

January 5, 2017

*Via USPS and e-mail*

Scott Trebatoski  
Director, Hillsborough County Pet Resource Center  
440 N. Falkenburg Rd.  
Tampa, FL 33619  
RescuePets@HCFLGov.net

Andrew Warren  
State Attorney, 13th Judicial Circuit  
419 Pierce St.  
Tampa, FL 33602  
MailProcessingStaff@sao13th.com

Re: Request for Investigation of Apparent Cruelty to Animals Violations  
Related to Death of Nurse Shark at the Florida Aquarium

Dear Messrs. Trebatoski and Warren:

I am writing on behalf of People for the Ethical Treatment of Animals (PETA) to request that your departments coordinate an investigation of the recent death of a nurse shark and reported starvation of stingrays at The Florida Aquarium (or “Aquarium”)—located at 701 Channelside Drive in Tampa, FL—for apparent violations of Florida’s cruelty to animals law. *See Fla. Stat. § 828.12.*

As detailed in the attached affidavit from a former employee at the Aquarium, [REDACTED] who requests that [REDACTED] anonymity remain protected—in early 2016, the Aquarium implemented a food-deprivation training program for several sharks and rays. The training program was reportedly designed and overseen by Precision Behavior, a third-party captive animal training consulting group, the purpose of which was to habituate certain animals to feed on cue to allow for new interactions and shows at the facility. As [REDACTED] attests, if the animals did not come up to the trainers to feed at the designated times during the daily training sessions, they would not be fed that day. Based on [REDACTED] experience and education, [REDACTED] believes that as a result of routinely depriving the animals of food, several stingrays lost a concerning amount of body mass and a nurse shark named “Weezy” ultimately died of malnutrition.

PETA asks that your offices fully investigate this matter to determine if The Florida Aquarium, Precision Behavior, and their principals and management violated Florida’s cruelty to animals law by depriving these animals of food, and hold them fully accountable for any violations of Florida law your inspection may reveal.

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## I. Food-Deprivation Training Program at The Florida Aquarium

The following information regarding the harmful and potentially fatal effects of the food-deprivation training program at the Aquarium was detailed by [REDACTED] a former employee at the Aquarium, whose affidavit is attached hereto. (*See* Declaration of [REDACTED] (Jan. 3, 2017); Exhibit.) [REDACTED] is a [REDACTED]

According to [REDACTED] over the past two years, the Aquarium significantly increased the number of its interactive shows, from only one or two per day to multiple shows per day. To train the sharks and stingrays for one planned interaction, the Aquarium implemented a food-deprivation training program that may be responsible for the substantial weight loss of several rays and the death of a shark.

### a. Weezy's Death

[REDACTED] attests that in early 2016, the Aquarium began training for a planned interactive show with Charlie, an eight-year-old nurse shark who is kept in the coral reef tank (or reef tank). Charlie's training was a food-reward-based program in which trainers fed him only during his designated training sessions. The training was designed to habituate him to take food on cue, a behavior Charlie would later be expected to exhibit on command while in the lap of a visitor during the planned interactive program.

As [REDACTED] observed, Charlie's training sessions were conducted once per day in the same tank that holds many other sharks and rays, and in a portion of the tank where only the nurse sharks are fed. In addition to Charlie, the reef tank also held one other nurse shark named Weezy. To ensure that Weezy did not interfere with Charlie's training sessions—or with the interactive dive shows with Charlie once they began—Weezy was fed before, and *only* before, Charlie's training sessions so that he was sated and trained to be disinterested in the food being offered to Charlie. [REDACTED] states in [REDACTED] affidavit that Charlie and Weezy's training protocols were directed by a third-party company called Precision Behavior, which was co-founded by Thad Lacinak and Angi Millwood. Mr. Lacinak and Ms. Millwood reportedly both personally directed the training program, and Margo McKnight, the Aquarium's Senior Vice President of Biological Operations, approved the training program.

[REDACTED] states that if Weezy did not take food during his designated feeding time, in accordance with Precision Behavior's training protocol, he was not fed that day. [REDACTED] personally observed that many days Weezy was not fed because he did not come to receive food from the trainers during his designated feeding time. If Weezy came up to feed during or after Charlie's training sessions, he was intentionally deprived of food. [REDACTED] specifically recalls one particular occasion when she pointed out to another biologist during Charlie's training session that Weezy had come up to feed, but that biologist told [REDACTED] that Weezy was too late and would not be fed that day. Over the course of a few months, [REDACTED] observed that Weezy was denied food many times, including four separate days within one two-week span. Indeed, [REDACTED] who was stationed at the reef tank during feeding twice per week, cannot

recall a single time since Charlie's training sessions began in early 2016 that she actually witnessed Weezy being fed.

On November 22, 2016, divers found Weezy dead at the bottom of the reef tank. Based on [REDACTED] years of experience and education [REDACTED] at the Aquarium, [REDACTED] believes that Weezy died as a result of malnutrition, having been consistently deprived of food when he did not eat during the designated time before Charlie's training sessions.

#### **b. Reported Atlantic Stingray Malnourishment**

[REDACTED] states that in early 2016, Precision Behavior also directed trainers at the Aquarium to implement food-deprivation training similar to that of Charlie and Weezy's with the Atlantic stingrays. Staff were instructed to only feed the stingrays once per day, and those individuals who did not eat during that time were to be denied food that day. [REDACTED] attests that after the protocol was implemented, the stingrays began to fall ill. They were then weighed, and their comparative weights revealed that they were losing body mass as a result of being underfed. The food-deprivation training protocol was reportedly abandoned for the stingrays at that time.

### **II. The Florida Aquarium's Food-Deprivation Training Apparently Violates Florida's Cruelty to Animals Law**

Florida law specifically criminalizes depriving an animal of necessary sustenance as an act of cruelty. Fla. Stat. § 828.12(1)-(2). *Intentionally* depriving an animal of necessary sustenance, or causing the same to be done, "which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering" is a third-degree felony offense, punishable by up to five years in jail and/or a fine up to \$10,000. *Id.* §§ 828.12(2), 775.082(3)(e). *Unnecessarily* depriving an animal of sustenance, or causing the same to be done, is a first-degree misdemeanor offense, punishable by up to one year in jail and/or a fine up to \$5,000. *Id.* §§ 828.12(1), 775.082(4)(a).

These are general intent crimes. To support a conviction under the statute based on the withholding of food, the State need not prove that the offender withheld food with the specific intent to cause an animal's undernourishment, pain, suffering, or death, but only that the offender intended to withhold food. *Reynolds v. State*, 842 So. 2d 24, 47 (Fla. 2002).

Nurse sharks and stingrays are "animals" covered by the statute, as the term is broadly defined to include "every living dumb creature." *Id.* § 828.02.

Moreover, Florida's cruelty to animals law applies to the acts of corporations, and also provides that "the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation." *Id.*

#### **a. Starving an Animal is a Felony-Level Offense**

In *Hynes v. State*, 1 So. 3d 328 (Fla. Dist. Ct. App. 2009), the defendant was convicted by a jury of felony cruelty to animals after investigators found in his apartment several dead animals and "an emaciated Australian Shepherd dog" named Pepsi. *Id.* at 329. At trial, the veterinarian who examined Pepsi testified that she was malnourished and dehydrated, and another expert testified that she had "no muscle tone and little to no fat on [her] torso." *Id.* Alarmingly, when an animal

control officer pointed out to the defendant that a bag of dog food was found in his bedroom, he admitted that “he was *using starvation as a ‘training technique.’*” *Id.* at 330 (emphasis added). The Fifth District Court of Appeals called the trial court’s decision to reduce the offense to a misdemeanor “dangerously wrong.” The court declared that “[t]he veterinary testimony that the dog was malnourished, dehydrated, too weak to stand and without muscle mass were sufficient” to support a felony conviction, and “[i]n a case such as this, *the animal’s pain and suffering due to starvation is a matter of common and ordinary experience.*” *Id.* (emphasis added).

Similarly, in *State v. Morival*, 75 So. 3d 810 (Fla. Dist. Ct. App. 2011), Hillsborough County Animal Services found the defendant’s two dogs undernourished, severely emaciated, and without food or water. *Id.* at 811. The trial court granted the defendant’s motion to dismiss felony charges for causing the dogs excessive or unnecessary pain and suffering on the ground that failure to feed a dog can constitute no more than a misdemeanor. The Second District Court of Appeals reversed, finding that not all undernourishment cases are misdemeanors, and “the State can properly charge the felony in severe cases of undernourishment.” *Id.* at 811. The court reasoned that, while either is a criminal offense:

the legislature properly distinguished between cases in which an owner fails, for example, to provide food for a dog for a few days while the owner goes on vacation—which is surely no more than depriving the dog of necessary sustenance—and cases in which an owner does not feed a dog or feeds a dog so little that it suffers malnutrition over an extended period such that the animal loses a high percentage of its natural body weight.

*Id.* at 812.

Finally, in *Brown v. State*, 166 So. 3d 817 (Fla. Dist. Ct. App. 2015), the court upheld the jury’s felony conviction of cruelty to animals for failing to provide a dog with access to sufficient food, water, and medical treatment, to the point that he was so malnourished that his hips and ribs were protruding. *Id.* at 820. The court noted that the 2013 amendment to Florida’s cruelty to animals statute—which added language clarifying that “a person who owns or has the custody or control of any animal and fails to act” may be culpable for cruelty—“did not change the law, but rather clarified the legislature’s intent and the existing state of the law that a failure to act [i.e., failure to provide food] can be the basis for a felony cruelty-to-animals conviction.” *Id.* at 821.

#### **b. The Aquarium’s Food-Deprivation Training Apparently Constitutes Cruelty**

As detailed above, both the case law and the plain language of Section 828.12 provide ample support for cruelty to animals charges against people and corporations who intentionally deprive animals—including non-mammal aquatic animals, like nurse sharks and stingrays—of necessary sustenance.

The circumstances surrounding Weezy’s death appear to rise to the level of felony cruelty to animals. Fla. Stat. § 828.12(2). Like the defendant in *Hynes*, who admitted to intentionally starving his dog Pepsi as a “training technique,” the trainers at the Aquarium, at the direction of Precision Behavior and the Aquarium’s senior management, deliberately and routinely deprived Weezy of food in an attempt to train him to feed at only one specific and limited time each day—before Charlie’s training sessions. Unlike Pepsi, however, Weezy did not survive his “training.”

The evidence suggests, and your investigation may reveal, that Weezy died as a direct result of intentionally and repeatedly being deprived of food over the course of months.

The stingrays' decline in body mass also appears to support cruelty to animals charges. As [REDACTED] attests in [REDACTED] affidavit, the stingrays, similar to the dogs in *Hynes*, *Morival*, and *Brown*, lost body mass as a direct result being deprived food over a prolonged period. Indeed, the rays' weight loss was reportedly so concerning that the Aquarium abandoned the training protocol altogether. The Aquarium's decision to begin providing the animals with necessary sustenance does not insulate it from liability for its previous failure to do so.

As illustrated by the aforementioned cases, if your investigation confirms that Weezy's death and the stingrays' weight-loss were the result of malnourishment from prolonged intentional food deprivation, that alone can support felony charges without additional evidence of pain and suffering. *See, e.g., Hynes*, 1 So. 3d at 330 (an animal's pain and suffering due to starvation is a matter of common and ordinary experience and, therefore, does not require an expert's independent corroboration).

Furthermore, the Aquarium's food-deprivation training was not short-term and inadvertent, like failing to provide food for a few days while going on vacation, so as to merit only misdemeanor charges. *See Morival*, 75 So. 3d at 812. Rather, the evidence in this case suggests that the Aquarium, in accordance with Precision Behavior's training protocol, intentionally refused to feed Weezy and the stingrays over an extended period, to the extent that the animals appear to have suffered malnutrition, which supports felony charges. *See id.*

If, despite [REDACTED] affidavit and any evidence your investigation may reveal, you determine that felony charges are inappropriate, the facts of this case also appear to unequivocally support misdemeanor charges for "unnecessarily" depriving Weezy and the stingrays of necessary sustenance in a futile attempt to train them to feed on cue. *See Fla. Stat. § 828.12(1).*

Cruelty to animals charges may be appropriate against any person who is found to have intentionally and routinely deprived Weezy and the stingrays of food, as well as against anyone who "caused such training to be done." *See Fla.Stat. § 828.12(1)-(2).* Accordingly, culpability may fall most squarely on the shoulders of those who directed, supervised, and approved the food-deprivation training protocol—Thad Lacinak and Angi Millwood of Precision Behavior and the senior management at the Aquarium, including Margo McKnight, Senior Vice President of Biological Operations—rather than the trainers. Additionally, because under Florida's cruelty to animals law the knowledge and acts of employees can be imputed to the employer-corporation, The Florida Aquarium and Precision Behavior may also be held criminally liable for Weezy's death and the stingrays' undernourishment. *See id.* § 828.02.

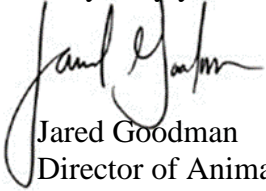
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PETA asks that your offices fully investigate this matter and hold those responsible for the animals' intentional food deprivation fully accountable for any violations of Florida law your inspection may reveal.

Thank you for your prompt attention to this matter. Please contact me at [REDACTED] or [REDACTED] to arrange for a meeting with [REDACTED] should you need any additional

information, or if there is any other way in which we might assist with your investigation. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jared Goodman". The signature is written in a cursive, flowing style with a large initial "J".

Jared Goodman  
Director of Animal Law