

**EXPERT REPORT OF**

**JOHN HARGROVE**

**Former Senior 1 Killer Whale Trainer, SeaWorld**

**and**

**Supervisor of Killer Whale Training, Marineland, France**

**February 8, 2016**

## QUALIFICATIONS

I have 14 years animal training experience between three different killer whale (or "orca") facilities—SeaWorld of California in San Diego, SeaWorld of Texas in San Antonio, and Marineland in Antibes, in the South of France. I began at SeaWorld of Texas in 1993 and was ultimately promoted to Senior Trainer at Shamu Stadium at SeaWorld of California in 2001 which, at the time, was the highest ranking position under the management level. As a Senior Trainer, I performed with the orcas in their tanks ("waterwork") and in shallow water at the edges of the tanks and on dry land ("drywork"). Like myself, only the most experienced trainers are approved by SeaWorld management to work with orcas, and particularly to swim with orcas who have been determined to be high risk and the most dangerous because of their past aggressive histories with trainers. I was also part of the team of trainers that in 2000 performed the first successful artificial insemination of a killer whale in the world.

In 2001, I left SeaWorld to gain international killer whale experience as a Supervisor at Marineland in France where I co-supervised the entire killer whale program. This included conditioning and performing waterwork with killer whales that had never before had trainers in the water with them, and teaching the French team of trainers how to perform waterwork with killer whales. After getting Marineland's killer whale waterwork program established, I left the facility at the end of 2002.

When I returned to SeaWorld, in Texas in 2008, I was promoted to the Senior 1 level, which was a newly created position and became the highest ranking position just below management. I was promoted to this position because I was considered a specialist in my waterwork and behavioral abilities following my extensive experience with the most dangerous whales held by SeaWorld and with the whales at Marineland who had no prior histories of trainers in the water with them. I continued to perform in shows with the killer whales and perform artificial insemination, and I assisted in acclimating several orcas for transport from all three killer whale facilities where I worked. In all, I have worked with 20 different killer whales throughout my career and have performed in the water with 17 of those 20.

Following my resignation from SeaWorld in August 2012, I was interviewed as a primary subject in the Sundance selected, BAFTA nominated, and Satellite Award winning documentary *Blackfish*, in which I discussed the destructive physical and emotional effects of captivity on orcas that I witnessed during my career. I promoted the film by participating in numerous film festivals both in the United States and abroad and was interviewed countless times by magazine, radio, and national and international television programs.

Following the success of *Blackfish*, I wrote a book, *Beneath the Surface*, about my life and career as an orca trainer over a span of 19 years. The book was published by Palgrave Macmillan of St. Martin's Press and became a New York Times Bestseller. In addition, *Beneath the Surface* was named one of the best books of 2015 by the

editors of Amazon, and won the Goodreads Choice Award of 2015 in Science and Technology. The book received rave reviews from People magazine, Scientific American, Smithsonian Magazine, and Psychology Today, which named the book to their list of the “Most Emotionally and Intellectually Intense Books of 2015.” As with *Blackfish*, I have been interviewed on national and international television programs as well as interviewed for magazines and on radio to discuss my book and experience as a trainer. I have also lectured at Georgetown University and presented at the Society for Marine Mammalogy’s biennial conference on what would be needed, from a training perspective, for orcas in a sea sanctuary coming from a captive facility.

I have been involved with orca welfare legislative and regulatory issues at both the state and federal levels. In 2014, I was asked to co-sponsor and testify as an expert witness before the California State Assembly for the ‘Orca Welfare and Safety Act,’ a bill authored by Assembly member Richard Bloom (D-CA) that proposed to ban the public display of orcas for entertainment purposes and end their captive breeding. I was also asked to support New York State Senator Greg Ball’s (R-NY) similar bill that sought to ban the captivity, breeding, and artificial insemination of orcas as well as ending the transportation of orcas and their genetic material across state lines.

The federal Occupational Safety and Health Administration (OSHA) hired me as their expert witness in their case regarding the Miami Seaquarium’s appeal of citations issued for violating the Occupational Safety and Health Act with respect to trainer safety. This is the only case in which, during the previous four years, I have testified as an expert at trial or by deposition. Shortly after, the California Department of Industrial Relations’ Division of Occupational Safety and Health (Cal/OSHA) retained me as a chief witness in their case against SeaWorld of California, which similarly resulted in the park being cited for multiple safety violations related to trainer contact with orcas.

I also met with individual commissioners on the California Coastal Commission and testified the day of their vote in which SeaWorld sought permits to be allowed to build new killer whale tanks. In a unanimous decision, the Commission approved SeaWorld’s permit, with the condition that SeaWorld must end their breeding program and would not transfer any orcas into the state.

## **OPINION**

I have been hired as an expert witness by the Plaintiffs in this lawsuit to review the animal training records of Lolita and to conduct an on-site inspection to behaviorally assess the solitary orca at Miami Seaquarium. I was asked to use my experience to ascertain if Lolita is thriving in her environment or if she is suffering any type of physical and/or emotional adverse effects from her current living conditions. In exchange for these services, I will be compensated at a rate of \$90.00

per hour, \$650.00 per day for out-of-town services exceeding seven hours, and reimbursement for out-of-pocket expenses.

I meticulously analyzed the Miami Seaquarium's animal behavior records for the years 2001, 2002, 2003, 2004, 2009, 2010, 2011, 2012, 2013. It is my understanding that the Seaquarium has misplaced or destroyed the records for the years 2005, 2007, and 2008. The animal behavior records consist of Lolita's trainer's notations regarding, largely: noting each interaction they have with her, including "relationships," "husbandry," "plays," "shows," and "training" sessions; the amount of food given to Lolita broken down by session, day, and week; the behavioral rating of each session and average for each day and week; the list of medications given to her; and shorthand notes reflecting on each session and anything of concern observed, such as Lolita being given a new medication, acting "tense," or suffering from fresh "rakes" on her body. These records are limited and fail to record important information such as the duration of interactions with Lolita, and the number of behaviors she is required to perform during each session. They are, however, very similar to those I have extensive experience preparing at SeaWorld during my employment there. Accordingly, I formed my opinion in this matter based on my experience as a trainer, which provided me with the knowledge and background to analyze these animal behavior records and to assess Lolita's behavior during our on-site inspection on January 20, 2016.

#### **SITE INSPECTION**

On January 20, 2016, I participated in an on-site inspection of the Miami Seaquarium and Lolita's conditions. I observed Lolita in her tank for approximately nine continuous hours, from 4:20 a.m. to 1:12 p.m.

Walking into Lolita's stadium I was shocked by the size and shallow depth of her tank, and the absolute absence of any enrichment to her enclosure. As discussed in this report, I have worked with orcas at three leading facilities and observed the animals' poor welfare as a result of their too-small tanks and conditions of captivity. Yet Lolita's tank at Miami Seaquarium is without question the smallest and most barren I have ever seen an orca forced to live in. The tank measures only 20 feet deep at its deepest point, and according to Miami Seaquarium holds 580,496 gallons of water and its records indicate that the water level is often dropped (*See, e.g.*, MSQ0002594). Even when filled, the tank is only a fraction of the 4.5 to 6.2 million gallons, and 36 foot depth, of the facilities at which I have worked. It is absolutely unthinkable that an orca measuring at least 20 feet long and weighing over 7,000 lbs. lives in this outdated and inadequate facility, and without any same-species social contact. It is difficult to believe that this facility still exists in the United States, where even many dolphin facilities from decades past that were essentially this size have long since been closed.

My goal during the site inspection was to begin by documenting her respirations and activity level every 30 minutes in 5 minute intervals, and thereafter to document any additional noteworthy behavior, in which case I would record that

event and, if necessary, her respirations and activity level at that time. Respirations can be one of the first indicators that an animal is in trouble and may need veterinary care as quickly as possible if injured or sick.

In my experience, a calm and relaxed orca, floating motionless (an "A" activity level rating), breathes an average of zero to three times per five minutes. An orca engaged in high energy behaviors, such as elevated swimming speeds (a "C" or "D" activity level), breathes upwards of seven to 10 breaths in a five-minute period. When an orca breathes more than 10 times per five minutes, especially when engaged in an A activity level behavior like floating motionless, they should be closely monitored to try and determine what is causing this elevated breathing rate—if it was not the result of a high burst of energy, it may indicate injury or distress.

Before other people began to enter the stadium and it became daylight, Lolita consistently floated motionless at the surface or just under the surface at what is most likely an inflow valve from the filtration system, discussed in further detail below. The only times Lolita moved from this spot, which is located at the beginning of the fourth glass/acrylic panel from stage left, was when the two Pacific white-sided dolphins who are also held in the tank harassed her. Many times she did nothing, but eventually she was provoked, possibly raked by their teeth, and she retaliated and a chase ensued.

The Miami Seaquarium's decision to hold Lolita and these dolphins in the same tank not only fails to provide Lolita with the species-specific companionship required for her psychological well-being, but it also has proven to cause her a great deal of stress, harassment, and injury. Of the 20 different orcas I have worked with between three different facilities, not one was held without an orca companion or with a Pacific white-sided dolphin or other non-orca dolphin species.

Throughout the duration of the inspection, I observed absolutely no interaction between Lolita and the Pacific white-sided dolphins other than harassment and chasing. From 4:20am until 8:30am, I observed this harassment and chasing behavior 8 times. Each time it occurred and chasing ensued, her respiration rate naturally increased. However, even when Lolita was in a motionless state, but the dolphins came within close distance, her respirations still increased—indicating distress—and she exhibited upset vocalizations that were sharp and distinct in sound, and behavioral signs of a distressed animal such as a tight back, rocking behavior, and when sufficiently lit, she clearly exhibited large wide eyes. I observed chasing for up to 10-12 minutes on at least one occasion. I observed the Pacific white-sided dolphins clearly chasing, harassing, and attempting to bite and rake her as she tucked her pectoral flippers and tail flukes in attempt to avoid the bites, since she cannot out maneuver them due to their small size and agility. These confrontations have also apparently been documented by the public. (Johnny Tsunami, *Lolita Killer Whale in Captivity - Miami Seaquarium - Please SHARE to raise awareness*, YouTube (Jan. 8, 2015),

[https://www.youtube.com/watch?v=kmFB3\\_MDvCA](https://www.youtube.com/watch?v=kmFB3_MDvCA).) The small size of Lolita's enclosure makes it difficult for her to even turn around at times, which is potentially the cause of the many cuts on her tail flukes that are reflected in her behavioral records. This would explain why she often appears to turn around or change positions slowly and therefore is unable to escape the dolphins.

As a result of my experience of 14 years, I am able to identify different types of vocalizations, such as those related to sexual behavior, aggressive behavior, distress, or play. There is also a wide spectrum within each of these types of vocalizations, which represents how intense their emotions are. As an experienced trainer, we rely on the interpretation of these vocalizations to make strategic behavioral decisions with the whales; these decisions can also be life or death. "Normal" vocalizations, which Lolita emitted during the site inspection, are those vocalizations that are not indicative of a specific emotional state such as play, sex, or aggression, but rather constitute a general communication and language, usually between other orcas in their social pairing.

When the dolphins were in the back pool, Lolita was in a more relaxed and calm state floating motionless at the inflow valve. She once continued to vocalize for approximately ten minutes. Because the dolphins are not adequate social companions, they did not interact or communicate back to her following these vocalizations. I believe, based on my experience and what I observed, that Lolita is engaging in behavior similar to when an isolated or ignored person begins talking to him or herself. Her ability to emit the type of vocalizations demonstrates that she likely still recalls the language and dialect of her pod. Despite being in captivity for 45 years and being solitary since the death of the orca Hugo 36 years ago, she still emits vocalizations that are considered normal between orcas, which I have heard from all the whales I have worked with during my career.

From the time I was permitted into the stadium at 4:20am until I was told to leave at 1:12pm, the only enrichment in Lolita's tank that she appeared to have access to and show any interest in was sitting at what appeared to be the inflow valve. She floated motionless at the surface or just under the surface at this spot for the entire duration of the inspection, except when chasing occurred, when the trainers and park employees began to enter the stadium to prepare for the park opening, and during interaction with the trainers. Even after preparing for the show and interactions with her began, however, she would still often return and float motionless at the inflow valve. During my time at SeaWorld, I witnessed this abnormal behavior of an orca spending inordinate amounts of time at an inflow valve. This fixation is caused by an intense boredom and absence of enrichment in the captive environment. It is unsurprising that Lolita engages in this repetitive behavior, as she is exposed to even less enrichment than the orcas that I worked with at SeaWorld or Marineland in France.

An additional concern regarding this behavior is the location of the chlorine injectors for her pool. If the chlorine to treat her water enters through this valve

then she he is getting the chlorine at a very strong potency before it has time to disperse in the rest of her pool. We know from her records that she is already on eye drops for both eyes and even Prednisone drops. (*See, e.g.*, MSQ0013227.) Numerous times both eyes are documented as being cloudy and most often white is seen in her left eye. (*See, e.g.*, MSQ0003268.) During the inspection, I personally saw distinct cloudy white in her left eye, which could be indicative of cataracts as was the case with the orca Corky, with whom I worked at SeaWorld of California.

As a primary playtime reinforcer, the training team gives Lolita a wetsuit every day. My experience at other facilities that take even more enrichment measures than Miami Seaquarium has—simply allowing her to play with a wetsuit, or spraying a hose, which is Lolita’s only other enrichment documented in the animal behavioral records and witnessed during the site inspection—has clearly demonstrated to me that these type of activities are wholly inadequate. They unquestionably fail completely to even begin to compensate for the physical and psychological damage caused by being held in such an unnatural setting—in a small concrete tank and without another member of her pod, population, or even species.

The wetsuit is not only an inadequate enrichment measure, and a swallowing hazard for Lolita that can cause her death, but it is also clearly an unsafe decision to condition an orca to play with a wetsuit like the ones that trainers are wearing on their bodies. I witnessed several times a trainer playing tug of war with the wetsuit with Lolita. (*See, e.g.*, Inspection Video 14, Camera A, at 4:00). Just because she has never become aggressive with this wetsuit does not mean she will not. In fact, the Seaquarium’s records reveal that Lolita has refused to give the wetsuit back to her trainer when asked. This reflects a horrible misjudgment of what these apex predators are capable of, reflects the training team has been taught to take her for granted and underestimate her nature, and demonstrates a fundamental lack of understanding of orca behavior, especially in captivity.

Finally, Lolita’s behavior during the show demonstrated that this is a very predictable routine for her, especially evident when she would anticipate the behavior before being given the signal. Instead of the trainer asking for a different behavior in light of Lolita’s anticipation, the trainer still gave her the signal for the same behavior she anticipated. Not only do these decisions detract from her behavioral ratings in the animal behavior records, but also this level of predictability historically leads to aggression due to frustration from boredom.

## **ANIMAL TRAINING RECORDS**

Miami Seaquarium’s own records reveal that Lolita is regularly and often heavily medicated. I recognize a number of the drugs that Lolita is regularly administered from those I have given to whales between the three killer whale parks at which I worked.

In my experience at other facilities, antibiotics were commonly dispensed for rakes caused by other animals' teeth when they aggressively charge with an open mouth. If the rake is deep enough to bleed, most veterinarians will prescribe antibiotics because of risk of infection. Indeed, orcas have died in the past from infected rakes even though they were given antibiotics. Antibiotics were also commonly used when an orca's bloodwork showed an infection somewhere in the body, often believed to have been contracted through holes that had been drilled in their teeth. We would also regularly medicate with prescription Tagamet to treat orcas' stomach ulcers.

As stated above, the Miami Seaquarium's animal behavior records reflect that Lolita is given eye drops in both eyes nearly every day and often she is given Prednisone eye drops. Additionally, it's clear from these records and from the on-site inspection that she is physically scarred from being raked by the Pacific white-sided dolphins. The documents indicate that many times these rakes are deep enough that they bleed and become open wounds, which can lead to infection, because following this raking behavior Lolita is often put on Baytril (*See, e.g.*, MSQ0009500, MSQ0009493), Clavamox (*See, e.g.*, MSQ0009496, MSQ9498), Amoxicillin (*See, e.g.*, MSQ0003479), and Cephalexin (*See, e.g.*, MSQ0003499), which are antibiotics to either treat infection that has already begun or to prevent it. I was alarmed to see that the documents reveal that Lolita is also commonly given the narcotic painkiller tramadol. (*See, e.g.*, MSQ0003470, MSQ0003498.) As Miami Seaquarium staff manipulates the public in to thinking that Lolita and these dolphins are the best of friends, in reality they harass and injure her, often to the point she needs antibiotics and painkillers for bleeding open wounds.

Among other drugs, Lolita is also given Ranitidine (*See, e.g.*, MSQ0009465) and Carafate (*See, e.g.*, MSQ0008975), which are used to treat ulcers caused by stress. Adding to just this sample of drugs given to her is Simplicef for skin infections (*See, e.g.*, MSQ0009490), and Fluconazole for fungal infections (*See, e.g.*, MSQ0009497). Also concerning is that she has been administered Regumate for months and in different years, at least in 2002 (*See, e.g.*, MSQ0009132, MSQ0009122) and 2009 (*See, e.g.*, MSQ0009497, MSQ0009525, MSQ0009523, MSQ0009521, MSQ0009517, MSQ0009509, MSQ0009511, MSQ9513, MSQ9515). Regumate was used during a trial period at SeaWorld as a form of birth control but was ultimately stopped due its dangerous side effects. In fact, the drug was so potent that only approved male trainers were allowed to handle and feed the drug to the female whale using protected latex gloves and bleach used to clean anything that came in contact with it. There was risk of infertility to female trainers if handled. Besides use as birth control, the drug is a hormone used to treat cancer, ovarian cysts, endometrial polyps, endometriosis, and polycystic ovary syndrome.

Based on my experience at other facilities, I looked for key elements in Lolita's animal behavior records that would give the most solid glimpse into her daily life. Behaviors including chasing and head bobbing, and anxious, agitated or tense behavior, indicate distress in the captive environment. I believe these are the most important factors when really trying to assess if this animal is well adjusted and

healthy. This information can be used to determine whether she is living an emotionally and physically healthy existence, and the information contained in these records clearly indicates that she is not. Also, note that these terms are those used to describe Lolita's behavior in the Seaquarium's own documents. I calculated how many times these documents used these words or terms to describe what is happening to her every day. The nine years of records I reviewed represent only a 20% snapshot of her 45 years in captivity at Miami Seaquarium.

CHASING has been documented more than 150 times. (*See, e.g.*, MSQ0009243, MSQ0009249, MSQ0009250, MSQ0009214.) This is not play, but aggressive behavior that leads to the rakes described above. Some of her scars from the rakes from the dolphins measure greater than a foot in length. (MSQ0009257.) Just in the limited records we were given, trainers documented that Lolita had been raked more than 300 times by the dolphins. (*See, e.g.*, MSQ0009209, MSQ0009181, MSQ0009192, MSQ0009205, MSQ0009206.) In my experience working with many orcas in varying environments, including dealing with different social structures, I became keenly aware of the distinction between play behavior and aggression. When the behaviors are related to play, the orcas will eventually work their issues out and begin to cooperate and play in a less aggressive manner. However this was not observed with Lolita and the dolphins nor represented in the animal behavior records. Rather, the records and site inspection reflect a constant state of being anxious, tense, chasing, or being raked.

Her own trainers described her behavior as ANXIOUS OR AGITATED more than 50 times. (*See, e.g.*, MSQ0009305, MSQ0009202, MSQ0009210, MSQ0009219, MSQ0009246.) This means she is stressed in her environment, which causes stomach and intestinal issues. I have commonly seen elevated stress levels in captive orcas, and they are often administered medication to attempt to treat it. However, Lolita has been described as anxious or agitated more than any orca I have ever worked with in my career. She has been documented as becoming agitated even to just simply being touched by a trainer.

According to the documents, the Pacific white-sided dolphins have bitten Lolita *on her tongue* more than 70 times, an injury I have never seen on an orca. (*See, e.g.*, MSQ0009304.) This type of aggression by the dolphins toward Lolita and her occasional retaliation could have led to the two documented but not fully explained deaths of Pacific white-sided dolphins in 2001 and 2015. The official record for the death in 2001 states that a diver found the dolphin deceased in the morning and that Lolita was "agitated" and "started on" ulcer treatment medications Ranitidine and Carafate, and antacid Mylanta. (MSQ0008975.)

Miami Seaquarium's behavior rating system is largely taken from the system I used while at SeaWorld, as are many of their other methods of record keeping. The behavior ratings used on a 1-5 scale are as follows:

1. NO RESPONSE. The animal does not make contact with the trainer in any manner; will not look at trainer; will not respond to stimuli and will not eat. (Note: if this behavior occurs report it to your supervisor or manager)
2. POOR. The animal responds but is sluggish; has a low energy level or is constantly breaking control; frequently refusing [discriminative stimuli] and generally responds at a level well below acceptable criteria.
3. AVERAGE. The animal responds reliably and generally meets criteria; energy level is normal and, although errors occur, they are correctable and not severe enough to be disruptive.
4. GOOD. The animal responds with enthusiasm and takes [discriminative stimuli] without any hesitation; energy level is noticeably above average and behavior exceeds criteria on a majority of all interactions during the session.
5. EXCELLENT. The animal responds with extraordinary vigor to all [discriminative stimuli]; criteria is exceeded by a wide margin on most behaviors; rapid progress is made in training; energy level is extremely high and the animal is extremely positive throughout.

(MSQ0009764.) The animal behavior records reveal that Lolita has a poorer behavior rating than any orca I have worked with in my career. She was given a POOR behavior rating for her interaction (training or shows) incredibly more than 1300 times. The significance of this is that when an animal, especially an orca, is failing that much, they become very frustrated and aggression becomes highly probable. An orca can become easily frustrated and become aggressive if they fail by performing a behavior incorrectly because reinforcement is withheld. Advances in animal training techniques include reinforcing a whale on a ratio even if they performed the behavior incorrectly, as long as they remain calm. However even with this training, frustration and aggression is still commonly observed when a whale fails, as is documented many times in Lolita's records. This leads to the following behaviors that, based on my experience, are recognized as well-known pre-cursors to aggression.

Lolita was observed HEAD-BOBBING more than 250 times. It is important to note in what context she was observed exhibiting this behavior. She had a high number of head bobs when she would fail on a behavior during the delivery of a Least Reinforcing Scenario (LRS), which is simply a three-second pause with no reaction from the trainer. If the animal remains calm for this pause, they have been trained that sometimes, but not always, there is an opportunity for reinforcement. However, on many occasions, Lolita demonstrated frustration at failing and exhibited the aggressive precursor of head-bobbing. (*See, e.g.*, MSQ0009301, MSQ0009220, MSQ0009254, MSQ0009284.) She has also head-bobbed at trainers in multiple scenarios: when trainers were in the water with her; when trainers were getting out of her pool or leaving her environment; when "sloppy feeding" occurred, and when a trainer touched her face. Alarming, she has head-bobbed when her teeth were swabbed—something I witnessed the veterinarian do the day of our

inspection even though the veterinarian is not a trainer and does not have an adequate relationship with Lolita.

Also indicating that Lolita is stressed, which causes health issues as well as leading to aggression, her own trainers documented Lolita more than 300 times as being TENSE. (*See, e.g.*, MSQ0009202, MSQ0009210, MSQ0009219, MSQ0009246.) On numerous occasions trainers documented Lolita as “extremely tense.” (*See, e.g.*, MSQ0009042, MSQ0003473, MSQ0003511, MSQ0009493.)

Lolita was recorded as having JAW-POPPED 8 times in the records to which I had access. (*See, e.g.*, MSQ0009550.) This number may seem small and insignificant but the behavior is anything but insignificant. In fact, it is arguably the most severe precursor to aggression—and clear indicator of stress—an orca can exhibit. Most experienced orca trainers have never even heard or seen this happen. In my 14 years spread out over 19 years, I have seen it only twice between 20 whales. She has also “pushed trainer in pool” (MSQ0009626), attempted to bite a trainer’s leg (MSQ0009204), and lunged toward a visitor with an open mouth (PETA001686-1989). These behaviors all clearly demonstrate that Lolita becomes aggressive due to the stress and frustration caused by her living in an environment with inadequate space, enrichment, and companionship.

Captive orcas exhibit stereotypic bored behavior patterns in various ways, depending upon the individual personality of each orca as well as learned behavior. From my analysis and observation, Lolita appears to express her boredom by excessively rubbing parts of her body on the pool floor and walls. Rubs on her various body parts were observed and documented more than 350 times in the animal behavior records, including on her pectoral flippers, tail flukes, blowhole, dorsal fin, eyes, eye patches, melon, jaw, ventral side, back, peduncle, and genital region. Some of these rubs were documented as severe enough to be raised, and trainers recorded in their records no fewer than 5 times, “Rubs all over body.” (*See, e.g.*, MSQ0009212, MSQ0009214.)

## CONCLUSION

The Animal Training staff at Miami Seaquarium describe in detail in their own animal behavior records how Lolita is suffering and not thriving in her current conditions. In fact, the records reflect the enormous amount of drugs she is given on a daily basis. Additional drugs are regularly and commonly added to her daily drugs. With my experience and having used many of these drugs on captive orcas, I can confidently state that they reflect that she has damage to both eyes, and suffers from moderate to severe pain requiring narcotics, various and frequent infections and dental problems. She is treated with at least two different medications indicated for both stomach ulcers and stress ulcers, which have most likely been caused by extremely abnormal and elevated stress levels in the captive environment and are common with other captive orcas. She is also treated for skin and fungal infections. The staff’s long term and repeated use of the dangerous drug Regumate

in various years is troubling since the drug is not being given for birth control, which reflects there is a health issue going on and most likely a very serious one. Since 2001, two Pacific white-sided dolphins forced to live in confinement with her have died, and the causes of death submitted by the facility to the National Marine Fisheries Service indicate causes potentially related to trauma. Miami Seaquarium has not provided any other explanation as to how these deaths happened.

The Seaquarium has displayed on numerous occasions a complete disregard for Lolita's health and well-being by making her perform numerous times in shows after it was known that one of her eyes was completely shut. They also forced her to perform when she was medicated for a dental abscess that caused bruising and swelling to her lower jaw. The records document that it was common practice to make her perform in shows while injured, sick, and/or medicated. In 2011, trainers drilled one or more of her teeth at least 16 times. Despite this painful medical procedure—called a pulpotomy—and with her tooth or teeth actively bleeding, and while she was medicated, they still chose to have her perform in shows. This led to Lolita head-bobbing at her trainer, who also documented her behavior as “tense,” clearly demonstrating the distress Lolita was suffering at the time. The decision made by the Seaquarium to have Lolita perform under these circumstances is unfathomable to me. Rarely in my career have I witnessed such a poor and clearly unsafe decision for both Lolita and the trainers.

This complete disregard for what is in Lolita's best interest is further documented when she is raked by the Pacific white-sided dolphins, which cuts her skin deep enough to cause bleeding and scarring and yet they do not pull her out of shows so she can heal properly. We documented during the site inspection evidence of the dolphins she is forced to live with actively harassing her as she attempts to elude them. It is common sense that Lolita should not be held with animals that are causing her injuries that require medical attention.

The behavior observed on the date of the on-site inspection corroborated all of the information collected from her animal behavior records. The objective of my participation in this matter is to determine whether Lolita is healthy and thriving or being harmed in her current living conditions. Overwhelming evidence documented in her official animal behavior records and supported by physically observing her clearly demonstrates that she is neither healthy nor thriving. Lolita is continuously medicated with numerous drugs, including multiple antibiotics and Tramadol, a narcotic painkiller used to treat moderate to severe pain. Both of Lolita's eyes show signs of damage, most likely due to the chlorine levels in her tank and the direct sunlight she is subjected to due to no shade protection. She does not have the ability to avoid the sun when she would need or choose to do so. She also consistently exhibits signs of distress and frustration that manifest themselves as a variety of aggressive precursors toward the trainers. She also exhibits stereotypic bored behavior patterns from living in such a small and sterile confined space, including floating motionless at the surface for hours at a time without any stimulation or enrichment from her habitat. For all the above-mentioned reasons, it is my strong

professional opinion, based on my extensive experience with captive killer whales, that Lolita is neither healthy nor thriving. In fact, the evidence supports that this whale, despite the love her trainers undoubtedly have for her, has been suffering both physically and emotionally for years in an antiquated and inadequate facility that fosters both poor living conditions and poor care.

### **Declaration**

Pursuant to 28 U.S.C. § 1746, I, John J. Hargrove, hereby declare that under the penalty of perjury the contents of the foregoing report are true and correct to the best of my knowledge.

EXECUTED on this 8th day of February 2016

  
John J. Hargrove