

1 IRELL & MANELLA LLP
 2 David A. Schwarz (State Bar No. 159376)
 3 DSchwarz@irell.com
 4 Casey Hultin (State Bar No. 302904)
 5 CHultin@irell.com
 6 1800 Avenue of the Stars, Ste. 900
 7 Los Angeles, CA 90067-4276
 8 Tel: 310-277-1010
 9 Fax: 310-203-7199

10 PETA FOUNDATION
 11 Jeffrey S. Kerr (to be admitted *pro hac vice*)
 12 JeffK@petaf.org
 13 1536 16th Street NW
 14 Washington, DC 20036
 15 Tel: 202-540-2171
 16 Fax: 202-540-2208

17 Matthew Strugar (State Bar No. 232951)
 18 Matthew-s@petaf.org
 19 Martina Bernstein (State Bar No. 230505)
 20 MartinaB@petaf.org
 21 2154 W. Sunset Boulevard
 22 Los Angeles, CA 90026
 23 Tel: 323-739-2701
 24 Fax: 213-484-1648

25 *Attorneys for Plaintiff*

26 UNITED STATES DISTRICT COURT

27 NORTHERN DISTRICT OF CALIFORNIA

28	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,)
 and WILDLIFE PERSONALITIES, LTD.,)
 2 a United Kingdom private limited)
 3 company,)
)
 4 Defendants.)
 5)

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.
 28

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

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

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

22 **JURISDICTION AND VENUE**

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

25 9. The Court has personal jurisdiction over Slater, a resident of the United
 26 Kingdom, pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure, and based
 27 upon Slater’s copyright infringing conduct detailed below, a substantial part of which
 28 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.

1 23. Blurb is a Delaware corporation and publishing company with its principal
2 place of business located at 580 California Street, Suite 300, San Francisco, California
3 94104. Blurb is the publisher of a book by Slater, entitled “Wildlife Personalities” (the
4 “Wildlife Book”), which is sold through interstate commerce (including Amazon.com) in
5 the United States and elsewhere. The images created by Naruto appear throughout the
6 Wildlife Book, including on its cover.

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

12 **FACTS**

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

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

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

27 28. Naruto and his community occupy a range in the Tangkoko Reserve
28 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.

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

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

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

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

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

13 **PRAYER FOR RELIEF**

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

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

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

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

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

27 (e) Awarding damages in such amount as may be found, or as otherwise
28 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*
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a trial by jury of all issues so triable.

Dated: September 21, 2015

Respectfully submitted,

IRELL & MANELLA LLP

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

PETA Foundation

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

Attorneys for Plaintiff

FILER'S ATTESTATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: September 21, 2015

Respectfully submitted,

IRELL & MANELLA LLP

By: /s/ Casey Hultin
Casey Hultin

Attorneys for Plaintiff

EXHIBIT 1

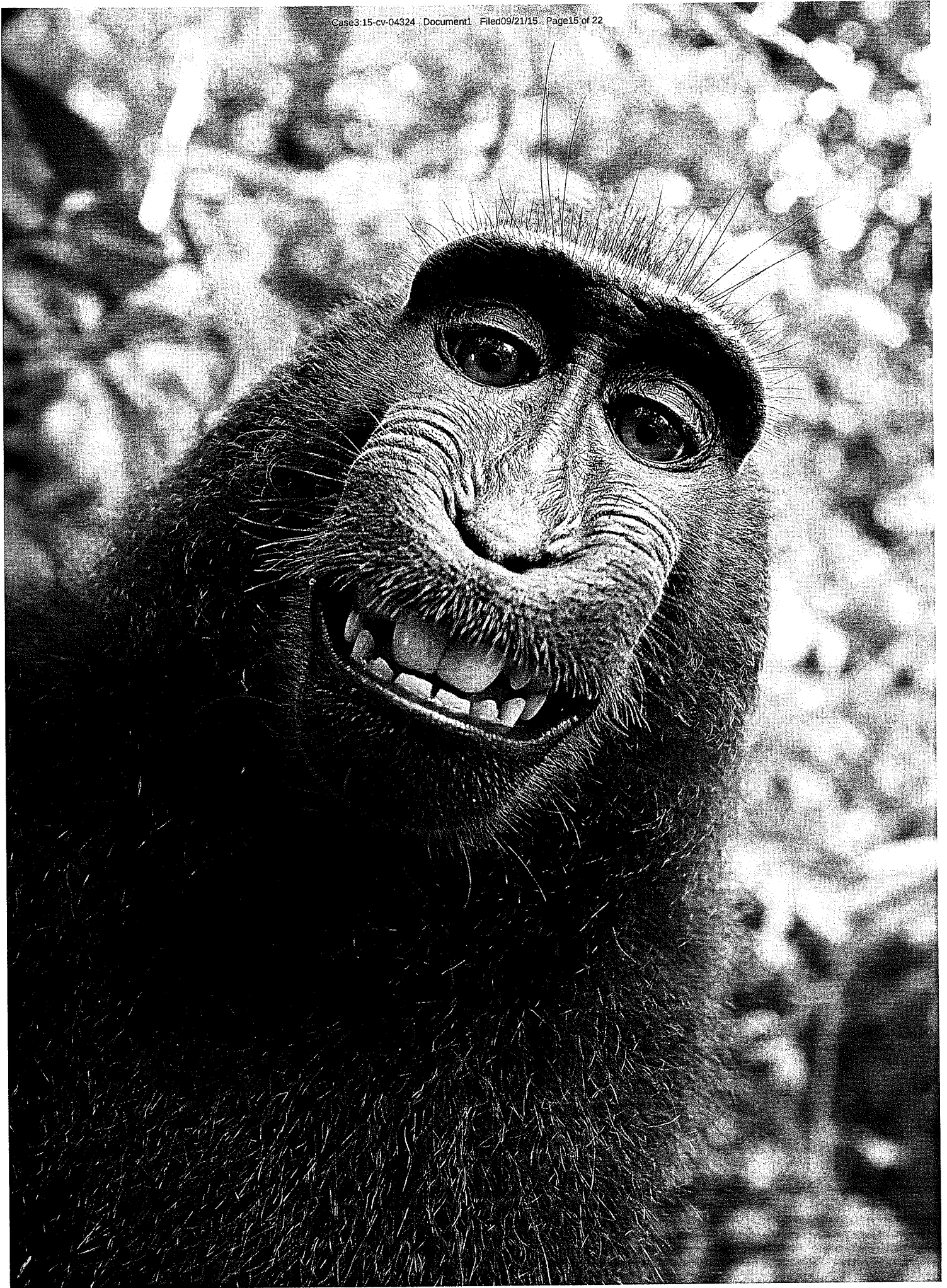
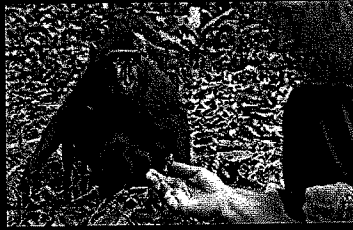


EXHIBIT 2



WILDLIFE PERSONALITIES

DAVID J. SLATER



Copyright © David J Slater 2014, in text & photographs (except as credited below)
Copyright © Wildlife Personalities Ltd. in photographs (11).
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; Indragiri Bawean macaque unimpressed with the paparazzi, Gibraltar; thoughtful Orangutan, Indonesia; Fighting squirrels, Namibia.



The Blurb-provided layout designs and graphic elements are copyright Blurb Inc. This book was created using the Blurb creative publishing service. The book author retains sole copyright to his or her contributions to this book.

EXHIBIT 3