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July 9, 2020

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Mr. John Reilly, CEO  
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[JReilly@palaceentertainment.com](mailto:JReilly@palaceentertainment.com)

**VIA ELECTRONIC MAIL**

**Re: Invitation to Discuss the Release of *Sk'aliCh'elh-tenaut***

Dear Mr. Fernández, Mr. Jonsson, and Mr. Reilly:

The purpose of this letter is twofold: first, to apprise you of Earth Law Center's legal representation of Lummi tribal elders *Squil-le-he-le* (Raynell Morris) and *Tah-Mahs* (Ellie Kinley), and second, to begin a conversation about the release from the Miami Seaquarium of *Sk'aliCh'elh-tenaut* (also known as Tokitae or her stage name, Lolita), an endangered Southern Resident orca, in a manner that is beneficial to all parties.

*Sk'aliCh'elh-tenaut* was violently captured from her home in Penn Cove, Washington, in 1970. We encourage you to watch the inhumane video: [www.youtube.com/watch?v=iUlBZifjoqo](http://www.youtube.com/watch?v=iUlBZifjoqo). The agony of her capture continues today with the conditions of her captivity. For 50 long years, she has been held in a small, concrete tank at the Miami Seaquarium in Florida, where she is compelled to perform daily in the hot sun. *Sk'aliCh'elh-tenaut's* family still lives free in the Salish Sea. The orca presumed to be her mother, Ocean Sun (L-25), is still alive, now over 90 years old. *Sk'aliCh'elh-tenaut* continues to sing the same songs she learned from her family 50 years ago. Although this story is a tragedy, it can become an inspiring success story when *Sk'aliCh'elh-tenaut* is finally returned home.

Earth Law Center is providing legal representation to *Squill-le-he-le* and *Tah-Mahs*, who are working to fulfil their *Xa xalh Xechnging* (sacred obligation). Last year *Squill-le-he-le* and *Tah-Mahs* sent a letter to the Miami Seaquarium, Palace Entertainment, and Grupo Parques Reunidos (see attachmet) asserting that *Sk'aliCh'elh-tenaut* qualifies to be returned to her native home based upon the Native American Graves Protection and Repatriation Act (NAGPRA), a federal law that requires the return of certain Native American "cultural items." Southern Resident orcas are considered sacred family members of the Lummi tribe and are the embodiment of spiritual and cultural power and tradition. Leading NAGPRA experts we have consulted with, including one of its drafters, have expressed their confidence that *Sk'aliCh'elh-tenaut* is subject to repatriation under NAGPRA.

However, it is our sincere hope to avoid any adversarial processes. We want what is best for *Sk'aliCh'elh-tenaut*. We believe you might share this sentiment and would support her release, including for the following reasons, many of which you already surely know:

1. The economic losses being suffered by the Seaquarium due to a significant increase in tourists who oppose orca captivity, coupled with the pandemic;
2. Shifting social norms that have moved substantially toward the recognition of Native American rights and the rights of *Sk'aliCh'elh-tenaut* herself;
3. To align with the corporate values and international commitments of EQT, Parques Reunidos, Palace Entertainment, and other involved parties. (For example, EQT has a stated commitment to **“future-proofing companies and making a positive impact with everything we do”** and signed the UN Principles for Responsible Investment, whereas Parques Reunidos proudly meets Sustainable Development Goals 7, 10,<sup>1</sup> and 12.)

Times have changed since her capture in 1970, and now it is time to bring *Sk'aliCh'elh-tenaut* home. Working with us to effectuate her release to a marine sanctuary and, ultimately, to roam freely in the Salish Sea presents an opportunity for you to bring a positive end to this decades long story and to demonstrate to investors, partners, and the public your commitment to making

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<sup>1</sup> SDG 10 on **reduced inequalities** specifically highlights the need to uphold Indigenous rights, such as the rights our Lummi elder clients assert in seeking the return of *Sk'aliCh'elh-tenaut*.

a positive impact. Experts in marine biology, and cetaceans in particular, with whom we have consulted, are confident that her transition back to her natural habitat can be successful. Considering these facts, we hope that you will do the right thing and partner with us to release *Sk'aliCh'elh-tenaut*. This would create a strong legacy for your companies and provide a needed benefit to the public perception of the Miami Seaquarium.

Please respond to this letter by July 23, 2020. We look forward to your thoughtful response and the opportunity to find a respectful and meaningful resolution. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Grant Wilson".

Grant Wilson  
Executive Director & Directing Attorney  
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[gwilson@earthlaw.org](mailto:gwilson@earthlaw.org)  
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Enclosure

CC: Board, Grupo Parques Reunidos  
Board, EQT Partners AB

# **ATTACHMENT**

**July 27, 2019 Letter from Raynell Morris and Ellie Kinley to Miami Seaquarium, Palace Entertainment, and Grupo Parques Reunidos**

Raynell Morris  
redacted address  
Bellingham, WA 98xxx



Ellie Kinley  
redacted address  
Bellingham, WA 98xxx

July 27, 2019

Certified U.S. Mail - Return Receipt Requested  
Eric A. Eimstad, General Manager  
Miami Seaquarium  
4400 Rickenbacker Causeway  
Key Biscayne, FL 33149  
United States

Certified U.S. Mail - Return Receipt Requested  
Rolf Paegert, Chief Operating Officer  
Palace Entertainment  
4590 MacArthur Blvd Suite 400  
Newport Beach, CA 92660  
United States

Certified U.S. Mail - Return Receipt Requested  
José Diaz, Chief Executive Officer  
Grupo Parques Reunidos  
Paseo de la Castellana, 216. 16th floor  
28046 Madrid. Spain

**Re: Notice of Intent to Sue for Violations of the Native American Graves Protection and Repatriation Act**

Dear Señor Diaz, Mr. Eimstad, and Mr. Paegert:

This letter provides notice of the intent to sue Parques Reunidos, Palace Entertainment, Festival Fun Parks, Miami Seaquarium, and any parent company thereof, for the release and repatriation of *Sk'aliCh'elh-tenaut*, the orca held in possession by Miami Seaquarium.

We, *Tah-mahs* (Ellie Kinley) and *Squil-le-he-le* (Raynell Morris), are enrolled Lummi Nation tribal members.

Lummi Nation has requested the repatriation of *Sk'aliCh'elh-tenaut*, also known as Lolita and/or Tokitae, from the Miami Seaquarium to her home in traditional Lummi waters in the Salish Sea. This request has repeatedly been ignored, and so we are invoking NAGPRA in demanding her release and repatriation.

We intend to sue for the situations described herein if they are not remedied within ninety days.

## I. Legal Framework

The Native American Graves Protection and Repatriation Act requires agencies and institutions that receive Federal funds to return objects of cultural patrimony to the Native American individuals and/or Tribes from which those objects were taken.

Although NAGPRA has most often been used to repatriate human remains, funerary objects, and cultural artifacts, an acceptance of animals as cultural patrimony was established by *Dugong vs. Rumsfeld*, and has increasing international precedent as the rights of nature gain legal ground.

NAGPRA is an Act passed by the United States Federal government. The Lummi way is to consider *Sk'aliCh'elh-tenaut* as a sister, a daughter, an auntie as well as the embodiment of spiritual and cultural power and tradition. The relationship that exists between us –*Tah-mahs* and *Squil-le-he-le-* and *Sk'aliCh'elh-tenaut* is one that contains both tangible and intangible cultural and spiritual properties.

United States jurisprudence requires the use of language that does not make sense from a spiritual or cultural point of view. It does not make sense that *Sk'aliCh'elh-tenaut* would be considered an item or an object, but the language of NAGPRA requires that we use such language in describing the physical form that contains both an individual intelligence and soul and that also contains the essence known as “cultural patrimony.” The body of this orca, the family from which she was taken, and the line of her family stretching back to time immemorial, is part of a complex and dynamic system that also contains, and is contained by, the culture and spirit of the Lummi people.

*Okinawa Dugong vs. Rumsfeld* accepted the Japanese government’s classification of the Okinawa Dugong as a “monument,” and thus allowed the Dugong on the National Registry of Historic Places. There is precedent for the United States government to not only accept an animal as “cultural patrimony,” but also to accept the classification of such from another sovereign nation.

Lummi Nation is a sovereign nation that has declared *Sk'aliCh'elh-tenaut* to be of great cultural and spiritual value, and has called for her immediate repatriation to her own family and to the Lummi family. While “object of cultural patrimony” does not appear in the Lummi lexicon, it can be understood that *Sk'aliCh'elh-tenaut* belongs to the Lummi people as both a family member and as the embodiment of necessary cultural and spiritual weight and meaning.

## II. Factual Background

The entire Southern Resident Killer Whale population are *qwe'hol'mechen*, our “relations below the waves.” J, K, and L pods have been in a reciprocal relationship since time immemorial with the Lummi people. Teachings indicate not only deep cultural and spiritual connections between *qwe'hol'mechen* and *Lhaq'temish* (Lummi people), but also kinship bonds.

The Lummi term for “orca” is *qwe'hol'mechen*, which translates loosely to “our relations under the waves.” *Lhaq'temish* and the *qwe'hol'mechen* have shared deep spiritual connections, kinship bonds, and cultural affinity since time immemorial.

We, *Tah-mahs* and *Squil-le-he-le*, as enrolled members and lineal descendants of *Lhaq'temish* (Lummi people), know *Sk'aliCh'elh-tenaut* as a relation. *Sk'aliCh'elh-tenaut* embodies cultural and spiritual properties, both tangible and intangible, that are of utmost significance to the Lummi people, in particular to *Tah-mahs*, *Squil-le-he-le*.

Further, as the entire *qwe'hol'mechen* family (the Southern Resident Killer Whales) carries cultural and spiritual power for the Lummi people. Part of the family system that constitutes this cultural patrimony has been missing since 1970; namely, *Sk'aliCh'elh-tenaut*. Her return to L-pod, the Salish Sea, and to us as the Lummi people is critical.

As a member of *qwe'hol'mechen*, *Sk'aliCh'elh-tenaut* is, to Lummi people, an “object of cultural patrimony,” if one must step outside our Lummi worldview and *schelangen* and use the legal and corporate language of United States jurisprudence.

“Cultural affinity” is also a NAGPRA consideration: plaintiffs must demonstrate a historical and ongoing relationship to the subject. In this case, our Lummi tribal affinity to *Sk'aliCh'elh-tenaut* is demonstrable.

Miami Seaquarium, a subsidiary of Palace Entertainment, whose parent company is Parques Réunidos, is an oceanarium that has received federal funding for disaster relief, for manatee rescue and rehabilitation, and for coral reef research and exhibition. As such, Miami Seaquarium is subject to NAGPRA.

## III. Legal Violations

*Sk'aliCh'elh-tenaut* was violently taken from L-pod in 1970 at the ancestral village site of *Sk'aliCh'elh*, and she has been held in possession by Miami Seaquarium ever since. Lummi Nation never consented to, and was never even informed of, this abduction.

Lummi Nation has repeatedly requested the repatriation of *Sk'aliCh'elh-tenaut*, but Miami Seaquarium has refused to comply or to even discuss the matter directly with Lummi Nation or individual tribal members.

IV. Conclusion

Miami Seaquarium, as an oceanarium engaged in research and exhibition, is an institution that has received federal funding, and is thus subject to NAGPRA. Federal funds received include those for disaster relief, manatee rehabilitation, and coral reef research and exhibition.

For the foregoing reasons, if Parques Reunidos, Palace Entertainment, and Miami Seaquarium do not agree to release and repatriate *Sk'aliCh'elh-tenaut* within ninety days, we intend to file suit.

We urge Parques Reunidos, Palace Entertainment, and Miami Seaquarium to contact us regarding this letter to discuss options for avoiding litigation.

*Hy'shqe* (thank you) for your prompt attention to this matter.

Sincerely,



*Squil-le-he-le* (Raynell Morris)

July 27, 2019  
Date



*Tah-mahs* (Ellie Kinley)

July 27 2019  
Date

Cc:  
Christian Sinding  
CEO and Managing Partner, EQT  
Bahnhofstraße 20  
CH-8001 Zurich  
Switzerland