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5 *Attorney for Defendants David John Slater*
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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9	NARUTO, a Crested Macaque, by and through)	Case No.: 15-cv-4324-WHO
10	his Next Friends, PEOPLE FOR THE)	
11	ETHICAL TREATMENT OF ANIMALS,)	MOTION TO DISMISS THE
12	INC., and ANTJE ENGELHARDT, Ph.D.)	COMPLAINT FOR LACK OF STANDING
13	Plaintiff,)	AND FAILURE TO STATE A CLAIM
14	vs.)	UPON WHICH RELIEF CAN BE
15	DAVID JOHN SLATER, an individual,)	GRANTED
16	BLURB, INC., a Delaware corporation, and)	[FED. R. CIV. P. 12(b)(1), 12(b)(6)]
17	WILDLIFE PERSONALITIES, LTD., a)	
18	United Kingdom private limited company,)	Date: Jan. 6, 2016
19	Defendants.)	Time: 2:00 p.m.
20		Courtroom: 2, 17th Floor
21		Judge: Hon. William H. Orrick

22 **NOTICE OF MOTION AND MOTION TO DISMISS**

23 TO PLAINTIFF AND PLAINTIFF’S ATTORNEYS OF RECORD: NOTICE IS

24 HEREBY GIVEN that on January 6, 2016, at 2:00 p.m. or as soon thereafter as counsel may be
25 heard, before the Honorable William H. Orrick in Courtroom 2, located at 450 Golden Gate
26 Avenue, San Francisco, CA 94102, Defendants David John Slater and Wildlife Personalities, Ltd.
27 (“WPL”) will and hereby do move the Court to dismiss this case under Fed. R. Civ. P. 12(b)(1) for
28 lack of standing to sue, and Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief
can be granted. By each of these motions, Defendants seek dismissal of this matter with prejudice.

INTRODUCTION

1
2 A monkey, an animal-rights organization and a primatologist walk into federal court to sue
3 for infringement of the monkey’s claimed copyright. What seems like the setup for a punchline is
4 really happening. It should not be happening. Under *Cetacean Community v. Bush*, 386 F.3d 1169
5 (9th Cir. 2004), dismissal of this action is required for lack of standing and failure to state a claim
6 upon which relief can be granted. Monkey see, monkey sue is not good law – at least not in the
7 Ninth Circuit.

RELEVANT FACT

8
9 The only pertinent fact in this case is that Plaintiff is a monkey suing for copyright
10 infringement. Plaintiff’s factual assertions regarding the creation of the famous Monkey Selfie
11 photograph are fundamentally erroneous, but they must be accepted as true for purposes of this
12 Motion to Dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). (Regardless, the true story of how
13 this photograph came to be is available at http://www.djsphotography.co.uk/original_story.html.)

ARGUMENT

14
15 “[I]f Congress and the President intended to take the extraordinary step of authorizing
16 animals as well as people and legal entities to sue, they could, and should, have said so plainly.”
17 *Cetacean Community*, 386 F.3d at 1179 (quoting *Citizens to End Animal Suffering & Exploitation,*
18 *Inc. v. New England Aquarium*, 836 F. Supp. 45, 49 (D. Mass. 1993)). In *Cetacean Community*,
19 the Ninth Circuit rejected the notion that non-human animals could have standing under four Acts
20 of Congress, including two that Congress enacted for the protection of animals: the Endangered
21 Species Act and the Marine Mammal Protection Act. 386 F.3d at 1177-78. The standing inquiry
22 for animals under *Cetacean Community* is very simple: unless Congress has plainly stated that
23 animals have standing to sue, the federal courts will not read any legislation to confer statutory
24 standing to animals. *Id.* at 1179.

25 Congress has not plainly stated that non-human animals have standing to sue for copyright
26 infringement. Nothing in Title 17 of the United States Code even hints at that possibility. Indeed,
27 imagining a monkey as the copyright “author” in Title 17 of the United States Code is a farcical
28 journey Dr. Seuss might have written. The “children” of an “author” can inherit certain rights,

1 “whether legitimate or not” and that includes “children legally adopted” by the author. *See* 17
2 U.S.C. §§ 101, 201, 203 and 304. An author’s “widow or widower owns the author’s entire
3 termination interest unless there are any surviving children or grandchildren of the author, in
4 which case the widow or widower owns one-half of the author’s interest.”
5 § 203(a)(2)(A). Accepting Plaintiff’s standing argument would present the bizarre possibility of
6 protracted family and probate court battles when the offspring of non-human authors scrum over
7 the rights to valuable works.

8 To be sure, there are quite reasonable arguments for conferring legal standing for animals
9 (via human *ad litem* representatives) in some areas of law – especially with regard to legislation
10 enacted to protect the animals in question. *See, e.g.,* Hogan, COMMENT: Standing for Nonhuman
11 Animals: Developing a Guardianship Model from the Dissents in *Sierra Club v. Morton*, 95 Calif.
12 L. Rev. 513 (2007). The law of trusts now expressly recognizes the legitimacy of trusts for the
13 benefit of non-human animals. *See* Uniform Trust Code 105(b) (“A charitable organization
14 expressly entitled to receive benefits under the terms of a charitable trust or a person appointed to
15 enforce a trust created for the care of an animal . . . has the rights of a qualified beneficiary under
16 this [Code].”). Defendants David Slater, a nature photographer who is deeply concerned about
17 animal welfare, and WPL wholeheartedly embrace legal standing and property rights for animals
18 in those contexts.

19 Still, if the humans purporting to act on Plaintiff’s behalf wish for copyright to be among
20 the areas of law where non-human animals have standing, they should make that dubious case to
21 Congress – not the federal courts. Enumerating the reasons why animals should not be able to sue
22 for copyright infringement would serve no useful purpose in this motion since controlling Ninth
23 Circuit authority requires dismissal of this action.

24 CONCLUSION

25 For the foregoing reasons, the Court should dismiss the complaint with prejudice.

26 By: /s/ Andrew J. Dhuey
27 Andrew J. Dhuey
28

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10	his Next Friends, PEOPLE FOR THE)	
	ETHICAL TREATMENT OF ANIMALS,)	[PROPOSED] ORDER GRANTING
11	INC., and ANTJE ENGELHARDT, Ph.D.)	MOTION TO DISMISS
)	
12	Plaintiff,)	Date: Jan. 6, 2016
)	Time: 2:00 p.m.
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14	DAVID JOHN SLATER, an individual,)	Judge: Hon. William H. Orrick
15	BLURB, INC., a Delaware corporation, and)	
	WILDLIFE PERSONALITIES, LTD., a)	
16	United Kingdom private limited company,)	
)	
17	Defendants.)	

18
19 This cause having come before the Court upon the Motion to Dismiss of Defendants David
20 John Slater and Wildlife Personalities, Ltd., the Court having reviewed the file and being
21 otherwise duly advised in the premises,
22

23 IT IS HEREBY ORDERED:

24 The Motion to Dismiss is GRANTED.

25 Dated: _____

The Honorable William H. Orrick