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16 UNITED STATES DISTRICT COURT

17
18 NORTHERN DISTRICT OF CALIFORNIA

19 NARUTO, a Crested Macaque, by and through) Case No.: 15-cv-4324-WHO
his Next Friends, PEOPLE FOR THE)
20 ETHICAL TREATMENT OF ANIMALS,) **NOTICE OF APPEAL AND**
INC., and ANTJE ENGELHARDT, Ph.D.) **REPRESENTATION STATEMENT OF**
21) **PLAINTIFF NARUTO**

22 Plaintiff,)

) Judge: Hon. William H. Orrick

23 vs.)

24 DAVID JOHN SLATER, an individual,)
BLURB, INC., a Delaware corporation, and)
25 WILDLIFE PERSONALITIES, LTD., a)
United Kingdom private limited company,)
26)

27 Defendants.)

28

1 Plaintiff and Appellant Naruto, a Crested Macaque, by and through his Next Friend,
2 People for the Ethical Treatment of Animals, Inc. (“PETA”) and Dr. Antje Engelhardt, hereby
3 appeals to the United States Court of Appeals for the Ninth Circuit from (1) the Judgment of the
4 District Court, entered in this case on February 18, 2016 (Dkt. No. 47), a copy of which is attached
5 hereto as Exhibit A; and (2) the District Court’s Order Granting Motions to Dismiss, entered in
6 this case on January 28, 2016 (Dkt. No. 45), a copy of which is attached hereto as Exhibit B.

7 Dated: March 20, 2016

Respectfully submitted,

8 IRELL & MANELLA LLP

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10 By: /s/ David A. Schwarz

11 David A. Schwarz

12 *Attorneys for Plaintiff*

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REPRESENTATION STATEMENT

Pursuant to Rule 12(b) of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 3-2, all parties to the action are listed below along with the names, addresses and telephone numbers of their respective counsel.

For plaintiff and appellant Naruto:

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For defendants and appellees David John Slater and Wildlife Personalities, Ltd.:

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Dated: March 20, 2016

Respectfully submitted,

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

EXHIBIT A

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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18
19 NARUTO, a Crested Macaque, by and through) Case No.: 15-cv-4324-WHO
his Next Friends, PEOPLE FOR THE)
20 ETHICAL TREATMENT OF ANIMALS,) JOINT STIPULATION AND JUDGMENT
INC., and ANTJE ENGELHARDT, Ph.D.)
21) Complaint filed: September 23, 2015
Plaintiff,) Judge: Hon. William H. Orrick
22)
23 vs.)
24 DAVID JOHN SLATER, an individual,)
BLURB, INC., a Delaware corporation, and)
25 WILDLIFE PERSONALITIES, LTD., a)
United Kingdom private limited company,)
26)
27 Defendants.)

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1 Pursuant to Local Rule 7-12, Plaintiff Naruto, a Crested Macaque, by and through his Next
2 Friends, People for the Ethical Treatment of Animals, Inc. (“PETA”) and Antje Engelhardt, Ph.D.
3 (“Plaintiff”), and Defendants Blurb, Inc., David J. Slater, and Wildlife Personalities, Ltd.
4 (“Defendants,” and together with Plaintiff, the “Parties”), by and through their respective counsel,
5 hereby stipulate as follows:

6 WHEREAS, Plaintiff filed a complaint on September 23, 2015;

7 WHEREAS, Defendants filed respective motions to dismiss on November 6, 2015 (Dkt.
8 Nos. 24, 28) (the “Motions to Dismiss”);

9 WHEREAS, the Court granted the Motions to Dismiss on January 28, 2016 (Dkt. No. 45);

10 WHEREAS, Plaintiff has elected not to file an amended complaint;

11 WHEREAS, the Parties believe the interests of efficiency, judicial economy and avoiding
12 piecemeal determinations counsel in favor of deferring any applications for attorneys’ fees and
13 determination thereof until after any appeal has been resolved; and

14 WHEREAS, the Parties reserve all other rights;

15 NOW THEREFORE, IT IS HEREBY STIPULATED between the Parties, by and through
16 their counsel of record, subject to the approval of the Court, that:

- 17 (1) Judgment be entered in favor of the Defendants; and
- 18 (2) Any motions for attorneys’ fees incurred prior to the entry of judgment shall be
19 filed: (i) within 14 days after the time to appeal has expired, if no appeal is filed, or (ii) within 14
20 days after the Ninth Circuit dismisses any appeal or mandate issues, if an appeal is filed.

21 Dated: February 17, 2016

Respectfully submitted,

23 IRELL & MANELLA LLP

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

27 *Attorneys for Plaintiff*

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COOLEY LLP

By: /s/ Angela L. Dunning
Angela L. Dunning

*Attorneys for Defendant
BLURB, INC.*

By: /s/ Andrew Dhuey
Andrew Dhuey

*Attorney for Defendants
DAVID J. SLATER AND WILDLIFE
PERSONALITIES, LTD.*


FILER'S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, David A. Schwarz hereby attests that concurrence in the filing of this document has been obtained.

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

1 PURSUANT TO STIPULATION, IT IS SO ORDERED that, the Court having granted
2 Defendants' Motions to Dismiss, judgment is hereby entered in favor of all defendants as to all
3 claims. Plaintiff shall take nothing by way of his complaint. The Parties reserve all other rights.

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5 Dated: February 18, 2016


The Honorable William H. Orrick

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EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NARUTO, et al.,
Plaintiffs,
v.
DAVID JOHN SLATER, et al.,
Defendants.

Case No. [15-cv-04324-WHO](#)

ORDER GRANTING MOTIONS TO DISMISS

Re: Dkt. Nos. 24, 28

INTRODUCTION

This case arises out of allegations that Naruto, a six-year-old crested macaque, took multiple photographs of himself (the “Monkey Selfies”) using defendant David John Slater’s camera. The complaint, filed by the People for the Ethical Treatment of Animals (“PETA”) and Antje Engelhardt as “Next Friends,” alleges that defendants Slater, Blurb, Inc. (the “publisher” of a book by Slater containing the Monkey Selfies), and Wildlife Personalities, Ltd. (a United Kingdom company that, along with Slater, “falsely” claims authorship of the Monkey Selfies) violated Naruto’s copyright by displaying, advertising, and selling copies of the Monkey Selfies. On January 6, 2016, I heard argument on the defendants’ motions to dismiss that assert that Naruto does not have standing and cannot state a claim under the Copyright Act. Because the Copyright Act does not confer standing upon animals like Naruto, defendants’ motions to dismiss are GRANTED.¹

¹ Blurb and Next Friends request judicial notice of exhibits containing content from internet webpages. Dkt. Nos. 26, 33. Because I do not rely on these materials in granting defendants’ motions, and even if I had it would not change my analysis, the requests are DENIED as moot.

United States District Court
Northern District of California

1 **BACKGROUND**

2 I accept the allegations in the complaint as true for purposes of the motions to dismiss.
 3 Naruto is a six-year old crested macaque who lives in a reserve on the island of Sulawesi,
 4 Indonesia. Compl. ¶ 14 [Dkt. No. 1]. He is “highly intelligent” and possesses “grasping hands
 5 and opposable thumbs with the ability to move his fingers independently.” *Id.* ¶¶ 25, 27. Because
 6 the reservation where he lives is immediately adjacent to a human village, Naruto has encountered
 7 tourists and photographers throughout his life. *Id.* ¶¶ 28, 29. He was “accustomed to seeing
 8 cameras, observing cameras being handled by humans, hearing camera mechanisms being
 9 operated, and experienced cameras being used by humans without danger or harm to him and his
 10 community.” *Id.* at ¶ 30. “On information and belief, Naruto authored the Monkey Selfies
 11 sometime in or around 2011” by “independent, autonomous action” in examining and
 12 manipulating Slater’s unattended camera and “purposely pushing” the shutter release multiple
 13 times, “understanding the cause-and-effect relationship between pressing the shutter release, the
 14 noise of the shutter, and the change to his reflection in the camera lens.” *Id.* ¶¶ 31, 33.

15 The Next Friends allege that Slater has repeatedly infringed on Naruto’s copyright on the
 16 Monkey Selfies by “falsely claiming to be the photographs’ authors and by selling copies of the
 17 images” for profit. *Id.* ¶35. They claim that defendants have violated sections 106 and 501 of the
 18 Copyright Act of 1976, by displaying, advertising, reproducing, distributing, offering for sale, and
 19 selling copies of the Monkey Selfies. *Id.* ¶¶ 43, 44. They allege that Naruto is entitled to
 20 defendants’ profits from the infringement and seek to permanently enjoin defendants from
 21 copying, licensing, or “otherwise exploiting” the Monkey Selfies and to permit Next Friends to
 22 “administer and protect” Naruto’s authorship of and copyright in the Monkey Selfies. *Id.* at p. 9-
 23 10.

24 **LEGAL STANDARD**

25 To survive a motion under either Federal Rule of Civil Procedure 12(b)(1) or 12(b)(6), the
 26 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 27 *Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when the plaintiff
 28 pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for

1 the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There
 2 must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* While courts
 3 do not require “heightened fact pleading of specifics,” a plaintiff must allege facts sufficient to
 4 “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

5 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
 6 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
 7 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
 8 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
 9 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
 10 2008). If the court dismisses the complaint, it “should grant leave to amend even if no request to
 11 amend the pleading was made, unless it determines that the pleading could not possibly be cured
 12 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

13 DISCUSSION

14 Defendants argue the complaint should be dismissed for lack of standing under Article III
 15 and the Copyright Act of 1976. Slater Mot. at 2-3 [Dkt. No. 28]; Blurb Mot. at 4-5 [Dkt. No. 24].
 16 To demonstrate standing under Article III’s case or controversy requirement, a plaintiff must show
 17 that: (i) it has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or
 18 imminent, not conjectural or hypothetical; (ii) the injury is “fairly traceable” to the challenged
 19 action of the defendants; and (iii) a favorable decision will be likely to redress the injury. *Friends*
 20 *of the Earth, Inc. v. Laidlaw Env’t Services (TOC), Inc.*, 528 U.S. 167, 180-81 (2000); *see also*
 21 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The Ninth Circuit has stated that
 22 Article III “does not compel the conclusion that a statutorily authorized suit in the name of an
 23 animal is not a ‘case or controversy.’” *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir.
 24 2004). I need not discuss Article III standing further, because regardless of whether Naruto fulfills
 25 the requirements of Article III, he must demonstrate standing under the Copyright Act for his
 26 claim to survive under Rule 12(b)(6).

27 A plaintiff seeking redress for a statutory violation must establish statutory standing.
 28 *Cetacean*, 386 F.3d at 1175; *Warth v. Seldin*, 422 U.S. 490, 500 (1975). “If a plaintiff has

1 suffered sufficient injury to satisfy the jurisdictional requirement of Article III but Congress has
2 not granted statutory standing, that plaintiff cannot state a claim upon which relief can be
3 granted,” and dismissal is appropriate. *Cetacean*, 386 F.3d at 1175. Statutory standing exists
4 “when a particular plaintiff has been granted a right to sue by the specific statute under which he
5 or she brings suit.” *Id.* (internal citations and quotation marks omitted). Congress must “make its
6 intentions clear before [the courts] will construe a statute to confer standing on a particular
7 plaintiff.” *Id.*

8 “[T]he starting point for interpreting a statute is the language of the statute itself.”
9 *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The Copyright
10 Act protects “original works of authorship fixed in any tangible medium of expression, now
11 known or later developed, from which they can be perceived, reproduced, or otherwise
12 communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 102(a). The
13 “fixing” of the work in the tangible medium of expression must be done “by or under the authority
14 of the author.” 17 U.S.C. § 101. The Copyright Act defines neither “works of authorship” nor
15 “author.” The Ninth Circuit has observed that the Act “purposefully left ‘works of authorship’
16 undefined to provide for some flexibility.” *Garcia v. Google, Inc.*, 786 F.3d 733, 741 (9th Cir.
17 2015).

18 Defendants argue that the Copyright Act confers no rights upon animals such as Naruto.
19 Next Friends respond that the Act has “no definitional limitation.” *Opp.* at 8 [Dkt. No. 31]. They
20 contend that standing under the Copyright Act is available to anyone, including an animal, who
21 creates an “original work of authorship.” *Id.* at 5. They argue that they have sufficiently alleged
22 that Naruto is the author of the Monkey Selfies and are not required to allege “anything else” to
23 demonstrate his standing. *Id.* at 7.

24 I disagree with Next Friends and follow the rationale of *Cetacean*. In that case, the
25 Cetacean Community (the “Cetaceans”), created by the “self-appointed attorney for all of the
26 world’s whales, porpoises, and dolphins,” filed suit on behalf of the Cetaceans for violations of the
27 Endangered Species Act, the Marine Mammal Protection Act, and the National Environmental
28 Policy Act. 386 F.3d at 1171-72. Reviewing the district court’s order granting dismissal, the

1 Ninth Circuit examined the language of each statute to assess whether it evidenced congressional
2 intent to confer standing on animals. None did. The court held that “if Congress and the President
3 intended to take the extraordinary step of authorizing animals as well as people and legal entities
4 to sue, they could, and should, have said so plainly.” *Id.* at 1179 (internal quotation marks,
5 citations, and modifications omitted).²

6 Here, the Copyright Act does not “plainly” extend the concept of authorship or statutory
7 standing to animals. To the contrary, there is no mention of animals anywhere in the Act. The
8 Supreme Court and Ninth Circuit have repeatedly referred to “persons” or “human beings” when
9 analyzing authorship under the Act. *See, e.g., Aalmuhammed v. Lee*, 202 F.3d 1227, 1234 (9th
10 Cir. 2000) (“[A]n author superintends the work by exercising control. This will likely be a *person*
11 who has actually formed the picture by putting the persons in position, and arranging the place
12 where the people are to be.”) (internal quotation marks, citations and modifications omitted)
13 (emphasis added); *Urantia Foundation v. Maaherra*, 114 F.3d 955, 958 (9th Cir. 1997) (“For
14 copyright purposes, however, a work is copyrightable if copyrightability is claimed by the first
15 *human beings* who compiled, selected, coordinated, and arranged [the work].”) (emphasis added);
16 *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (“As a general rule, the author
17 is the party who actually creates the work, that is the *person* who translates an idea in a fixed,
18 tangible expression entitled to copyright protection.”) (emphasis added). Despite Next Friends’
19 assertion that declining to grant a monkey copyright to a photograph “would depart from well-
20 established norms,” Next Friends have not cited, and I have not found, a single case that expands
21 the definition of authors to include animals. *Opp.* at 15.

22 Moreover, the Copyright Office agrees that works created by animals are not entitled to
23 copyright protection. It directly addressed the issue of human authorship in the Compendium of
24

25 ² Similarly, in *Tilikum ex rel. People for the Ethical Treatment of Animals, Inc. v. Sea World*
26 *Parks & Entm’t, Inc.*, 842 F. Supp. 2d 1259, 1260-61 (S.D. Cal. 2012), PETA, acting as next
27 friends for five orcas, brought an action against Sea World alleging that the orcas were being held
28 in violation of the Thirteenth Amendment. Dismissing the case for lack of federal jurisdiction, the
court held that the amendment’s language was “clear, concise, and not subject to the vagaries of
conceptual interpretation” and as such “there is simply no basis to construe the Thirteenth
Amendment as applying to non-humans.” *Id.* at 1264.

1 U.S. Copyright Office Practices issued in December 2014 (the “Compendium”). “When
2 interpreting the Copyright Act, [the courts] defer to the Copyright Office’s interpretations in the
3 appropriate circumstances.” *Inhale, Inc. v. Starbuzz Tobacco, Inc.*, 755 F.3d 1038, 1041 (9th Cir.
4 2014); *see also Garcia*, 786 F.3d at 741-42 (describing an expert opinion by the Copyright Office
5 as reflecting a “body of experience and informed judgment to which courts and litigants may
6 properly resort for guidance”) (internal quotation marks and citations omitted). In section 306 of
7 the Compendium, entitled “The Human Authorship Requirement,” the Copyright Office relies on
8 citations from *Trade-Mark Cases*, 101 U.S. 94 (1879) and *Burrow-Giles* to conclude that it “will
9 register an original work of authorship, provided that the work was created by a human being.”
10 *Compendium of the U.S. Copyright Office Practices* § 306 (3d ed.). Similarly, in a section titled
11 “Works That Lack Human Authorship,” the Compendium states that, “[t]o qualify as a work of
12 ‘authorship’ a work must be created by a human being. Works that do not satisfy this requirement
13 are not copyrightable.” *Id.* at § 313.2 (internal citations omitted). Specifically, the Copyright
14 Office will not register works produced by “nature, animals, or plants” including, by specific
15 example, a “photograph taken by a monkey.” *Id.*³

16 Naruto is not an “author” within the meaning of the Copyright Act. Next Friends argue
17 that this result is “antithetical” to the “tremendous [public] interest in animal art.” *Opp.* at 12.
18 Perhaps. But that is an argument that should be made to Congress and the President, not to me.
19 The issue for me is whether Next Friends have demonstrated that the Copyright Act confers
20 standing upon Naruto. In light of the plain language of the Copyright Act, past judicial
21 interpretations of the Act’s authorship requirement, and guidance from the Copyright Office, they
22 have not.

23
24
25 ³ Next Friends argue that the opinion expressed in the Compendium should not apply, in part,
26 because the Monkey Selfies are foreign created works and thus are not required to be registered.
27 *Opp.* at 21. However, regardless of whether these particular photographs require registration, the
28 Compendium provides guidance regarding the core, disputed question – whether authorship under
the Copyright Act contemplates works created by animals. Therefore, I rely on the Compendium
as an additional basis for my analysis to the extent that its interpretation has the “power to
persuade.” *Inhale, Inc.*, 755 F.3d at 1042.

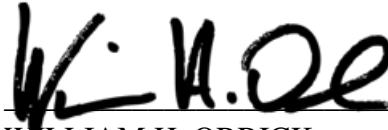
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CONCLUSION

Defendants’ motions to dismiss are GRANTED. Any amended complaint should be filed within 20 days of this Order.

IT IS SO ORDERED.

Dated: January 28, 2016



WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California