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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NARUTO, a Crested Macaque, by and	)	Case No.: 15-cv-4324
through his Next Friends, PEOPLE FOR	)	
THE ETHICAL TREATMENT OF	)	COMPLAINT FOR COPYRIGHT
ANIMALS, INC., and ANTJE	)	INFRINGEMENT
ENGELHARDT, Ph.D.	)	
	)	DEMAND FOR JURY TRIAL
Plaintiff,	)	
	)	
vs.	)	
	)	
DAVID JOHN SLATER, an individual,	)	

1 BLURB, INC., a Delaware corporation, )  
2 and WILDLIFE PERSONALITIES, LTD., )  
3 a United Kingdom private limited )  
4 company, )  
5 Defendants. )

6 Plaintiff Naruto (“Naruto” or “Plaintiff”), by and through his next friends, People  
7 for the Ethical Treatment of Animals, Inc. (“PETA”) and Antje Engelhardt, Ph.D. (“Dr.  
8 Engelhardt,” and together with PETA, the “Next Friends”), aver as follows:

9 **NATURE OF THE CASE**

10 1. Naruto is a free, autonomous six-year-old male member of the *Macaca nigra*  
11 species, also known as a crested macaque, residing in the Tangkoko Reserve on the island  
12 of Sulawesi, Indonesia. In or around 2011 Naruto took a number of photographs of  
13 himself, including one image – the internationally famous photograph known as the  
14 “Monkey Selfie.” A copy of the Monkey Selfie is attached hereto and incorporated as  
15 Exhibit 1.

16 2. The Monkey Selfie is one of a series of photographs (the “Monkey Selfies”)  
17 that Naruto made using a camera left unattended by defendant David John Slater  
18 (“Slater”). The Monkey Selfies resulted from a series of purposeful and voluntary actions  
19 by Naruto, unaided by Slater, resulting in original works of authorship not by Slater, but by  
20 Naruto.

21 3. Slater has publically admitted that the Monkey Selfies were taken by Naruto.  
22 Nonetheless, Slater has reproduced the Monkey Selfies, claiming that he, rather than  
23 Naruto, is their author.

24 4. Beginning in 2014, Slater and Defendant Blurb, Inc. (“Blurb”), published  
25 and sold for profit a book in the United States containing copies of the Monkey Selfies.  
26 The book identifies Slater and Defendant Wildlife Personalities, Ltd. (“Wildlife  
27 Personalities”), as the copyright owners of the Monkey Selfies.

5. Naruto has the right to own and benefit from the copyright in the Monkey Selfies in the same manner and to the same extent as any other author. Had the Monkey Selfies been made by a human using Slater’s unattended camera, that human would be declared the photographs’ author and copyright owner. While the claim of authorship by species other than *homo sapiens* may be novel, “authorship” under the Copyright Act, 17 U.S.C. § 101 *et seq.*, is sufficiently broad so as to permit the protections of the law to extend to any original work, including those created by Naruto. Naruto should be afforded the protection of a claim of ownership, and the right to recover damages and other relief for copyright infringement, as asserted on his behalf by the Next Friends.

6. Slater himself admits this proposition, writing in his book: “The recognition that animals have personality and should be granted rights to dignity and property would be a great thing.” Slater further writes that macaques such as Naruto are “intelligent – artistic – complex.”

7. The Next Friends seek an order of the Court permitting PETA to administer and protect Naruto's rights in the Monkey Selfies on the condition that all proceeds from the sale, licensing, and other commercial uses of the Monkey Selfies, including Defendants' disgorged profits, be used solely for the benefit of Naruto, his family and his community, including the preservation of their habitat, in consultation with Dr. Engelhardt and other third parties who are already working for such benefit and preservation. PETA's and Dr. Engelhardt's services will be provided without compensation in furtherance of their respective charitable animal protection and scientific missions.

## **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. The Court has personal jurisdiction over Slater, a resident of the United Kingdom, pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure, and based upon Slater's copyright infringing conduct detailed below, a substantial part of which occurred in this judicial district.

1           10.     This Court has personal jurisdiction over Blurb because its principal place of  
2 business is located in this judicial district and because its copyright infringing conduct  
3 occurred in this judicial district.

4           11.     This Court has personal jurisdiction over Wildlife Personalities, a United  
5 Kingdom entity, pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure, and  
6 based upon Wildlife Personalities' copyright infringing conduct detailed below, a  
7 substantial part of which occurred in this judicial district.

8           12.     Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the  
9 events giving rise to Naruto's claims occurred in this judicial district.

#### 10                                   **INTRADISTRICT ASSIGNMENT**

11           13.     This is an Intellectual Property Action to be assigned on a district-wide basis  
12 pursuant to Local Rule 3-2(c).

#### 13                                   **PARTIES**

14           14.     Naruto is a six-year-old male member of the *Macaca nigra* species, also  
15 known as a crested macaque, residing on the island of Sulawesi, Indonesia. Naruto cannot  
16 independently bring this action due to inaccessibility and incapacity.

17           15.     Naruto and the other members of his species are critically endangered  
18 according to the International Union for the Conservation of Nature (IUCN) Red List of  
19 Threatened Species, with their total population estimated to be between 4,000 and 6,000.

20           16.     Plaintiff and Next Friends PETA and Dr. Engelhardt are informed and  
21 believe, and thereon allege, that their numbers have decreased by approximately ninety  
22 percent (90%) over the last twenty-five years due to human population encroachment,  
23 being killed by humans in retribution for foraging on crops, and being trapped and  
24 slaughtered for bush meat.

25           17.     The Next Friends bring this action on behalf of, and as next friends to,  
26 Naruto, pursuant to Rule 17(b) of the Federal Rules of Civil Procedure, because Naruto's  
27 rights cannot be effectively vindicated except through an appropriate representative. The  
28

1 Next Friends have a genuine concern for Naruto's well-being and are dedicated to  
2 pursuing his best interests in this litigation.

3 18. PETA is a Virginia not-for-profit corporation and an animal protection  
4 charity exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code.  
5 Founded in 1980, PETA is the largest animal rights organization in the world and operates,  
6 in part, under the principle that, as sentient beings, animals have rights that are or should  
7 be recognized in law and protected by courts. Since its inception, PETA has championed  
8 establishing the rights and legal protections available to animals beyond their utility to  
9 human beings or the belief that they are mere "things" devoid and undeserving of any  
10 rights. PETA has the financial and operational resources and the professional expertise to  
11 administer and protect Naruto's copyright in the Monkey Selfies.

12 19. Dr. Engelhardt is a primatologist and ethologist, who has studied the  
13 behavior of the Sulawesi crested macaques for over a decade. Dr. Engelhardt teaches  
14 courses in Behavioural Ecology and Anthropology at Georg-August University, Göttingen,  
15 Germany, where she is also a member of the Ph.D. examination board in the Biological  
16 Faculty. She also teaches Behavioural Ecology at the University of Leipzig, Germany.

17 20. Since 2006, Dr. Engelhardt has served as the co-head of one of the foremost  
18 scientific projects studying the ecology, reproductive biology, and social systems of  
19 Sulawesi crested macaques in their natural habitat and promoting their conservation and  
20 protection. She is one of the world's foremost experts on the *Macaca nigra* species.

21 21. Dr. Engelhardt and those with whom she works have known, monitored, and  
22 studied Naruto since his birth. Naruto and his matrilineal family are an integral part of the  
23 crested macaque population Dr. Engelhardt studies. She has the scientific and professional  
24 expertise, and commitment to consult and cooperate with PETA on behalf of Naruto, so  
25 that the proceeds from the administration of Naruto's copyright in the Monkey Selfies are  
26 used for the protection of Naruto, his community and their habitat.

27 22. Slater is a professional photographer, residing in the United Kingdom, who  
28 claims to be the author and copyright owner of the Monkey Selfies.

23. Blurb is a Delaware corporation and publishing company with its principal place of business located at 580 California Street, Suite 300, San Francisco, California 94104. Blurb is the publisher of a book by Slater, entitled “Wildlife Personalities” (the “Wildlife Book”), which is sold through interstate commerce (including Amazon.com) in the United States and elsewhere. The images created by Naruto appear throughout the Wildlife Book, including on its cover.

24. Wildlife Personalities is a United Kingdom private limited company located at 13 Birdwood Gardens, Mathern, Chepstow, United Kingdom. Upon information and belief, Slater is the director and sole shareholder of Wildlife Personalities. In the Wildlife Book, both Slater and Wildlife Personalities falsely claim authorship of the Monkey Selfies.

### **FACTS**

25. Naruto and all crested macaques are highly intelligent, capable of advanced reasoning and learning from experience.

26. Like other primates, including humans, Naruto and all crested macaques have stereoscopic color vision with depth perception and are vision dominant. As a result, visual images, including seeing their reflection in a motor bike mirror or camera lens, are intensely interesting experiences for them.

27. Also like humans and other primates, Naruto possesses grasping hands and opposable thumbs with the ability to move his fingers independently. Because he has fingernails instead of claws, he can bring his fingers together in various manipulatory configurations, including picking up and processing foods, grooming other macaques by removing very small ectoparasites as part of a social bonding exercise integral to the macaque community, and extensive acrobatic climbing and swinging from trees. As such, Naruto’s use of his hands in any activity results from his intentional, purposeful, and concentrated action, not mere happenstance or accident.

28. Naruto and his community occupy a range in the Tangkoko Reserve immediately adjacent to a human village. Human development is steadily encroaching

1 into the area, with attendant cars, motorbikes, tourists, and wildlife photographers and  
2 videographers as the Reserve has become an increasingly popular destination for people  
3 wanting to see macaques in their natural homeland environment.

4 29. Because Naruto and his community depend on foraging as their primary  
5 means of finding food, they regularly forage in and around the human village, in the  
6 process encountering reflective surfaces like motorbike and car mirrors. They also  
7 encounter tourists and professional photographers and videographers with their reflective  
8 camera lenses. Upon information and belief, throughout his life, Naruto has been  
9 accustomed to observing and recognizing his own image in some or all of these reflective  
10 surfaces.

11 30. Upon information and belief, prior to authoring the Monkey Selfies, Naruto  
12 was accustomed to seeing cameras, observing cameras being handled by humans, hearing  
13 camera mechanisms being operated, and experiencing cameras being used by humans  
14 without danger or harm to him or his community.

15 31. On information and belief, Naruto authored the Monkey Selfies sometime in  
16 or around 2011.

17 32. Slater did not assist Naruto's authorship of the Monkey Selfies.

18 33. Upon information and belief, Naruto authored the Monkey Selfies by his  
19 independent, autonomous actions in examining and manipulating Slater's unattended  
20 camera and purposely pushing the shutter release multiple times, understanding the cause-  
21 and-effect relationship between pressing the shutter release, the noise of the shutter, and  
22 the change to his reflection in the camera lens.

23 34. Slater admits Naruto created the Monkey Selfies. For example, Slater makes  
24 all of the following admissions in the Wildlife Book published by Blurb, which uses one of  
25 the Monkey Selfies as the cover photograph:

26 a. Description of front cover: "Sulawesi crested black macaque smiles at  
27 itself whilst pressing the shutter button on a camera." (Attached and incorporated  
28 as Exhibit 2.)

1           b.       Page 9: “A Sulawesi crested black macaque pulls one of several funny  
2 faces during its own photo shoot, seemingly aware of its own reflection in the lens.  
3 Despite the howling posture, the macaque was silent throughout, suggesting to me  
4 some form of fun and artistic experiment with its own appearance.” (Attached and  
5 incorporated as Exhibit 3.)

6           c.       Page 11: “Posing to take its own photograph, unworried by its own  
7 reflection, smiling. Surely a sign of self-awareness?” (Attached and incorporated as  
8 Exhibit 4.)

9           d.       Page 11: “[T]he shutter was pressed by the monkey.” (*Id.*)

10          e.       Page 11: “My experience of these monkeys [crested macaques]  
11 suggested that they were not just highly intelligent but were also aware of  
12 themselves. . . . It was only a matter of time before one pressed the shutter resulting  
13 in a photo of herself [sic]. She [sic] stared at herself with a new found appreciation,  
14 and made funny faces – in silence – just as we do when looking in a mirror. She  
15 [sic] also, importantly, made relaxed eye contact with herself [sic], even  
16 smiling....She [sic] was certainly excited at her [sic] own appearance and seemed to  
17 know it was herself [sic].” (*Id.*)

### 18                                   **Defendants’ Infringing Conduct**

19          35.       Naruto through the Next Friends is informed and believes, and thereon  
20 alleges, that, at all relevant times, Slater and Wildlife Personalities have, in this judicial  
21 district and elsewhere, repeatedly infringed on Naruto’s copyright in the Monkey Selfies  
22 by falsely claiming to be the photographs’ authors and by selling copies of the images for  
23 their profit.

24          36.       Slater engaged the services of Blurb to publish the Wildlife Book, which  
25 reproduces the Monkey Selfies, including one on its cover, in violation of Naruto’s  
26 copyright.

27          37.       The Wildlife Book also falsely claims that Wildlife Personalities and Slater  
28 are the copyright owners of one or more of the Monkey Selfies.



1           38.     The Wildlife Book is available for sale in both hard copy and ebook formats,  
2 and it has been sold on Amazon.com, including, upon information and belief, within this  
3 judicial district. Online orders of the Wildlife Book are shipped by Blurb from its business  
4 location in San Francisco, California.

5           39.     Since at least 2014 and continuing to the present, Slater has sold copies of  
6 the Monkey Selfies for his profit as follows:

7               a.     Utilizing the services of Picanova (www.picanova.com), a photograph  
8 sales and distribution business, to sell copies of the Monkey Selfies, including, upon  
9 information and belief, in this judicial district.

10              b.     As recently as November 2014, using Picanova to sell or give away  
11 copies of the Monkey Selfies, including, upon information and belief, in this  
12 judicial district, using the tag line “NOBODY’S MONKEYING AROUND,”  
13 offering a free “12” x 8” canvas” or “Get \$46 Off of a Larger Size.” Picanova  
14 further attempted to maximize the unauthorized sales of the Monkey Selfies by  
15 proclaiming that “we donate \$1.70 with every canvas ordered.” This promotion  
16 furthered Slater’s improper claim of copyright ownership in the Monkey Selfies by  
17 stating that Picanova’s copies were “Printed with David J Slater’s permission.”

18              c.     Selling and continuing to sell unauthorized copies of the Monkey  
19 Selfies via his own website, www.djsphotography.co.uk, including, upon  
20 information and belief, in this judicial district. Slater also improperly asserts  
21 copyright ownership of the photo on his website, claiming “All images © David  
22 Slater 2000-2015.”

23                               **CLAIM FOR RELIEF**

24                               **Copyright Infringement**

25           40.     Naruto through the Next Friends repeat and reallege each of the foregoing  
26 paragraphs.

27           41.     The Monkey Selfies are digital photographs fixed in a tangible medium and  
28 are original works of authorship created by Naruto.

42. Naruto made the Monkey Selfies in Sulawesi, Indonesia. None of these images is a “United States Work” within the meaning of 17 U.S.C. §§ 101 and 411(a), and therefore no copyright registration is required to maintain this action.

43. Defendants, in violation of Naruto's copyright, have displayed, advertised, reproduced, distributed, offered for sale, and sold copies of the Monkey Selfies.

44. Defendants continue to infringe Naruto's copyright in the Monkey Selfies, in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

45. As a direct and proximate result of said infringement by Defendants, Naruto is entitled to damages in an amount to be proven at trial.

46. Naruto is also entitled to Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. §504(b), including an accounting of and a constructive trust with respect to such profits.

## **PRAYER FOR RELIEF**

WHEREFORE, Naruto through the Next Friends respectfully prays for judgment against Defendants as follows:

(a) Declaring Naruto to be the author and copyright owner of the Monkey Selfies with all attendant rights and privileges under law;

(b) Permanently enjoining and restraining Defendants, their agents, servants, employees, successors, and assigns and all those in active concert or participation with one or either of them, from copying, licensing or otherwise exploiting the Monkey Selfies, and prohibiting Defendants, or any of them, from assisting or authorizing any third party to engage in any of the actions prohibited by this subparagraph;

(c) Requiring Defendants to account for all proceeds, expenses and profits related to Defendants' infringement of Naruto's copyright in the Monkey Selfies;

(d) Ordering Defendants to disgorge any and all profits from their individual or joint infringements of Naruto's copyright in the Monkey Selfies;

(e) Awarding damages in such amount as may be found, or as otherwise permitted by law.

1 (f) Permitting the Next Friends to administer and protect Naruto's authorship of  
2 and copyright in the Monkey Selfies; by

3 (i) providing that all net proceeds from the sale, licensing and other  
4 commercial use of the Monkey Selfies, including Defendants' disgorged profits, less  
5 necessary and appropriate expenses, be used solely for the benefit of Naruto, his  
6 community of crested macaques, and preservation of their habitat; and

7 (ii) providing that PETA report to the Court on such administration and  
8 management of Naruto's copyright in the Monkey Selfies at such times and in such  
9 manner as the Court deems proper;

10 (g) Granting Naruto's full costs, including, as part of such costs, reasonable  
11 attorneys' fees pursuant to 17 U.S.C. § 505; and

12 (h) Granting Naruto such other and further relief as the Court deems just and  
13 proper.

14  
15 Dated: September 21, 2015

Respectfully submitted,

16 IRELL & MANELLA LLP

17 By: /s/ David A. Schwarz  
18 David A. Schwarz

19 PETA Foundation

20 By: /s/ Jeffrey S. Kerr  
21 Jeffery S. Kerr

22 *Attorneys for Plaintiff*  
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Dated: September 21, 2015

IRELL &amp; MANELLA LLP

PETA Foundation

By: /s/ Jeffrey S. Kerr  
Jeffery S. Kerr

*Attorneys for Plaintiff*

1 **FILER'S ATTESTATION**

2 Pursuant to Local Civil Rule 5-1(i)(3), I hereby attest that all signatories on whose  
3 behalf this filing is jointly submitted concur in the filing's content and have authorized me  
4 to file this document.

5  
6 Dated: September 21, 2015

Respectfully submitted,

7 IRELL & MANELLA LLP

8 By: /s/ Casey Hultin  
9 Casey Hultin

10 *Attorneys for Plaintiff*  
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# **EXHIBIT 1**







# **EXHIBIT 2**





# *WILDLIFE PERSONALITIES*

DAVID J SLATER



Copyright © David J Slater 2014, in text & photographs (except as credited below)  
 Copyright © Wildlife Personalities Ltd., in photographs p11.  
 The book author retains sole copyright to his contributions of photographs and text to this book. All rights reserved. No photographs in this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, mechanical, photocopying, recording or otherwise, without the prior written permission of the author.

Front cover: Sulawesi crested black macaque smiles at itself whilst pressing the shutter button on a camera.  
 Back cover: Portrait of a happy Common Seal with insets: A contented Rothschild giraffe and a pair of happy Frogs.  
 This page top to bottom: Cape fur seals, Namibia, in agreeable poses; the author with a crested black macaque; baby Barbary macaque unimpressed with the paparazzi, Gibraltar; thoughtful Orangutan, Indonesia. Fighting squirrels, Namibia.



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# **EXHIBIT 3**

A Sulawesi crested black macaque pulls one of several funny faces during its own photo shoot, seemingly aware of its own reflection in the lens. Despite the howling posture, the macaque was silent throughout, suggesting to me some form of fun and artistic experiments with its own appearance.



# **EXHIBIT 4**





## SELF-AWARENESS

It's long been believed that animals don't recognise themselves in reflections. The famous spot test - a spot placed on an animal's forehead tests if the animal sees itself in a mirror and tries to touch it - alleges to show that animals are not self-aware. Dogs bark at a mirror because they supposedly see the mirror creature as another threatening animal. My experience of these monkeys suggested that they were not just highly intelligent but were also aware of themselves.

A monkey had been looking at itself in the reflection of the lens when it grabbed my camera. The noise of the shutter excited it and was reluctant to hand the camera back, and in the ensuing repossession the shutter was pressed by the monkey. My intent had been to get a full face portrait using the wide angle lens, with a monkey looking directly into the camera. They were reluctant to do so with me behind the lens because it amounted to staring me in the face, something that monkeys feel is bad manners. So I mounted the camera on a tripod and encouraged them to touch the camera and a cable release I had added.

Now more confident to move closer to the camera, they became over-joyed by their appearance in the lens.

It was only a matter of time before one pressed the shutter resulting in a photo of herself. She stared at herself with a new found appreciation, and made funny faces - in silence - just as we do when looking in a mirror. She also, importantly, made relaxed eye contact with herself, even smiling.

Are the mouth shapes an imitation of the noise? She was certainly excited at her own appearance and seemed to know it was herself.



Above: Posing to take its own photograph, unworried by its own reflection, even smiling. Surely a sign of self-awareness?