with the ability to manage and benefit from the resources. Fifty-eight out of 60 rural districts in Zimbabwe participate, engaging over 770,000 households (2.4 million children), and covering approximately 50,000 km² (12% of Zimbabwe). CAMPFIRE is the forerunner of most CBNRM programs in Africa and has significantly influenced and contributed to similar CBNRM models around the world. Plaintiff CAMPFIRE Association received more than \$20 million in USAID assistance during CAMPFIRE's development to serve as a model for other indigenous people to responsibly participate in, manage, and benefit from their natural resources through sustainable use. In the international community, CAMPFIRE/the CAMPFIRE Association has been a crucial supporter and model of the rights of local peoples to manage and benefit from their natural resources, and developing an understanding of sustainable wildlife use and common property management. From 1989-2006 CAMPFIRE communities and rural district councils realized \$38.4 million in revenue from hunting operations. Today CAMPFIRE districts work with 33 hunting operators,

and share in the benefits of sustainable use as well as photo-tourism, but with the vast majority of revenues (90%) generated from hunting and lease of hunting concessions, and especially from the hunting of the Big Five. Improvement projects and limited cash distributions funded by that revenue help alleviate human-wildlife conflicts in villages suffering from elephant crop-raiding, lion livestock-raiding, and other wildlife-caused damage. Due to its economic, political, cultural, and historical importance, Plaintiff CAMPFIRE Association and the Government of Zimbabwe are evaluating updates to the program to increase benefit-sharing and income generation opportunities. Plaintiff CAMPFIRE Association is a registered private voluntary organization formed in 1991 to lead and coordinate CAMPFIRE. It appears on its own behalf and has a direct stake in the success of Zimbabwe's hunting industry. The Big 5 are the largest source of CAMPFIRE's revenue. In prior years up to 70% of CAMPFIRE income has come from elephant tourist hunting. Zimbabwe has the second largest elephant population in the world, of approximately 85,000 (2014). Plaintiff CAMPFIRE Association also appears on behalf of the districts, wards, and ultimately, the individual households that it represents.

18. Plaintiff Tanzania Hunting Operators Association ("TAHOA") was founded at the request of Tanzania's Ministry of Natural Resources and Tourism in 1988 to allow the operators to coordinate and synchronize their relationship with the Ministry and improve collaboration with the government on wildlife, environment, and hunting issues; to promote and support projects for the preservation of wildlife and habitat; and to defend their principles of big game hunting and hunting ethics as needed. TAHOA currently has 39 members, although this number is in danger of declining due to the airline trophy embargos. TAHOA's and its members' primary source of revenue is Big Five hunts, especially from required 21-day safaris. Tanzania has the largest populations of lion, leopard, and Cape buffalo in the world. It also has the most

habitat, with over five times the amount of protected habitat in hunting areas than in its national parks. TAHOA seeks to defend Tanzania's hunting industry and ethic, and appears on its own behalf and as a representative on behalf of its members.

19. Defendant Delta Air Lines, Inc. is a Delaware corporation doing business in the Northern District of Texas. It is an international airline headquartered and domiciled in Atlanta. It claims to maintain an "industry-leading global network" with flights "to 334 destinations in 64 countries on 6 continents" and a "mainline fleet of more than 700 aircraft." When its "worldwide alliance partners" (codeshare) are included, Delta claims to offer over 15,000 flights/day. Delta flies directly to South Africa and through its alliance partners to Tanzania and Zimbabwe. Delta is authorized to do business in Texas and may be served through its registered agent: Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

JURISDICTION AND VENUE

20. Plaintiffs reside or are domiciled in the following locations: Metairie, Louisiana; Dallas, Texas; Houston, Texas; Harare, Zimbabwe; and Dar es Salaam, Tanzania.

21. Defendant Delta is a Delaware corporation headquartered/domiciled in Atlanta, Georgia. It does business in Dallas, Texas, throughout this district, throughout the United States, and throughout Africa either directly or through "codeshares" and its alliance partners.

22. This Court has jurisdiction over this suit pursuant to 28 U.S.C. §§ 1331, 1332, and 1367 and 28 U.S.C. § 2201. The liability of a common carrier airline is evaluated under federal common law, there is complete diversity, and the amount in controversy exceeds \$75,000.

23. Venue is proper in this district under 28 U.S.C. § 1391. Delta is a national airline doing business in the Northern District of Texas, and a substantial part of the wrongful conduct giving rise to Plaintiffs' claims took place and have effects here.

**LAWS, RESOLUTIONS, AND REGULATIONS
GOVERNING TRADE IN HUNTING TROPHIES**

24. It is legal to possess and trade in hunting trophies of listed or “protected” species as long as the appropriate (import and export) permits are issued. Under CITES, “Appendix I” includes “all species threatened with extinction which are or may be affected by trade.” CITES art. II(1). This Appendix includes all black rhino; all white rhino except for the populations of South Africa and Swaziland; and African elephant except for the populations of Botswana, Namibia, South Africa, and Zimbabwe, among other species. *See* CITES App’x I.

25. Trophy trade in Appendix I species is allowed subject to the provisions of Article III and Resolution 2.11 (rev.). Article III allows for trade in Appendix I species as long as an export permit is granted by the State of export and an import permit is granted by the State of import. CITES art. III(2). Neither permit may be granted unless certain conditions are met. For an export permit, the conditions relevant to hunting trophies are:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; ... and
- (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

CITES art. III(2)(a)-(d). For an import permit, the conditions relevant to hunting trophies are:

- (a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved; ... and
- (c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

CITES art. III(3)(a)-(c).

26. Under CITES, “Appendix II” includes “all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is

subject to strict regulation.” CITES art. II(2). Appendix II includes the white rhino populations of South Africa and Swaziland “[f]or the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies,” as well as African lion, and the elephant populations of Botswana, Namibia, South Africa, and Zimbabwe (“downlisted” to Appendix II to facilitate lawful trade including hunting trophies). CITES App’x II. Many wildlife populations are not listed on any CITES Appendix, including Cape buffalo, which are some of Africa’s most abundant large herbivores.

27. Again, trade in Article II species is allowed as long as the provisions of Article IV are followed. Under Article IV, only an export permit must issue under the following conditions relevant to hunting trophies:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species; ... and
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; ...

CITES art. IV(2)(a)-(b). Put simply, if an animal is legally hunted as part of a regulated hunting program, allowing the range state and receiving state to make the required findings and issue the required permits, then trade in the hunting trophy is allowed.

28. CITES parties typically set national export quotas for listed species, “used as an essential management tool in the conservation of species of wild fauna and flora.” CITES Res. Conf. 14.7. Quotas are limits on the number of animals of a species that may be legally exported in a year. *Id.* They establish the upper limit of export “at a level that has no detrimental effect on the population of the species,” and setting a quota, “advised by a Scientific Authority effectively meets the requirement of CITES to make a non-detriment finding for species....” *Id.* Parties notify the CITES Secretariat of their quotas and if the Secretariat has questions or

concerns about technical issues or the sustainability of the quota, it engages with the Party. *Id.* Publication of a quota by the Secretariat without discussion or publication of an “annotation” indicates acceptance of the quota. *See id.* Other Parties may also raise concerns about a quota with the range state Party. *Id.* For example in 2015, export quotas were established and registered with the CITES Secretariat for elephant from Namibia and South Africa, among other countries.

29. The CITES Parties made the requirements for legal international trade in hunting trophies abundantly clear in Resolution Conf. 2.11. They have also expressly authorized export and trade in particular Appendix I listed species in several Resolutions: 10.14, for leopard; 10.15, for straight-horned markhor from Pakistan, and 13.5, for black rhino from Namibia and South Africa. The Resolutions were adopted to facilitate the trade of those trophies because the CITES Parties recognize the beneficial role that tourist hunting can play in a country’s conservation program; for instance: “financial benefits derived from trophy hunting of a limited number of specimens will benefit the conservation of the species directly and provide additional incentives for conservation and habitat protection, when such hunting is done within the framework of national conservation and management plans and programmes.” CITES Res. Conf. 13.5. As the Resolutions illustrate, limited, regulated hunting and subsequent trade is expressly favored by the CITES Parties – not prohibited.

30. CITES allows each Party to adopt “stricter domestic measures.” CITES art. XIV. Thus, FWS allows import of hunting trophies, but for black rhino, elephant, and leopard, FWS requires a showing that the import is part of a conservation program that enhances the survival of the species. *E.g.*, 50 C.F.R. § 17.40(e). FWS has made positive enhancement findings for the trophies of African elephant from Namibia, Botswana, and South Africa (and Zimbabwe and Tanzania in the past although they are temporarily suspended), leopard from all sub-Saharan

Africa, and black rhino from Namibia, to name but a few. The issuance of these enhancement permits speaks for itself – possession and transport of hunting trophies is not prohibited under U.S. law, or under CITES.

BASIS OF COMPLAINT

31. The African hunting industry includes many different players: private land owners (there are over 12,000 hunting ranches in South Africa alone) or lessors of concession land, governments or communities who benefit from the fees paid; the safari operators or professional hunters; pre-hunt service industries like travel agencies, booking agencies, etc.; hunting clients; the operators' employees (e.g., drivers, trackers, spotters, skimmers, cooks, camp staff); post-hunt service industries like tanning, taxidermy, freight; and above all, the range state wildlife authorities who regulate and supervise the hunting, ensure its sustainability, and actively protect and manage wildlife. In all Southern and Eastern African nations that allow hunting, the wildlife authorities collect fees from the operators and clients, which fees vary with the species, location, method of hunt, and other factors. These include concession fees, conservation fees, permit fees, trophy fees, and more. In Southern and Eastern Africa, these fees are the largest source of revenue for the national wildlife departments. And the Big Five are the highest priced and thus provide the greatest revenue.

32. Virtually all hunting clients wish to bring back a trophy of the hunting experience. Trophies are taxidermied (or to be taxidermied) memorabilia from the game animals taken on these hunts. It is a general ethic of tourist safari hunters not to waste any part of the game taken. The meat is eaten or provided to the local people for their consumption, and the skin, horns, tusks etc., are transported home by the hunter as greatly valued personal property. The trophies Delta is embargoing are among Plaintiffs' and their members' most valued personal property.

But for the expectation of bringing their trophies home, hunters certainly will not pay the large trophy fees which fund the wildlife authorities and incentivize local people to conserve the game and its habitat. These trophies are what Delta has wrongfully embargoed.

33. On April 21, 2015, South Africa Airways (“SAA”) announced it would no longer transport the trophies of legally hunted “rhino, elephant, lion, and tiger,” even with valid CITES export permits and other paperwork.

34. Almost immediately, a “Change.org” petition was posted online by animal rights activists to try to coerce Delta into taking a similar position. However, Delta initially refused to be bullied by an Internet petition whose signatures are not necessarily verifiable. Delta issued a statement confirming it “accept[ed] hunting trophies in accordance with all U.S. domestic and international regulations” and noting, “[c]ustomers are required to produce detailed documentation of trophies to U.S. Customs and Border Patrol officials as their trophies undergo inspection.”

35. On information and belief, Delta continued to transport Big Five trophies between May 2015 and August 3, 2015.

36. On July 20, 2015, SAA reversed its position, announcing it had been working with South Africa’s Department of Environmental Affairs and had agreed to transport lawful hunting trophies.

37. South Africa’s Minister of Environmental Affairs “welcomed” SAA’s decision to lift its ban on hunting trophies and emphasized how the embargo “incorrectly failed to distinguish between the trade in and transportation of legally acquired wildlife specimens, and the illegal trade in wildlife specimens.” The Minister further noted: “The legal, well-regulated

hunting industry in South Africa is valued at around R 6.2billion] a year and is a source of much needed foreign exchange, job creation, community development and social upliftment.”

38. In July 2015, Dr. Walter Palmer was hunting lion on a private conservancy outside Hwange National Park, Zimbabwe. A number of lion were reported to be feeding on the carcass of an elephant (dead from natural causes) on the property. The professional hunter engaged to guide the hunt set up a blind and Dr. Palmer shot an old male lion with a compound bow. Dr. Palmer and the professional hunter discovered it had a radio collar and eventually learned it was an older lion that had been named.

39. Because the landowner may not have had an appropriate quota, Zimbabwe’s Parks and Wildlife Management Authority investigated Dr. Palmer’s hunt and charged the landowner and professional hunter. Dr. Palmer has not been charged in Zimbabwe or the U.S. On October 12, 2015, Zimbabwe’s Minister of Water, Climate, and Environment confirmed that no charges would be filed against Dr. Palmer as he had “all necessary papers in order.”

40. However, the harvest of “Cecil” drew unprecedented, frequently inflammatory, and often inaccurate news media and social media attention. The coverage grew so inflammatory that someone vandalized Dr. Palmer’s house, and many people made threats against Dr. Palmer, and his wife and daughter.

41. On August 3, 2015, amid the media furor over “Cecil” the lion, Delta announced:

Effective immediately, Delta will officially ban shipment of all lion, leopard, elephant, rhinoceros and buffalo trophies worldwide as freight. Prior to this ban, Delta’s strict acceptance policy called for absolute compliance with all government regulations regarding protected species. Delta will also review acceptance policies of other hunting trophies with appropriate government agencies and other organizations supporting legal shipments.

42. On information and belief, Delta has not notified the FAA of this embargo.

43. South Africa's Department of Environmental Affairs immediately announced it was "disappointed" with Delta's decision because the embargo did not (and does not) distinguish between trophies acquired legally and killed illegally. Namibia's Minister of Environment and Tourism echoed this sentiment and "stressed the important role that trophy hunting plays" for the economy of Namibia and its communities and conservancies. The Minister also warned that Delta's trophy embargo "is significantly impacting the Namibian economy."³

44. Evaluating the decision, an industry consultant said "Delta was probably responding to pressure following the news of Cecil's killing."⁴

45. As a common carrier, it is illegal for Delta to "respond to pressure," discriminate against an unpopular but non-hazardous type of cargo, and refuse to carry it.

46. Delta operates as a U.S. airline under a certificate issued by the Federal Aviation Administration ("FAA"). Under FAA guidelines, a common carrier is a company that "'holds itself out' as willing to furnish transportation ... to any person who wants it."⁵ Under federal common law, a "common carrier" is required to transport freight or passengers **without refusal** if the fare is paid. The Supreme Court has called a common carrier's duty "comprehensive[,] and exceptions are not to be implied" and has held "[r]efusal to carry the goods of some shippers" but not others to be unlawful. *E.g., Am. Trucking Ass'ns v. Atchison*, 387 U.S. 397, 406-07 (1967).

³ *Banning trophy hunting would harm conservation*, Namibian Sun (Aug. 5, 2015), available at www.namibiansun.com/crime/banning-trophy-hunting-would-harm-conservation.82312.

⁴ William Cummings, *Airlines ban hunters' big-game "trophies" after uproar over Cecil the lion*, USA Today (Aug. 4, 2015), available at <http://www.usatoday.com/story/travel/flights/todayinthesky/2015/08/03/american-airlines-animal-trophy-ban/31090331/>.

⁵ FAA, Advisory Circular 120-12A (Apr. 24, 1986); *see also* broad interpretation of "common carrier" in context of chartered foreign air carrier flights, available at http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/interpretations/data/interps/2005/howard%20turner%20-%20%282005%29%20legal%20interpretation.pdf.

47. Delta holds itself out as a national and international airline offering 15,000 flights per day to 334 destinations in 64 countries. It offers these flights to the public by way of online, telephone, or airline counter sales and issues a ticket to any person who pays the fare through one of these systems. Under federal common law, Delta is a common carrier.

48. Because it is a common carrier, Delta's embargo on "all lion, leopard, elephant, rhinoceros and buffalo trophies worldwide" violates its obligation not to discriminate against passengers and cargo.

49. Delta's embargo also violates its contract and conditions of carriage. The contract lists many reasons why a passenger may be denied carriage and restrictions on baggage, but nowhere mentions "Big Five trophies" as a ground for refusing service.

50. Delta's embargo even violates its own "Rules of the Road," a corporate policy that encourages "Integrity" ("always keep your deals"), "Respect" ("don't hurt anyone"), and "Servant Leadership" ("care for our customers, our community and each other). Delta tells its employees to avoid "politics" ("No politics. Period."). It also counsels them to "[b]e flexible – change your mind when persuaded by meritorious argument." Yet as a corporation, Delta allowed itself to be persuaded by politics, not meritorious argument; rejected a large base of customers, apparently out of concern for unsupported Facebook outrage; and failed to "keep its deal" with the range states it serves directly or through a Codeshare partner. Worse, Delta prioritized politics at the expense of African communities, wildlife, and most wildlife habitat. Delta's embargo threatens the wildlife upon which Plaintiffs depend for their activities. The Big Five need hunting and hunting needs the Big Five.

51. And Delta's unlawful embargo violates the public policy made clear in the CITES Convention, Resolutions, and quotas, which establish and seek to further the trade embargoed. It

violates the public policy reflected in the ESA. It nullifies ESA enhancement permits authorized and issued by FWS, directly obstructing the intended recovery and survival of four of the five species embargoed (as Cape buffalo are not ESA-listed). It denies black rhino, elephant, and leopard the enhancement of survival intended by issuance of the FWS import permits. And it runs against the public policy of sustainable use, which is intended to generate operating revenue for wildlife authorities to fund anti-poaching, recovery, and management, to incentivize local people to tolerate and even value the listed species, and to preserve habitat.

52. Delta's unlawful embargo injures Plaintiffs, current or potential Delta customers. Conservation Force represents and advocates for its member supporters including Mr. Knowlton, whose rhino was rejected by Delta as a result of Delta's unlawful ban on Big Five trophies. Other member supporters are being similarly affected by explicit rejections, forced to re-route trophies on other carriers incurring delay and expense, or canceling or postponing African hunting safaris out of concern for the difficulty and expense of getting a trophy home.

53. Delta's unlawful embargo has injured members of DSC and HSC, safari hunters and supporters of user-pay, sustainable use programs. DSC and HSC represent thousands of conservation-minded hunters who are questioning their ability to hunt in Africa, and feeling the personal slight of being confused with traffickers – when in fact, they are seeking to participate in an internationally recognized conservation activity on which range states, and the wildlife they sustain, depend. Worse, DSC and HSC have major conventions coming up in less than three months at which many if not most safaris are booked. The embargo's chilling effects threatens the conventions and safari bookings, again, upon which many conservationists and communities in Africa depend for their livelihoods.

54. CAMPFIRE communities, representatives of the many indigenous African people who live side-by-side with wildlife and rely upon sustainable use, are injured and facing threats of hunting safari cancellations. Some areas have already experienced cancellations and revenue losses. The Big Five generate the most in fees and income for communities (and for wildlife authorities). Delta's trophy embargo comes on top of the FWS' temporary suspension of import permits for elephant trophies from Zimbabwe, and adds severe stress to communities already burdened by large wildlife populations and a poor national economy. Their plight is especially marked as American clients make up three-quarters of hunters in CAMPFIRE areas. The damage caused by Delta's embargo could be extensive – CAMPFIRE districts lost 57% of elephant hunts in 2014 due to the temporary import suspension and could lose a similar amount – or more – as a result of Delta's embargo.

55. Conservation Force, DSC, HSC, and TAHOA also represent the safari hunting operators who provide the first line of anti-poaching defense, share benefits and fees with wildlife authorities and local communities, and voluntarily contribute to and engage with the communities to encourage habitat preservation and help build tolerance of dangerous, high-value wildlife. Obviously, operators are injured by clients canceling or changing their safari plans to focus on less valuable hunts (as are other service businesses who are members of Conservation Force, DSC, and HSC such as lodge operators, taxidermists, shipping agents, equipment sales, etc.). Safaris are typically booked a considerable amount of time in advance, and deposits are only a portion of the safari amount and do not account for multiplier revenue like tips, keepsake purchases, and the extra donations for anti-poaching or community development frequently made by safari clients.

56. Operators face additional injuries. They hold a hunting trophy for a period after the tourist hunter leaves the country, and frequently arrange transport as one of their services. Delta's unlawful embargo hinders the operators' ability to fulfill their contractual obligations to ship trophies to their clients. This situation is especially damaging and unfair to those clients and operators whose hunts preceded "Cecil mania" and imposition of the embargo but whose trophies are still with the operator. Operators could face legal action as a result of not being able to deliver the client's property, and they all face delays and greater expense in finding a work-around. Moreover, in Tanzania, TAHOA member risk a fine from the Ministry of Natural Resources and Tourism if they do not ship trophies to clients in a timely manner. Thus, these operators face not only the risk of suit but an increased regulatory burden and administrative fines as a result of Delta's unlawful embargo.

57. On the whole, Delta's unlawful embargo – designed to disrupt the African hunting industry and to serve the interests of activists and Facebook posters opposed to the sustainable use-paradigm – is succeeding. Fewer hunters are booking Big Five hunts out of concern for being able to transport their trophies back to the U.S. This in turn reduces revenue available for national wildlife authorities and for communities. It puts hunting operators and other service providers at risk of lost revenue, legal action, and regulatory fines. Without this essential revenue from tourist hunting, the wildlife itself is most at risk, as law enforcement and anti-poaching efforts will lose funding and communities will lose patience or be driven to subsistence poaching.

58. All Plaintiffs also face indirect losses from reduced wildlife, which **will** occur if the hunting revenue is not available to fund voluntary anti-poaching patrols, community game scouts, and most especially, if state wildlife authorities must cut their budgets or reduce their

services due to receiving fewer of the hunting fees on which they depend. A functioning wildlife authority is essential to every part of the hunting industry, from the communities to the operators with whom they contract, to the local people employed by the operators (trackers, skinners, and lodge workers, among others), through the supply chain (travel agents, taxidermists, freight agents and forwarders, equipment manufacturers, and hundreds of others that are members of Plaintiff organizations). All Plaintiffs here depend on a functioning wildlife department and services like anti-poaching, which Delta's unlawful embargo has disrupted.

59. These injuries arise because Delta is wrongly embargoing legal, fully regulated trade. The embargo undercuts CITES, and flies in the face of the Parties' recognition that: "sustainable use of wild fauna and flora, whether consumptive or non-consumptive, provides an economically competitive land-use option" and "the returns from legal use may provide funds and incentives to support the management of wild fauna and flora to contain the illegal trade." CITES Res. Conf. 8.3. Export and subsequent transport of Big Five trophies is authorized by the Parties (for rhino, leopard, and elephant), is guided by the quota system (for rhino, elephant, and lion), or falls outside of CITES completely in the case of the abundant Cape buffalo.

60. Recognizing the damage unlawful airline embargos can do to CITES, two former CITES Secretaries-General sent a letter criticizing airline embargos and encouraging the current Secretary-General to "protect CITES from irrelevance." This letter pointed to the statements by some groups that have filed petitions for the airlines to embargo trophies that baldly admitted to "leapfrogging" CITES. This letter also noted that some airlines appear to be currying favor with "an enhanced image of socially concerned corporation," but at the expense of "livelihoods in the developing world ... and targeted species."

61. The unlawful embargo also undermines FWS findings that the import of Big Five species like elephant and black rhino enhances the survival of the species. FWS bases its findings on expert analysis of the best available information, yet Delta – with no technical expertise – is ignoring these findings in embargoing species from countries and programs explicitly found by FWS to benefit the species. Delta refused to transport Mr. Knowlton’s fully permitted (import and export) black rhino trophy, even though FWS determined, among other things:

Based on the success of implementing the **Black Rhino Conservation Strategy for Namibia**, the use of funds generated from black rhino hunts, and the biological need for such harvests, the Branch of Permits has found that the import of this sport-hunted black rhinoceros from Namibia, taken as part of the national strategy and under the selection criteria established for culling, meets the criteria for issuing an import permit under the ESA. Specifically, Mr. Knowlton’s trophy is to be taken under the auspices of the national strategy and the \$350,000 contribution to the GPTF [Game Products Trust Fund] will greatly assist in black rhino conservation efforts ... the import of this trophy should be authorized.”⁶

Delta has offered no lawful reason for rejecting FWS’ reasoned conclusions.

CLAIMS FOR RELIEF

COUNT ONE VIOLATION OF COMMON CARRIER OBLIGATIONS

62. Plaintiffs reincorporate and re-allege the allegations in paragraphs 1 through 61.
63. Under federal common law and FAA guidelines, as a common carrier, Delta is not permitted to discriminate against certain passengers or cargo. This principle is made clear in

⁶ FWS, *Enhancement Finding* (Apr. 6, 2015). FWS also concluded that Namibia has “a mechanism to ensure that the revenue generated from the sale of [black rhino] hunts is used towards wildlife and community conservation ... This approach provides local communities with a stake in securing the continued existence of rhinos and other wildlife...,” and “as part of a sustainable program, sport-hunting can play an important role in the conservation and protection of black rhino ... The Service, in reviewing Namibia’s conservation strategy for black rhino, is satisfied that the Namibian government is managing their population in a manner that will ensure the long term viability of their population, and that the funds generated from sport-hunting will be used to further conservation efforts and increase anti-poaching operations in country.”

case law, the definitions of “interstate air transportation” and “foreign air transportation” (49 U.S.C. § 40102), the prohibitions on discriminatory practices (49 U.S.C. § 41390), and in implementing regulations and interpretations of the Federal Aviation Administration.

64. Plaintiffs and their conservation programs are shippers of or dependent upon the shipment of tourist hunting trophies, and depend on common carriers like Delta – and preferably Delta, because it flies directly to Africa – for transport of Big Five tourist hunting trophies from Africa. But Delta has unlawfully refused to transport a specific class of legally acquired trophies without any lawful justification for the embargo.

65. Delta’s unlawful embargo on transport of Big Five trophies has caused and will continue to cause Plaintiffs to lose business and conservation revenue from tourist hunting and fee revenue for the respective wildlife authorities, which is a substantial loss as all Plaintiffs depend upon functioning and funded wildlife authorities. The embargo threatens hunting operators’ largest source of income (Big Five hunts) and subjects operators to increased legal and regulatory risk. It deters hunter-conservationists from going on hunting safaris in Africa, to the detriment of all Plaintiffs and ultimately, to the detriment of all wildlife species that depend upon the habitat and anti-poaching funded by hunting revenue.

66. Plaintiffs’ damages from the embargo’s continuing effect have been, are, and will be substantial and difficult to measure. Plaintiffs’ immediate damages may be quantified in part by the costs of cancelled safaris, but as hunters choose not to take safaris in Africa or not to hunt the Big Five due to the embargo, Plaintiffs will continue to be injured, but their losses will not be compensable by money damages. Further, the legal risk to hunting operators is real but difficult to measure due to the locations of the operators and clients, but could be significant if an African

operator is sued in U.S. court. And the risk to the livelihoods of communities and the resultant impact on the value and future of wildlife is immeasurable.

67. If the embargo persists to “convention season,” where hunting safaris are typically marketed, Plaintiffs’ losses will be even more massive and beyond measure.

**COUNT TWO
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

68. Plaintiffs reincorporate and re-allege the allegations in paragraphs 1 through 67.

69. Until Delta imposed its unlawful embargo, there was a reasonable probability that Plaintiffs and/or the members they represent would have entered into business relationships with third parties. The hunter-conservationists represented here, such as Mr. Knowlton, would have entered into business relationships for hunting safaris; professional hunters and communities would have offered and sold those safaris and conducted them; wildlife ministries would have granted licenses and other hunting permits, overseen the hunts, and received license and other income from them, among other things; and the communities would have benefited as a result in sharing in those license and other fees.

70. Delta’s embargo is independently tortious and unlawful and violates Delta’s duties as a common carrier and its responsibilities under federal law.

71. Delta’s interference and imposition of the unlawful embargo proximately caused the injuries of the Plaintiffs and those they represent, as detailed here.

72. Delta’s tortious conduct has caused Plaintiffs past, present, and future damages.

**COUNT THREE
FAILURE TO COMPLY WITH FAA REGULATIONS AND OPERATING FLIGHTS IN
VIOLATION OF THE TERMS OF DELTA’S AIR CARRIER CERTIFICATE**

73. Plaintiffs reincorporate and re-allege the allegations in paragraphs 1 through 72.

74. Delta has failed to comply with federal regulations requiring that it update the FAA about information regarding carriage exclusions, such as the Big Five trophy embargo.

75. Delta also failed to comply with federal regulations requiring its compliance with U.S. law when it imposed an unlawful embargo on legal commerce and violated its obligations as a common carrier and under CITES (and national implementing law and regulations).

76. Delta has violated the conditions of its air carrier certificate by violating national and international law, and should cease to operate flights. Every flight it currently operates is in violation of 49 U.S.C. § 44711, prohibiting a person from operating as an air carrier in violation of a term of its air carrier certificate; of § 41101, allowing an air carrier to provide air transportation only if it holds a valid certificate; and of other federal statutes and regulations.

REQUEST FOR RELIEF

For these reasons, Plaintiffs respectfully request this Court enter judgment providing the following relief against Delta:

1. Declare Delta violated its common law and contractual duties as a common carrier to transport passengers and cargo indiscriminately;
2. Declare Delta tortiously interfered with the business relations of the communities, tourist hunters, safari hunting operators, and industry service providers represented by Plaintiffs, by obstructing lawful and internationally recognized trade and disparaging legal trade found to be beneficial by CITES and FWS and conflating it with poaching;
3. Permanently enjoin Delta from enforcing its mistaken and unlawful embargo on transport of Big Five trophies and require Delta to comply with U.S. and international law, as future damages are immeasurable;

4. Issue a mandatory injunction to compel Delta to accept lawfully permitted Big Five trophies for transport;
5. Grant money damages to each Plaintiff in an amount to be determined at trial;
6. Grant pre- and post-judgment interest on all amounts awarded as allowed by law;
7. Grant attorneys' fees and costs as allowed by law, including pursuant to the Texas Declaratory Judgment Act (Tex. Civ. Prac. § 37 *et seq.*); and
8. Provide any other relief the Court deems just and proper.

Date: October 15, 2015

Respectfully submitted,

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