

Case No. 16-15469

IN THE
United States Court of Appeals
for the Ninth Circuit

NARUTO, A CRESTED MACAQUE, BY AND THROUGH HIS NEXT FRIENDS,
PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.,

PLAINTIFF-APPELLANT,

—v.—

DAVID JOHN SLATER, WILDLIFE PERSONALITIES, LTD.,
AND BLURB, INC.,

DEFENDANTS-APPELLEES,

—————
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA IN CASE No. 3:15-cv-04324,
U.S. DISTRICT JUDGE WILLIAM H. ORRICK III

OPPOSED REQUEST FOR JUDICIAL NOTICE
BY DEFENDANTS-APPELLEES DAVID JOHN SLATER
AND WILDLIFE PERSONALITIES, LTD.

ANDREW J. DHUEY
456 Boynton Avenue
Berkeley, California 94707
(510) 528-8200

Attorney for Defendants-Appellees,
David John Slater and
Wildlife Personalities, Ltd.

30 May 2017

REQUEST FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201(b) and (d), Defendants-Appellees David John Slater and Wildlife Personalities, Ltd. (henceforth, “Slater”) respectfully move the Court to take judicial notice of the following document, annexed as Exhibit A to the accompanying Declaration of Andrew J. Dhuey: “Complaint – Summons” in *New Jersey v. Engelhardt*.

DISCUSSION

Federal Rule of Evidence 201 provides for judicial notice of any fact “not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot be questioned.” Fed. R. Evid. 201(b). “The court may take judicial notice at any stage of the proceeding,” Fed. R. Evid. 201(d), “whether in the trial court or on appeal.” Advisory Committee Notes to Fed. R. Evid. 201(f).

The document attached herewith is a court record from *New Jersey v. Engelhardt*, a pending criminal case in Allamuchy Township Municipal Court in New Jersey, case no. S2017000037. The defendant is Antje Engelhardt, Ph.D., a primatologist who filed this action along with People for the Ethical Treatment of Animals, Inc. (“PETA”), purportedly as “next friends” of Plaintiff Naruto, a crested macaque. The complaining witness is

Jeffrey S. Kerr, PETA's general counsel, who appeared pro hac vice at the district court on behalf of PETA. ER 19. Dr. Engerhardt is charged with criminal trespass and harassment, stemming from an incident on 22 April 2017 at Mr. Kerr's residence.

This Court may take judicial notice of the attached state court records. *See, e.g., Mozes v. Mozes*, 239 F.3d 1067, 1085 n. 55 (9th Cir. 2001) (panel took judicial notice of state court records that postdated the district court decision under review). Slater submits that these records bear relevance to PETA's eligibility to serve as a "next friend" of Naruto in the absence of Dr. Engerhardt, who moved to withdraw from the case, informing the Court that she "will not continue as a next friend to Appellant in this proceeding."¹ This Court granted Dr. Engerhardt's motion, thus leaving PETA as Naruto's lone putative next friend.²

Regardless of the merits or outcome of the criminal case against Dr. Engerhardt, its very existence is a relevant consideration on whether PETA can adequately represent the interests of Naruto, notwithstanding the documented animosity that has developed between PETA and Dr. Engerhardt. PETA's and Dr. Engerhardt's contentions regarding their "next friends" eligibility are at ER 23 (Complaint). Slater's arguments concerning

¹ Docket entry no. 10, May 4, 2016.

² Docket entry no. 14, May 18, 2016.

PETA's eligibility to serve as Plaintiff's *sole* "next friend" are set forth at pp. 8-11 of his principal brief. PETA's response can be found at pp. 10-13 of its reply brief.

STATEMENT OF OPPOSITION

Slater provided a draft of this Request to counsel for PETA and Defendant-Appellee Blurb, Inc. prior to filing. PETA has stated that it will oppose this Request; Blurb has stated that it will not oppose.

CONCLUSION

For the reasons set forth above, Slater respectfully requests that this Court take judicial notice of Exhibit A, attached to the Declaration of Andrew J. Dhuey, filed herewith.

Respectfully submitted,

/s/ ANDREW J. DHUEY
Attorney for Defendants-Appellees,
DAVID JOHN SLATER and
WILDLIFE PERSONALITIES, LTD.

**DECLARATION OF ANDREW J. DHUEY IN SUPPORT OF
REQUEST FOR JUDICIAL NOTICE**

I, Andrew J. Dhuey, declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California. I am also admitted to practice before this Court.
2. I am the attorney responsible for representing Defendants-Appellees David John Slater and Wildlife Personalities, Ltd. in this appeal. I have personal knowledge of the matters set forth below.
3. Attached hereto as Exhibit A is a true and correct copy of the Summons and Complaint in *New Jersey v. Engelhardt*, case no. S2017000037, pending in Allamuchy Township Municipal Court. I received this document from the court in response to a records request I had submitted. I believe the clerk of the court made the redactions of Dr. Engelhardt's personal information in the upper-right corner of the Complaint-Summons. I redacted the residential address of Mr. Kerr at PETA's request.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of May 2017, at Berkeley, California.

/s/ Andrew J. Dhuey

EXHIBIT A

COMPLAINT - SUMMONS

COMPLAINT NUMBER				THE STATE OF NEW JERSEY	
2101	S	2017	000037	VS.	
COURT CODE	PREFIX	YEAR	SEQUENCE NO.	ANTJE ENGELHARDT	
ALLAMUCHY TWP MUNICIPAL COURT BOX A ALPHANO RD ALLAMUCHY NJ 07820-0000 908-852-6667 COUNTY OF: WARREN				ADDRESS: [REDACTED] [REDACTED]	
# of CHARGES 2	CO-DEFTS	POLICE CASE #: B020170130		DEFENDANT INFORMATION	
COMPLAINANT NAME: TPR. J ROMERO NEW JERSEY STATE POLICE				SEX: F EYE COLOR: NOT LIST DOB: [REDACTED]	DL STATE: NA
				DRIVER'S LIC. #: [REDACTED]	SBI #: ()
				SOCIAL SECURITY #: [REDACTED]	LIVESCAN PCN #:
				TELEPHONE #:	

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **04/22/2017** in **ALLAMUCHY TWP** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, ENTER INTO [REDACTED] D OF JEFFREY KERR, A PLACE TO WHICH NOTICE AGAINST TRESPASS WAS GIVEN BY ACTUAL COMMUNICATION TO THE DEFENDANT KNOWING THAT SHE/HE WAS NOT LICENSED OR PRIVILEGED TO DO SO, SPECIFICALLY BY RINGING THE DOORBELL OF THE RESIDENCE, THE OWNER TELLING SUBJECT TO LEAVE THE RESIDENCE, AND THE SUBJECT WALKED INTO THE BACKYARD OF RESIDENCE.

WITHIN THE JURISDICTION OF THIS COURT, WITH PURPOSE TO HARASS ANOTHER, MAKE OR CAUSE TO BE MADE A COMMUNICATION OR COMMUNICATIONS IN A MANNER LIKELY TO CAUSE ANNOYANCE OR ALARM, SPECIFICALLY BY SENDING AN TEXT MESSAGE STATING THAT SHE WAS GONNA STOP BY THE VICTIM'S RESIDENCE AT AN KNOW TIME AND DATE.

in violation of:

Original Charge	1) 2C:18-3B	2) 2C:33-4A	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Signed: TPR. J ROMERO Date: 04/23/2017

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the Municipal Court in the county of: WARREN
 at the following address: ALLAMUCHY TWP MUNICIPAL COURT
BOX A ALPHANO RD ALLAMUCHY NJ 07820-0000
 If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.
 Date of Arrest: 04/22/2017 Appearance Date: 04/22/2017 Time: 02:00PM Phone: 908-852-6667
 Signature of Person Issuing Summons [Signature] #7537 Date 4/23/17

- | | | |
|---|--|--|
| <input type="checkbox"/> Domestic Violence – Confidential | <input type="checkbox"/> Related Traffic Tickets or Other Complaints | <input type="checkbox"/> Serious Personal Injury/ Death Involved |
|---|--|--|

Special conditions of release:

- No phone, mail or other personal contact w/victim
- No possession firearms/weapons
- Other (specify):

ORIGINAL

9th Circuit Case Number(s) 16-15469

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) May 30, 2017 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) s/ Andrew J. Dhuey

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

[Empty box for listing non-CM/ECF participants]

Signature (use "s/" format)

[Empty box for signature]