

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

<u>No.</u>	<u>Time Stamp</u>	<u>Description</u>	<u>Misleading and/or Inaccurate</u>
1.	:01-- 1:13	Opening Sequence: Under soundtrack consisting of actual 911 calls, five separate pieces of footage combined to depict (1) trainer (presumably Dawn Brancheau) swimming in a tank with a whale (presumably Tilikum); (2) various interactions between the trainer and the whale in the water, including the whale circling trainer; and (3) the whale making aggressive move towards the trainer.	<p>The Opening Sequence is false and misleading. It consists of separate pieces of innocuous training and show footage taken by SeaWorld’s underwater cameras cobbled together (under actual 911 calls regarding Dawn Brancheau) to mislead the audience into believing it is viewing footage of the fatal incident between Ms. Brancheau and Tilikum on February 24, 2010. However, the Opening Sequence does <u>not</u> contain footage of an attack, and neither Ms. Brancheau nor Tilikum are depicted in the Opening Sequence.</p> <p>In addition, the Opening Sequence casts SeaWorld in a false light, misleading the audience into believing that SeaWorld trainers, including Ms. Brancheau, swam with Tilikum, which never occurred. From the date that Tilikum arrived at SeaWorld in 1993, SeaWorld had special safety protocols for the care and handling of Tilikum which prohibited any employee from conducting waterwork with Tilikum at any time.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. 1/6/93 Memorandum from Brad Andrews (See BF Index #1)</li> <li>2. Shamu Stadium Orientation Checklist (See BF Index #27)</li> <li>3. SeaWorld Animal Training SOP Section XI – Tilikum Protocol (See BF Index #32)</li> <li>4. References in OSHA Trial Record to Tilikum and his protocols (Testimony of Schaber, Grove &amp; Mairot) (See BF Index #25, 10, 14)</li> </ol>
2.)	1:40	Introduction to cast member John Hargrove, who throughout Film speaks about Tilikum.	Mr. Hargrove worked at SeaWorld San Diego from 1995 until 2001 and SeaWorld Texas from 2008 through August, 2012. Hargrove never worked at SeaWorld Florida, and never worked with Tilikum.

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3.	1:54	Introduction to cast member Samantha Berg, who throughout Film speaks about Tilikum.	<p>Ms. Berg has not worked at SeaWorld in over 20 years. Ms. Berg worked at SeaWorld Florida from February 1990 until August 1993. She worked primarily with dolphins, beluga whales and sea lions, and had very limited experience with killer whales. Ms. Berg was not assigned to Tilikum’s team and did not work with Tilikum.</p> <p>Ms. Berg has conceded her lack of expertise in the context of offering opinions in the zoological area. In an email dated September 7, 2011 to John Black, OSHA’s Lead Trial Lawyer in the Department of Labor’s case against SeaWorld, Ms. Berg offers to critique the expert report of Jeff Andrews, Sea World’s Zoological expert in the trial, but conceded: “Mainly, I am concerned that because I only worked at SWF for 3 ½ years – and one year at Shamu Stadium that my testimony may not be credible compared to a guy with 25 years of zoological experience.” She also admits: My direct knowledge of SeaWorld’s Procedures for training their staff only extends to what was in place up until August of ’93 – I question whether this qualifies me to speak to SeaWorld’s current safety or training procedures.” Although Counsel for OSHA rejected Ms. Berg as a witness at trial, Ms. Berg repeatedly opines on these topics throughout the Film.</p> <p><b>Evidence:</b>  1. Email chain from Samantha Berg dated September 7, 2011 (See BF Index #39)</p>
4.	2:10	Introduction to cast member Kim Ashdown, who throughout the Film speaks about Tilikum.	Ms. Ashdown worked at SeaWorld Florida primarily with dolphins, beluga whales and sea lions, and with killer whales for only approximately 4 months. Ms. Ashdown was not assigned to Tilikum’s team and did not work with Tilikum. Ms. Ashdown never performed waterwork with killer whales.

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5.	2:12	Introduction to cast member John Jett, who throughout the Film speaks about killer whales and Tilikum.	Mr. Jett has not worked at SeaWorld in over 17 years. Mr. Jett worked at SeaWorld Florida from 1992-1996, and had limited interaction with killer whales. Mr. Jett worked for a short period of time with Tilikum under the supervision of a senior trainer. Mr. Jett was never the trainer in charge of any session with Tilikum, and had no decision on how or when Tilikum would be worked.
6.	2:43	Introduction to cast member Dean Gomersall, who throughout Film speaks about killer whales and Tilikum.	Mr. Gomersall worked at SeaWorld Florida with sea lions, beluga whales and dolphins, and never worked with killer whales. He never worked with Tilikum.
7.	2:54-3:12	Using Ms. Ashdown, Film suggests that the only qualifications to become a killer whale trainer is to be a good swimmer and have a good personality.	<p>This is false and highly misleading. The path to becoming a killer whale trainer is lengthy and demanding, and the Film ignores the ladder of employment -- the many beginning and intermediate steps necessary to be promoted through the ranks to attain the level of killer whale interaction trainer. For example, Mr. Gomersall never attained the position of killer whale trainer, and was not permitted to interact with any killer whales. Ms. Berg, Ms. Ashdown and Mr. Hargrove did work with killer whales but did not interact with Tilikum.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. OSHA Hearing Testimony of Kelly Flaherty Clark Tr. 87-92 (See BF Index #8)</li> <li>2. OSHA Hearing Testimony of Jenny Mairot Tr. 1271-1295 (See BF Index #14)</li> <li>3. OSHA Hearing Testimony of Lynn Schaber Tr. 292-306 (See BF Index #25)</li> </ol>
8.	2:08	Introduction of Jeff Ventre	Ventre has not worked for SeaWorld for over 18 years. Mr. Ventre was employed by SeaWorld from November 1987 through December 1995. Mr. Ventre worked with killer whales for approximately three years, and while he excelled physically at in-water interaction, he was not a decision maker, did not plan the day, and was considered a junior level trainer.

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9.	4:48	Voice of Ms. Berg over Film showing female trainer riding a whale.	This sequence misleads the audience into believing that Ms. Berg is the trainer depicted as riding the whale (i.e. engaging in “waterwork” with the whale) thereby making it appear that Ms. Berg had relevant experience. In fact, the trainer is not Ms. Berg, it is Holly Byrd, and is footage recorded at SeaWorld more than 10 years after Ms. Berg left SeaWorld. SeaWorld has no record of Ms. Berg doing waterwork with killer whales; even if she did, it was very limited.
10.	8:24	Interview of George Tobin, who states that Tilikum ate Ms. Brancheau’s arm.	This is false. Tilikum did not eat Ms. Brancheau’s arm; The Coroner’s Report is clear that Ms. Brancheau’s entire body, including her arm was recovered.  <b>Evidence:</b> 1. Sheriff’s Investigative Report at pg. 28 (Witness Valerie Greene). (See BF Index #20)
11.	8:56	John Jett: OSHA’s conclusion to halt waterwork with killer whales “will have a ripple effect through the whole industry,” and various clips are used to imply that SeaWorld only suspended waterwork after being cited by OSHA and as a result of public outrage.	Film incorrectly states that OSHA stopped the waterwork at SeaWorld. In fact, SeaWorld <i>voluntarily</i> suspended waterwork with killer whales at each of its three parks on February 24, 2010, the day of the incident with Ms. Brancheau, over six months before SeaWorld was cited by OSHA, and over two years before trial commenced on the OSHA citation.  <b>Evidence:</b> 1. OSHA Hearing Testimony of Kelly Flaherty Clark Tr. 78-80. (See BF Index #8)

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12.	10:12 – 14:02	Film implies, through David Duffus (“it’s not a singular event”) and Howard Garrett (“Without missing a beat they went from Washington to Iceland and began capturing there”), that SeaWorld continues to capture whales in the wild.	<p>This implication is false. SeaWorld has not captured whales in nearly 34 years. The last such collection by SeaWorld took place in 1979.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. NMFS Data Sheet for Permit #240 (Kasatka) (See BF Index #16)</li> <li>2. NMFS Data Sheet for Permit #268 (Katina) (See BF Index #17)</li> </ol>
13.	13:40	Garrett states: “They [SeaWorld] were finally ejected from the state of Washington by a court order in 1976.”	<p>This is false. There is no court order ejecting or banning SeaWorld from the State of Washington. To the contrary, the court <i>dismissed</i> the case because of a stipulated <i>settlement</i> between the parties in which SeaWorld <i>voluntarily</i> agreed not to exercise its rights under the valid permit issued to SeaWorld by the State of Washington to capture whales.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. <i>State of Washington v. Sea World, Inc.</i> Stipulation of Dismissal (See BF Index #28)</li> <li>2. <i>State of Washington v. Sea World, Inc.</i> Motion for Order of Dismissal (See BF Index #29)</li> </ol>

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14.	15:39	Discusses training technique of punishing whales by food deprivation. The Film implies that all institutions with captive whales, including SeaWorld, use this technique. For example, later in the Film, when discussing the incident involving Dawn Brancheau, the issue of food is brought up (1:08:47. 1:09:13) (the sound of ice at the bottom of the bucket means that food is running out) with the misleading implication that SeaWorld deprived Tilikum of food or otherwise used a deprivation type of training technique.	This implication is false. Tilikum arrived at SeaWorld weighing 7,700 pounds, and currently weighs 12,000 pounds. SeaWorld has never deprived Tilikum of food for any reason, training or otherwise. Prior to Tilikum’s arrival at SeaWorld and continuing to this day, SeaWorld has only utilized operant conditioning, a scientific method that professional animal trainers have used for decades. Through rigorous efforts, trainers gradually increase the frequency of desired animal behavior, and minimize the occurrence of undesirable behavior, by encouraging the former with “positive reinforcement” and ignoring (and thereby discouraging) the latter. Punishment is never part of operant conditioning, and punishment is never employed at SeaWorld. SeaWorld pioneered and is the recognized world’s leader in the use of operant conditioning principles for the training of killer whales.
15.	17:22	Further discussion of food deprivation at Sealand of the Pacific.	See Box 14 above.

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16.	8:53	David Duffus is identified as “OSHA Expert Witness, Whale Researcher.”	<p>Duffus lacks requisite expertise to opine about the behavior of whales in captivity. Duffus’ experience is limited to the observation of wild whales to predict their seasonal movements and to understand whether whale-watching “disturbs” the whales. He has not conducted “any studies” on captive whales, and has no experience related to the interaction of any animals in a zoo or aquarium setting nor any expertise related to the safety of those employees who work with such animals. In addition, Duffus has admitted that he does not know whether being in captivity alters a killer whale’s behavior, and he also has no experience training whales.</p> <p>When questioned by Sea World’s lawyer at the OSHA proceeding, Duffus testified that Sea World is the expert and he suggested SeaWorld “go to work” and think about how they can “balance stuff”. He further testified “I’ve got no particular bone to pick with the citation and Sea World and the corporate behavior and the governance of these operations...” “I’ve got no particular issue with SeaWorld, their shows. I guess my main concern is the bar - - is the height of the bar for safety”.</p> <p>SeaWorld challenged Duffus’ qualifications at the OSHA hearing, and Duffus’ lack of relevant expertise is an issue currently pending before the appellate court. In an Order dated August 6, 2013, OSHA Administrative Judge Kenneth Welsch clarified that Duffus “is an expert in the behavior of killer whales in the wild, but he has no expertise in the training of captive killer whales.”</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. David A. Duffus Deposition taken August 30, 2011, Pgs. 38-42; Pgs. 128-130. (See BF Index #7)</li> <li>2. August 6, 2013 Decision and Order Granting Petition for Modification of Abatement Date (See BF Index 18)</li> </ol>

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<p>17.</p>	<p>18:47-21:58</p>	<p>Interview of Corrine Cowelle and Nadine Kallen, interspersed with interview of David Duffus.</p> <p>Cowelle/Kallen purport to provide eyewitness account of Keltie Byrne incident, stating unequivocally (22:08) that Tilikum went after Byrne while the other two whales “kind of circled around”</p>	<p>Film misleadingly fails to disclose that David Duffus was the foreman of the five person jury at the 1991 Coroner’s Inquest into the death of Keltie Byrne. The Film also fails to disclose the official Verdict of the Inquest. The Verdict reached by Duffus and his fellow jurors, after considering the testimony of nineteen witnesses, was that Ms. Byrne’s cause of death was “drowning DUE TO or as a consequence of forced submersion by Orca (killer) whales, falling into the whale pool.” Duffus and his fellow jurors found that Ms. Byrne “fell into the whale pool . . . and while attempting to get out the whales intervened,” and that “rescue attempts . . . were thwarted by the whales.” (Emphasis added.) Contrary to the account of Cowelle/Kallen in the film, Duffus and his fellow jurors did <u>not</u> find that Ms. Byrne was <i>pulled into the pool</i> by a whale, that Tilikum was the instigator, or that Tilikum was otherwise more to blame than the other two whales for the death of Keltie Byrne. Consistent therewith, Duffus testified at his deposition in the OSHA hearing that Ms. Byrne “slipped into the water,” “the whales didn’t pull her into the pool. She slipped and fell . . . She did attempt to get out of the water. That’s when the whales pulled her back in.” (Emphasis added). These critical omissions from the Film are highly misleading because the account of Cowelle/Kallen is flatly inconsistent with the official Verdict of the Coroner’s Jury, for which Duffus served as the foreman of the jury. Presenting the true facts concerning Duffus, the Coroner’s Jury and the Verdict would either undercut the veracity of Cowelle and Kallen or undercuts the competence and veracity of Duffus.</p> <p>Moreover, it appears Ms. Cowelle and Ms. Kallen first came forward with their story 20 years after the incident, on the eve of the 2011 OSHA hearing against SeaWorld, at which time they contacted David Kirby, a known anti-captivity activist and adversary of SeaWorld. They informed Mr. Kirby they were six feet away from the attack when it occurred and that Tilikum was primarily responsible for the incident, which is directly contrary to the evidence elicited during the 1991 Coroner’s Inquest. Mr. Kirby passed this story along to Jeff Ventre, one of the former trainers featured in the Film. Mr. Ventre passed the information on to Lara Padgett, the OSHA Investigator assigned to the SeaWorld case, and John Black, the Department of Labor Senior Trial Lawyer who tried the case at the 2011 hearing. Significantly, neither Ms. Cowelle nor Ms. Kallen were called to testify under oath at the 1991 Coroner’s Inquest or the 2011</p>
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			<p>OSHA hearing, however the Film presents their contradictory story as fact.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. 6/5/91 Verdict of Coroner’s Inquest (See BF Index #26)</li> <li>2. Duffus Deposition at 55, 58 (It should be noted that after being hired by OSHA as an expert witness, Duffus changed his testimony to suggest that Tilikum was primarily responsible for the death of Ms. Byrne, which testimony is flatly contradicted by Duffus’ work and conclusions as foreman of the Coroner’s jury twenty years earlier.)</li> <li>3. Email from Lara Padgett dated August 1, 2011 (See BF Index #41)</li> </ol>
18.	21:28	Cowelle/Kallen: “No one ever contacted us. There was an inquest. No one ever asked us to say what happened.”	See Note 17.

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19.	21:49	Cowelle/Kallen: “So, in the newspaper articles the cause of death was that she accidentally drowned, but she was pulled under by the whale.”	See 17. This account, which implies both a cover-up and that one whale (Tilikum) was to blame, is inconsistent with the official Verdict of the Coroner’s Jury, of which Duffus was the foreman, which found that Ms. Byrne drowned as the result of “forced submersion by killer whales.” (Emphasis added.) The Cowelle/Kallen account is also inconsistent with the account of Sealand of the Pacific trainer Eric Walters in the article “The Killer in the Pool” by Tim Zimmerman, published 7-30-10 in <i>Outside Magazine</i> . Mr. Walters, who also appears in the Film (15:06, 15:32) stated in the article that the female Nootka, not Tilikum was the aggressive of the three whales: “Each whale had a distinctive personality. Tilikum was youthful, energetic, and eager to learn. ‘Tilikum was our favorite,’ says Eric Walters. ‘He was the one we all really liked to work with. Nootka, with her health issues, was the most unpredictable.’” Prior to the incident involving Ms. Byrne, “according to Walters, Nootka pulled a trainer into the water. (He quickly yanked her out.) Twice she tried to bite down on Walters's hands. Not even the audience was safe. A blind woman was once brought onto the stage to pat Nootka's tongue. Nootka bit her, too.” The Film misleadingly omits this account by Mr. Walters.
20.	21:59	Duffus: You know there’s a bit of smoke and mirrors going on. One of the fundamental facts is that none of the witnesses were clear about which whale pulled Keltie in.”	See 17. Again, neither Duffus nor the Film disclose that Duffus was the foreman of the Coroner’s Jury. Duffus implies here that a particular “whale pulled Keltie in” however, Duffus’ own verdict as foreman in the Coroner’s Inquest was that Ms. Byrne <i>fell into the pool</i> , and was not “pulled in,” and that her forced submersion thereafter was by the “whales,” not by one whale.
21.	22:08	“Yes, yeah it was the large whale, Tilikum, the male is the one that went after her and the other two just kind of circled around, but he was definitely the instigator.”	See 17-20. In the 1991 interview of the sister that recently played on <i>Nightline</i> , she says that a whale “pulled her under.” She did not identify which whale. She did not state that it was the “large whale Tilikum,” or state that it was the “male.”

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22.	22:51	Huxter: “My understanding of the situation is that Tilikum and others would not be used in shows, they would not be performance animals.”	<p>This is not accurate, and appears to a mis-statement concerning the permits issued to bring Tilikum and the other Sealand of the Pacific whales into the United States. Tilikum was initially brought into the United States on an Emergency Permit based on the fact that the two female Sealand whales were pregnant and would not allow Tilikum to leave their tank. Pending the official permitting process, Tilikum was given an emergency permit which allowed him to be moved to SeaWorld, but which did not permit public display. The final permit ultimately obtained for Tilikum and the other Sealand whales was for the public display of all three animals.</p> <p><b>Evidence: Export Permit. (See BF Index #31)</b></p>
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23.	24:35	“And to this day, there’s no record of an orca doing any harm to any human in the wild.”	<p>This is false. There are documented instances of killer whales attacking humans in the wild.</p> <ul style="list-style-type: none"> <li>• In the 1910s, the Terra Nova Expedition recorded that killer whales had attempted to tip ice floes on which an expedition photographer and a sled dog team were standing.</li> <li>• On June 15, 1972, 43-foot-long (13 m) wooden schooner Lucette (Lucy) was holed by a pod of killer whales and sank approximately 200 miles west of the Galapagos Islands. The group of six people aboard escaped to an inflatable life raft and a solid-hull dinghy.</li> <li>• On September 9, 1972, a Californian surfer named Hans Kretschmer reported being bitten by a killer whale at Point Sur. His wounds required 100 stitches.</li> <li>• In August 2005, while swimming in four feet of water in Helm Bay, near Ketchikan, Alaska, a 12-year-old boy named Ellis Miller was "bumped" in the shoulder by a 25-foot transient killer whale. The boy was not injured.</li> <li>• During the filming of the third episode of the BBC documentary "Frozen Planet" (2011), a group of orcas were filmed trying to "wave wash" the Film crew's 18-foot zodiac boat as they were filming. The crew had earlier taped the group hunting seals in the same fashion. It was not mentioned if any of the crew were hurt in the encounter.</li> </ul>
24.	24:35	“[t]he adult offspring never leave their mother’s side.”	<p>The Film offers no scientific basis for this statement, SeaWorld is aware of none, and the statement defies logic. If no adult offspring ever leave their mother, there would be no genetic diversity necessary for survival or separate pods of killer whales. It is estimated that there currently exists thousands of pods of killer whales in the wild.</p>

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25.	24:35	Garret: “they have lifespans very similar to human life spans. The females can live to about 100, maybe more – males to about 50 or 60.”	<p>There is no scientific support for this assertion. The most recent study on life expectancy of southern resident killer whales is that females live between 30 and 46 years and males 19 to 31 years.</p> <p>Garret stated in an interview for the film <i>Lolita: Slave to Entertainment</i> that “in the wild female [killer whales] average 50 years of age,” which is consistent with the scientific evidence upon which SeaWorld bases its numbers.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Paper from the Canadian Science Advisory Secretariat; (See BF Index #4)</li> <li>2. <a href="http://orcahome.de/lifeexpectancy.htm">orcahome.de/lifeexpectancy.htm</a>: “Researchers have determined an average life expectancy for wild killer whales of about 30 years for males and 50 years for females.”</li> <li>3. <i>Lolita Slave to Entertainment DVD Copyright 2003.</i></li> </ol>
26.	25:38	Marino: “The orca brain just screams out intelligence awareness. We took this tremendous brain and put it in a magnetic resonance scanner. What we found is just astounding. . .”	<p>This is misleading. The most recent scientific research demonstrates that cetacean behaviors used to argue for high levels of intelligence are found commonly across mammals and vertebrates, and that cetacean intelligence is qualitatively no different than other vertebrates.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. P.R. Manger, Questioning the interpretations of behavioural observations of cetaceans: is there really support for a special intelligence status for this mammalian order?, <i>Neuroscience</i> (2013)</li> </ol>
27.	26:29	Photo of mass stranding.	The whales depicted in the photograph are pilot whales, not killer whales.
28.	27:42	Duffus: “I’ve spent a lot of time with killer whales and they’re always in charge, I never get out of the boat and I never mess with them.”	Contradicted by Garrett (24:09): “What we learned is that they are amazingly friendly and understanding and intuitively want to be your companion.”

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29.	28:52	Ventre: He arrived I think in 1992. I was at Whale and Dolphin Stadium when he arrived and he was twice as large as the next animal in the facility.”	This misleadingly suggests that Ventre was present at Tilikum’s arrival at SeaWorld in 1992. However, killer whales are housed at Shamu Stadium, not at Whale and Dolphin Stadium. By his own admission, when Tilikum arrived in 1992, Ventre did not work at Shamu Stadium and he had no firsthand knowledge of Tilikum’s arrival.
30.	29:08	Jett: Tilikum was raked upon arrival at SeaWorld, with implication that killer whales are not raked in the wild.	<p>The assertion regarding Tilikum is misleading, and the implication is false. Tilikum was not immediately introduced to the other whales upon his arrival at SeaWorld. When he was introduced, he did not receive rakes right away. As social hierarchy was established, in order to establish dominance, the females did on occasion give Tilikum superficial rake marks, none of which affected his health. The raking stopped within a few weeks. Ultimately, the females bred with Tilikum. There is scientific evidence that raking occurs in the wild (see nos. 43 and 44, <i>infra</i>), and that because whales generally travel in pods, whales do not “run away” from their pod to escape raking.</p> <p>Evidence: <a href="#">Ingrid Visser Paper (1998) (See BF Index #38)</a></p>

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31.	31:21	Ventre: “we weren’t given the full details of Keltie’s situation.”	<p>This is false. Ventre joined SeaWorld in 1987, four years before Tilikum’s arrival. All new trainers, including Ventre when he was transferred to work with killer whales years after Tilikum’s arrival, received the “Tili Talk,” which included Tilikum’s history. New trainers must complete the Shamu Stadium Orientation Checklist that tests their mastery of necessary skills. They must also demonstrate an understanding of SeaWorld’s Animal Training SOP (standard operating procedures), including a dedicated chapter on Tilikum-specific protocols. Eventually, new trainers sign a form stating their understanding of the SOP. Each year, they must review and re-sign the SOP. In no case may a trainer with fewer than eighteen months’ experience have close contact with a whale, nor may a trainer with fewer than three years’ experience work without the supervision of a senior trainer. Once a trainer is assigned to a whale’s “team,” he must familiarize himself with its “profile” and “incident reports” and may only progress from non-tactile to tactile work depending on senior trainers’ approval. Because Mr. Ventre was permitted to work with Tilikum, he was responsible for complete knowledge of Tilikum’s history, including the incident at Sealand of the Pacific.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"><li>1. Shamu Stadium Orientation Checklist (See BF Index #27)</li><li>2. Tilikum Animal Profile (See BF Index #30)</li><li>3. SeaWorld Animal Training SOP Section XI – Tilikum Protocol (See BF Index #32)</li><li>4. References in OSHA Trial Record to Tilikum and his protocols (Testimony of Schaber, Grove &amp; Mairot) (See BF Index #25, #10 and #14)</li></ol>
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32.	31:35	Berg : “I was under the impression that Tilikum had nothing to do with [Keltie Byrne’s] death.	<p>This is false. At the time of Tilikum’s arrival, all trainers and zoological personnel (which included Ms. Berg) received a memo discussing the circumstances of Keltie Byrne’s death: “Haida, Nootka and Tilikum were involved in an incident at Sealand of the Pacific, Ltd. in which a trainer fell into the pool with the animals, could not be rescued because of the animals’ activity and drowned.” In addition, Ms. Berg was a named plaintiff in a 2011 federal court lawsuit, along with PETA, on behalf of Tilikum and four other killer whales. Ms. Berg’s Complaint in that action (paragraph 92) <i>directly contradicts</i> her statement in the Film: “As an associate orca trainer . . .Ms. Berg was not permitted to conduct direct training with Plaintiff Tilikum due to his known aggression towards humans.”</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. 1/6/93 Memorandum from Brad Andrews (See BF Index #1)</li> <li>2. Complaint in <i>Tilikum et al v. SeaWorld Parks &amp; Entertainment</i>, U.S. District Court for the Southern District of California, Case No. 11-CV-2476 JM WMC (October 25, 2011) (See BF Index #22)</li> </ol>
33.	31:35	Berg’s account of a trainer being yelled at for walking near Tilikum’s pool with wet suit unzipped.	<p>It has always been SeaWorld’s “area safety protocol” that a trainer walking around or near any of the whale pools must have a zipped up wet suit; this was not a policy instituted solely with respect to Tilikum. The screen shot at 31:55 depicts two trainers whose wetsuits are completely zipped up. Berg’s account demonstrates that supervisors had a heightened awareness around Tilikum. The incident with the wetsuit demonstrates that the supervisors made this awareness very clear to all personnel present.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Shamu Stadium Orientation Checklist (“wetsuits zipped poolside”) (See BF Index #27)</li> </ol>



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34.	32:47	Trainer in red wetsuit in the water, then cuts to segment showing a large whale jumping. The whale is Tilikum in the show pool, and gives the impression that the trainer is in the water with Tilikum.	By splicing together two disparate pieces of film, the viewer is misled into thinking that the trainer in the red wetsuit was in the water with Tilikum. This casts SeaWorld in a false light, misleading the audience into believing that SeaWorld trainers swam with Tilikum, which never occurred. From the date that Tilikum arrived at SeaWorld in 1993, SeaWorld had special safety protocols for the care and handling of Tilikum which prohibited any employee from swimming with Tilikum at any time. No water work (except for the desensitization safety training conducted with Tilikum in a controlled environment prior to February 24, 2010 in pools equipped with a lift floor) was ever done with Tilikum.
35.	33:04	Berg: Tilikum lunged at trainer Liz Morris (now Thomas).	This is false. Tilikum never lunged at trainer Liz Morris. In the late 1980's, before Tilikum arrived at SeaWorld a male killer whale named Kanduke lunged at Ms. Morris.
36.	34:19	Ventre: Tilikum lunged at Liz Morris, and he was instructed to destroy his tape of the incident.	This is false. Kanduke incident occurred before Ventre worked at Shamu Stadium. Tilikum never lunged at trainer Liz Morris. SeaWorld management never told Ventre (and would never tell any trainer) to destroy a tape.
37.	33:42	Kelly Clark "rape" testimony.	This is misleading. Ms. Clark testified for three days at the OSHA hearing. Film uses this one sentence of testimony to evoke emotional bias, and omits all of Ms. Clark's testimony regarding the lack of whale aggression.
38.	36:39-39:26	Separating calf from mother	Kalina was disruptive to her mother and the other whales, and at the age of 4 ½ was moved to another park. The Film misleadingly depicts a calf that is only days old, not 4 ½ years old.
39.	38:05	Separating Kasatka (mother) and Takara (daughter).	Separation occurred at SeaWorld San Diego in April of 2004 when daughter Takara was 12 years old. Takara, at the time of the move, had her own calf, Kohana, who went with her to Orlando. At the time of the move, John Hargrove was not even working for any SeaWorld park, much less Sea World San Diego. By that point, he had not worked for SeaWorld in 3 years.

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

40.	38:05	Hargrove: SeaWorld brought in a scientist to analyze the vocals. “They were long-ranged vocals . . .looking for Takara.”	<p>This is false. SeaWorld did not call in a scientist to analyze Kasatka’s vocals. There is no evidence, scientific or otherwise, that these were “long ranged vocals . . .looking for Takara.”</p> <p>During this narration, the Film shows footage of a killer whale, leaving the viewer with the impression that the whale is Kasatka. The whale is at what appears to be underwater viewing glass and is opening and closing its mouth, which leaves the impression that the whale is “vocalizing” and otherwise “calling for Takara”. However, this footage is not Kasatka, nor was this even taken at SeaWorld San Diego, which is where Kasatka lives. In fact, whales do not vocalize through their mouths. Rather, they vocalize through their blowholes.</p> <p>John Hargrove was not working for SeaWorld at the time of Takara’s move, and would not have known what behavioral reaction, if any, Kasatka had to Takara’s move.</p>
41.	41:05	Garrett: We knew by 1980, after half a dozen years of the research, that they live the equivalent to human life spans.	<p>This is false. There is no scientific evidence to support Garrett’s assertion. The most recent study on life expectancy of southern resident killer whales is that females live on average between 30 and 46 years and males 19 to 31 years.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Paper from the Canadian Science Advisory Secretariat; (See BF Index# 4)</li> <li>2. <a href="http://orcahome.de/lifeexpectancy.htm">orcahome.de/lifeexpectancy.htm</a>: “Researchers have determined an average life expectancy for wild killer whales of about 30 years for males and 50 years for females.”</li> </ol>
42.	41:31	Ventre: “Dorsal collapse happens in less than 1 percent of wild killer whales. We know this.”	<p>This is false. There is no scientific evidence to support this claim of less than 1 percent. To the contrary, there is scientific evidence that nearly one-quarter of adult male southern resident killer whales in the wild have collapsing, collapsed or bent dorsal fins.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Ingrid Visser Paper (1998) (See BF Index #38)</li> </ol>

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

43.	42:19	Marino: “A lot of violence that you don’t ever see in the wild.”	<p>This is false. There is scientific evidence (including photographs) of orca-on-orca raking in the wild.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Ingrid Visser Paper (1998) (See BF Index #38)</li> <li>2. Balcomb III, et al Technical Report: Killer Whales of Southern Alaska photos (See BF Index #3)</li> </ol>
44.	43:29-43:56	Single example of a whale dying in captivity from whale-on-whale aggression with implication that this does not occur in the wild.	<p>This implication is false. There is scientific documentation of whale-on-whale orca aggression in the wild.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Ingrid Visser Paper (1998) (“Scarring on cetaceans has been recorded for a wide range of species with many of these scars attributed to inter-male aggression [citation omitted], but prolific scarring has also been reported on females of some species. [citations omitted]. The extensive scarring of the two adult male killer whales reported here cannot be positively attributed to one sex or the other, but it is highly probable that conspecifics [the same species] caused the parallel tooth rakes, due to the spacing of the rake marks. Scheffer (1969) reports a killer whale marked with regular lines suggesting scars made by the teeth of another killer whale. . . It is likely that any other killer whale involved in a mutually aggressive interaction would also show some scarring. . .Rake marks from killer whales are not uncommon on other species of cetaceans, e.g., . . . humpback whales, . . . gray whales, . . .bowhead whales. These scars all resemble those reported on the two adult male killer whales in this paper.”</li> </ol>

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

<p>45.</p>	<p>43:57 – 47:29</p>	<p>Video footage of John Sillick whale incident in 1987 (26 years ago).</p> <p>Jett: “I saw that there was just a lot of things that weren’t right and there was a lot of misinformation.”</p> <p>Berg: “John Sillick was the guy who in 1987 was crushed between two whales at SeaWorld of San Diego . . . and the SeaWorld party line was that was a trainer error.”</p> <p>Gomersall: It was John’s fault and he was supposed to get off that whale. And for years I believed that and I told people that.”</p> <p>Ventre: “We weren’t told much about it. Other than it was trainer error. . .”</p> <p>Gomersall: “Years later you look at the footage and you go, you know what, he didn’t do anything wrong.”</p>	<p>None of the trainers critiquing this incident worked at SeaWorld San Diego or were present for this incident. The rehearsed routine called for the trainer to ride once around the perimeter of the pool on the back of the whale. Making a poor judgment call based on the routine, Mr. Sillick decided to ride a second perimeter –facing backward -- and took the whale around a second time. This act threw off the timing of the send signal given to the other whale, which performed the behavior exactly as requested, resulting in the accident, not an act of aggression.</p> <p>The footage is misleading because it does not show what occurred in the stadium prior to the incident, it does not explain the rehearsed routine for the behavior, and it fails to disclose that the trainer failed to get off the whale after the first perimeter. These omissions enable the cast to falsely claim that SeaWorld is guilty of “misinformation,” that Mr. Sillick “didn’t do anything wrong,” and that the incident was an act of aggression.</p> <p>Jeff Ventre admitted in a November 16, 2011 email directed to OSHA Trial Lawyers John Black and Tremelle Howard-Fishburne and OSHA Investigator Lara Padgett, that the Sillick accident was “not even an act of whale aggression”. He goes on to say that “It was a trainer being in the wrong place and getting smashed while riding a whale.” Nevertheless, the Film portrays the incident as an act of aggression.</p> <p>Following this 1987 incident, and throughout the 26 years since, SeaWorld has developed and incorporated formal protocols for all waterwork interactions to minimize trainer discretion with respect to rehearsed routines.</p> <p><b>Evidence: Jeff Ventre November 16, 2011 email. (See BF Index #40)</b></p>
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***BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content***

46.	47:26	Home video footage of incident between trainer Tamarie Tollison and Orkid.	Video footage shows that Ms. Tollison broke SeaWorld's safety protocols, including interacting with a killer whale (Orkid) without a spotter, and repeatedly stepping on Orkid's rostrum. The Film misleadingly portrays this incident as an act of whale aggression, when the incident could have been avoided entirely had the trainer followed SeaWorld's protocols.
47.	49:13	Footage of employee at SeaWorld San Diego riding a killer whale while wearing a bikini.	This occurred in 1971 – 42 years ago – at a time when SeaWorld was owned by the original owners (the first of three prior owners), and prior to the current safety protocols that have long been in place. This employee was a secretary, not a trainer, and the event was a publicity stunt/photo opportunity. No such incident could possibly occur at SeaWorld today.

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

48.	49:23	Berg: “I believe that it’s 70 plus maybe even more, just killer whale/trainer accidents.” Visual: documents purporting to be incident reports.	<p>This is inaccurate and highly misleading. The Film makes it appear that the depicted documents are incident reports relating solely to SeaWorld. However, the document depicted in the visual is an index maintained by a third party (not SeaWorld), and it refers to other parks in addition to SeaWorld. For example the very first entry says “Windsor Safari Park, England” (not affiliated with SeaWorld) which closed in 1992. Most of the entries on the list relate to the 1980’s.</p> <p>Sea World Corporate Curator Charles Tompkins testified during the OSHA hearing that SeaWorld had 98 documented incidents involving its parks and its killer whales during the 21 year time period of 1988 to 2009. As Mr. Tompkins explained, the fact a situation was called an “incident” does not mean that it involved whale contact with a trainer or trainer injury for that matter. In fact, of those 98 incidents, only 12 incidents in 21 years involved actual injury to a trainer.</p> <p>Mr. Tompkins further testified that the number of incidents decreased over time as SeaWorld’s safety program became more sophisticated: Sea World Orlando hadn’t experienced any incident for 5 years before the tragic incident with Ms. Brancheau. The Film misleadingly fails to disclose that evidence.</p> <p><b>Evidence:</b>  <b>1. OSHA Hearing Testimony of Charles Tompkins Tr. 369-376; 487. (See BF Index #33)</b></p>
49.	50:30	Video of John Hargrove with bloody face. Film implies that Hargrove was injured by a whale.	<p>This footage is misleading because Hargrove’s injury had nothing whatsoever to do with any whale. Hargrove was doing a footpush into a stage slide and when he slid across the stage, he hit his head on the concrete slideover because he didn’t perform the maneuver correctly. In the correct maneuver, the trainer would keep his head up as he enters the slideover area. Hargrove basically dove into the concrete, injuring himself.</p>

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

50.	51:09	Ken Peters incident. Duffus: “The whale jumped over [the net] and came right after him.”	As can be seen in the video, Duffus’ statement is not accurate. The whale (Kasatka) crossed over but did not jump over the net, and did not “come after” Peters once Peters crossed the net. The whale did not even swim all the way to the slideout.
51.	55:12	Daniel Dukes incident. Ventre: “Well, all I know is the public relations version of it. . . he climbed the barbed wire fence around the perimeter and stayed after hours.”	<p>Ventre was no longer employed at SeaWorld at the time of this incident in 1999, so he has no personal knowledge of the facts. His assertion of a “public relations version” is false and misleading. The official Sherriff’s report includes a detailed timeline of the events: SeaWorld employees first noticed Dukes in the pool around 7:20 am. 911 was called at 7:25 am and an officer was dispatched to SeaWorld at 7:26 am. When the sheriff arrived the body was still in the pool on Tilikum’s back. There was no barbed wire fence.</p> <p><b>Evidence:</b>  <b>1. Orange County Sheriff’s Office Investigator’s Report (See BF Index #19)</b></p>
52.	55:44	Daniel Dukes incident. Jett: “Perfect storyline” suggesting that SeaWorld concocted a story. “A mentally disturbed guy hides in the park after hours and strips his clothes off and decides he wants to have a magical experience with an orca and drowns because he became hypothermic.	<p>Jett was no longer employed at SeaWorld at the time of this incident in 1999, so he has no personal knowledge of the facts. The implication that SeaWorld concocted a story is false and designed to cast SeaWorld in a negative light. In fact, as set forth in the official sheriff’s investigative report, Dukes was mentally ill and had a criminal history. He had just gotten out of jail two days before he came to SeaWorld. He had undressed, and his clothes were found on the north side of the pool deck. He had put on a swimsuit. The cause of death was determined by the Medical Examiner to be an accidental drowning. Further demonstrating the falsity of the Film’s claim that Dukes’ death was a case of whale aggression, Naomi Rose, Ph.D. of the Humane Society of the United States, an outspoken critic of SeaWorld, was quoted as saying “since the body was found on Tilikum’s back, it’s unlikely the whale was behaving aggressively. . .The whale was probably playing with the man and continued to play with the body after the man died.”</p> <p><b>Evidence:</b>  <b>1. Orange County Sheriff’s Office Investigator’s Report (See BF Index #19)</b>  <b>2. Orlando Sentinel Article dated July 7, 1999 (See BF Index #21)</b></p>

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

53.	56:00	Ventre: He was not detected by the night watch trainers who were presumably at that station.	<p>This is false. In 1999, there was no night trainer or watchperson stationed at Tilikum's pool. Rather, there was a night watchman responsible for walking the entire perimeter of the stadium and pools.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"><li>1. Orange County Sheriff's Office Investigator's Report (See BF Index #19)</li><li>2. Orlando Sentinel Article dated July 7, 1999 (See BF Index #21)</li></ol>
54.	56:07	Jett: There were cameras all over the back of Shamu's Stadium, pointing every which way. . .I find it hard to believe that nobody knew until the morning that there was a body in there."	<p>This is false. There were no cameras pointing to the back area at Shamu Stadium. In the various still photographs used in the Film at 56:10, there is no photograph of the back area of the stadium.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"><li>1. Orange County Sheriff's Office Investigator's Report (See BF Index #19)</li><li>2. Orlando Sentinel Article dated July 7, 1999 (See BF Index #21)</li></ol>



**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

55.	56:30	Ventre: “The public relations spin on this was that he was kind of a drifter and died of hypothermia but the medical examiner’s reports were more graphic than that.”	<p>This is false. There was no “public relations spin.” The official Orange County Sheriff Investigator’s Report indicated that Dukes was a “transient” who was arrested for retail theft and spent three days in jail in Vero Beach, Florida and was released two days before arriving in Orlando where he was observed at SeaWorld (due to strange clothing and lack of personal hygiene) the day before his death. The Report further provided that at 7:20 am on July 6, 1999, SeaWorld employee Michael Dougherty headed to the underwater viewing area where the fitness facility is located when he noticed human legs in the tank with Tilikum. He knew this was a problem because of SeaWorld’s safety protocol that no one is allowed in the water with Tilikum. Dougherty alerted security. At the same time, Arturo Cordoba, another employee charged with cleaning the pools and deck was on the deck and observed a white male on the back of Tilikum. Orange County Sheriff was contacted immediately and arrived on the scene while Dukes was still on the whale’s back. The cause of death was determined by the County Medical Examiner to be drowning and the manner of death to be an accident.</p> <p><b>Evidence:</b>  <b>1. Orange County Sheriff’s Office Investigator’s Report (See BF Index #19)</b></p>
56.	57:22	Jett: So why keep Tilikum there? This guy . . his proven track record of killing people . . he is clearly a liability to the institution.	The statement “proven track record of killing people” is false and highly misleading. Regarding Keltie Byrne, the verdict of the Coroner’s Jury did not find that Tilikum was the instigator or more responsible than the other whales. Regarding Dukes, there is no evidence of what happened to Dukes other than the Medical Examiner’s finding that Dukes accidentally drowned.
57.	58:21	“Family Tree” of breeding by Tilikum.	There is no scientific or other evidence linking the few incidents of whale aggression at SeaWorld to a whale’s genetic connection to Tilikum.
58.	59:31	Loro Parque sequence.	This emotional part of the Film falsely implies that SeaWorld was involved in a cover-up to hide the circumstances surrounding the trainer’s death. SeaWorld leases whales to Loro Parque for breeding and display purposes, and supplies a trainer to Loro Parque to provide oversight of the training program for SeaWorld’s whales. SeaWorld has nothing to do with the management of Loro Parque, and had no involvement with the notification given to the trainer’s family immediately following the incident.

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

<p>59.</p>	<p>1:05:37</p>	<p>Loro Parque / Duffus: “For somebody to get up and say in a court of law that they had no knowledge of the linkage between SeaWorld and this park in Tenerife is well either, she doesn’t know when she is telling the truth or it’s a bold face lie.”</p>	<p>This statement is false. SeaWorld has never denied that it has a business relationship with Loro Parque, however there is no formal affiliation between the two parks. Duffus misstates the trial record; there was no question posed regarding “linkage.” Kelly Clark correctly testified at the OSHA trial that four of the whales at Loro Parque belonged to SeaWorld. She also made clear that Sea World had provided trainers to assist Loro Parque. When asked whether Loro Parque was owned by SeaWorld, Ms. Clark correctly testified “no.” When asked whether SeaWorld is “affiliated” with SeaWorld, Ms. Flaherty Clark correctly answered “no.” When asked further questions about the relationship, Ms. Flaherty Clark made it clear she was not the proper person to answer such questions. She testified: “I actually don’t know that I’m the right person to answer this question. I can answer anything you want to know about Sea World of Orlando and how I supervise my supervisors, but . . .I did not have direct line reports at Loro Parque and have not.”</p> <p>Moreover, the Film ignores the fact that the SeaWorld trainer on loan to Loro Parque at the time of this incident, Brian Rokeach, testified extensively at the OSHA hearing concerning this incident. In addition, Michael Scarpuzzi, the Vice President of Zoological Operations at Sea World San Diego testified that he oversaw Brian Rokeach, participated in weekly calls with Loro Parque related to the training process and Sea World’s whales, and actually made regular visits to Loro Parque. He was informed of the incident by Mr. Rokeach, traveled to Loro Parque himself, reviewed the video of the incident and actually went to each Sea World park afterwards to discuss the incident with all Sea World curators. Rather than use this testimony, the Film features the testimony of Kelly Clark, who, of the three trainers, knew the least about SeaWorld’s relationship with Loro Parque in order to falsely and misleadingly portray Ms. Clark as “lying” about the business relationship between SeaWorld and Loro Parque.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. OSHA Hearing Testimony of Kelly Flaherty Clark Tr. 38-39; 133; 165-67 (See BF Index #8)</li> <li>2. OSHA Hearing Testimony of Brian Rokeach Tr. 1175-76; 1181-88; 1202-26 (See BF Index #23)</li> <li>3. OSHA Hearing Testimony of Michael Scarpuzzi Tr. 1109-36. (See BF Index #24)</li> </ol>
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**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

60.	1:00:25, 1:02:31	Suzanne Allie discussing Loro Parque, its reputation, facilities, training and the quality of trainers, the whales, and SeaWorld's purported responsibility for the incident.	Ms. Allie was a videographer with no knowledge or expertise in the training of killer whales. She has no foundation or education whatsoever to offer her critiques or conclusions. Ms. Allie, alongside Naomi A. Rose Ph.D. of the Humane Society of the United States, has made similar claims to United States governmental agencies. All such claims have been rejected.
61.	1:05:39	A whale comes out onto stage while Ventre is talking into the microphone.	This segment is highly misleading because it is placed in the Film immediately before Jett states that he had been expecting somebody to be killed by Tilikum (1:06:26). Therefore, the whale coming on stage is depicted as a dangerous moment/act of aggression imperiling the trainer (Ventre). In fact, this is a <i>scripted</i> part of the show, and was entirely expected by the trainer (Ventre), who was never in danger.
62.	1:06:54	Berg Interview re Brancheau incident	Ms. Berg last worked at SeaWorld in 1993, seventeen years before the incident with Dawn Brancheau. Ms. Berg never worked with Tilikum and only worked with killer whales for a very brief period. Ms. Berg has no personal knowledge regarding the incident.
63.	1:07:01	Ventre Interview re Brancheau incident	Mr. Ventre last worked at SeaWorld in 1995, fifteen years before the incident with Dawn Brancheau. Mr. Ventre has no personal knowledge regarding the incident. Although Mr. Ventre purports to critique the incident, Mr. Ventre had at most, three years' experience working with killer whales at a very junior level, and never in the role of trainer-in-charge of any encounter. By comparison, Dawn Brancheau, whom Ventre purports to critique, had 16 years' experience, was one of SeaWorld's most senior and experienced trainers, attained the title of Supervisor of Animal Training, and was the senior trainer on Tilikum's team.

**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

64.	1:09:13	Jett: “There is no food left . . . she kept asking him to perform more behaviors . . . he was not getting reinforced for the behaviors that he was doing correctly; he probably was frustrated toward the end . . .	<p>Cast members purport to criticize Dawn Brancheau for her handling of Tilikum. None of the cast members was present at the incident or had recent first-hand experience with Tilikum and are engaged in pure speculation. During the OSHA hearing, there was extensive eye-witness testimony from trainers who were present for the Dine with Shamu show and Ms. Brancheau’s interactions with Tilikum both during and after the show. Lynn Schaber, then a Senior Trainer approved to work on Tilikum’s team, served as a spotter that day. She testified that she believed Tilikum performed correctly during the Dine with Shamu show. Jan Joseph Topoleski was an additional spotter for that show and the interaction that followed. He testified, referring to Dawn, “I remember she said she was really proud of the interaction that we did; nothing really out of the ordinary”.</p> <p><b>Evidence:</b> OSHA Hearing Testimony of Lynne Schaber Tr. 277; 284-287; 320 (See BF Index #25) OSHA Hearing Testimony of Jan Topoleski Tr. 741-745 (See BF Index #35)</p>
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**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

65.	1:09:46	Jett: “Tilikum at some point grabbed a hold of her left forearm and started to drag her and eventually did a barrel roll and pulled her in.”	<p>This is false. Jett had not worked at SeaWorld in 17 years and had limited interaction with killer whales. His account is pure speculation. At the OSHA hearing, two witnesses testified to the way in which Tilikum pulled Ms. Brancheau into the water. The first was SeaWorld trainer Jan Topoleski, who was acting as Ms. Brancheau’s spotter, who testified that Ms. Brancheau was pulled into the water by her ponytail. The second was a SeaWorld security guard (Mr. Herrera) who testified that he saw Tilikum grab Ms. Brancheau’s arm and pull her into the water (Tr. 247). However, on the date of the incident, Mr. Herrera had told the Orange County detective that the whale grabbed “either her hair or her arm.” On cross-examination during the OSHA hearing, Mr. Herrera admitted that he could not see Ms. Brancheau clearly from his vantage point and that “I’m not sure if he grabbed her arm or her hair, I don’t know. “(Tr. 249) OSHA concluded from this testimony that the way in which Ms. Brancheau entered the water “was not established as a fact at the hearing, and it is in dispute.” A third witness, Valerie Green, reported to the Orange County Sheriff that she saw “a woman’s ponytail in the whale’s mouth.” Ignoring the express OSHA finding and the overwhelming evidence that Ms. Brancheau was pulled in by her hair, the Film falsely states as “fact” that Tilikum grabbed Ms. Brancheau by the arm, for which there is <u>no</u> competent evidence.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Jan Joseph Topoleski handwritten statement – February 24, 2010; (See BF Index #36)</li> <li>2. Jan Joseph Topoleski: transcript of recorded statement – February 24, 2010; (See BF Index #37)</li> <li>3. Jan Joseph Topoleski: OSHA testimony; (See BF Index #35)</li> <li>4. Fredy Herrera: Witness Statement; (See BF Index #13)</li> <li>5. Fredy Herrera: OSHA testimony; (See BF Index #12)</li> <li>6. Valerie Green: Witness Statement; and (See BF Index #19)</li> </ol>
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***BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content***

66.	1:11:48	Berg: “At first Sea World reported that a trainer slipped and fell into the water and was drowned. So, that was the first report.”	This is false. Ms. Berg has not worked at SeaWorld in over 20 years and has no knowledge of the incident. As demonstrated in the Film immediately preceding this statement, it was the Orange County Sheriff, not SeaWorld, that reported this (1:11:38). This account of the incident by the Sheriff was clearly a mistake as it was directly contradicted by the eyewitness statement given to the Sheriff’s office by SeaWorld’s employee Jan Topoleski immediately following the incident (see below).
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**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

67.	1:11:55	<p>Jett: “It wasn’t until eye witness accounts disputed that, that they had to go back into their huddle and said wait a minute, we’ve got to come up with a new plan. . . The new plan is that he grabbed her ponytail. This is a subtle way of placing the blame on Dawn’s shoulders.”</p>	<p>This is false. There is no evidence whatsoever that the statements regarding Tilikum grabbing Ms. Brancheau’s ponytail were concocted by SeaWorld. To the contrary, an eyewitness to the incident, spotter Jan Topoleski, testified under oath at the OSHA hearing that Ms. Brancheau was pulled into the water by her ponytail. He stated under oath that he saw Ms. Brancheau get up on her knees and put her hands to her pony tail: ‘She could not break free. She had both hands on her pony tail being pulled toward the water’ (Tr. 745-746). Significantly, Mr. Topoleski provided the identical report – that Tilikum had Ms. Brancheau by the hair -- to the Orange County Sheriff’s office only <i>minutes after the incident</i>. Mr. Topoleski’s written and audio statements under oath to the Sheriff were part of the OSHA record. Less than 90 minutes following the incident, Mr. Topoleski wrote in his Statement to the Sheriff that Tilikum had “bit down on a piece of her hair. Within the span of 2 seconds she was pulled into the pool, unable to get her hair released.” Within a few hours of the incident, Mr. Topoleski gave a taped, oral statement in which he recounted: “All I saw was her grabbing her hair and trying to pull it out of his mouth.” The Detective asked Mr. Topoleski: “so you think the hair was the only reason he grabbed her?” Mr. Topoleski responded: “Yes. Absolutely.” Mr. Topoleski has gone on to a distinguished career in animal training, currently working with the Federal Bureau of Investigation training bomb-sniffing dogs. Finally, the Film omits other evidence corroborating Mr. Topoleski’s testimony, including the Coroner’s Report itself. When read in its entirety, the Coroner’s Report disproves the Film’s claims that SeaWorld concocted the ponytail theory and/or that SeaWorld had lied.</p> <p><b>Evidence:</b></p> <ol style="list-style-type: none"> <li>1. Jan Joseph Topoleski handwritten statement – February 24, 2010;</li> <li>2. Jan Joseph Topoleski: transcript of recorded statement – February 24, 2010;</li> <li>3. Jan Joseph Topoleski: OSHA testimony; and</li> <li>4. Coroner’s Report.</li> <li>5. Orange County Sheriff’s report pg. 26 of 43</li> </ol>
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**BLACKFISH ANALYSIS: Misleading and/or Inaccurate Content**

68.	1:14:32	Marino: “All whales in captivity have a bad life. They’re all emotionally destroyed. They’re all psychologically traumatized. So, they are ticking time bombs. It’s not just Tilikum.	<p>The Film portrays Marino’s statement as if it is the opinion of the scientific community, and as such is false and misleading. There is no scientific evidence to support such a blanket statement. To the contrary, the Journal of Zoo and Aquarium Research recently published a paper that discusses the history of this very issue. Killer whales in captivity have an excellent standard of living and have access to food and state of the art medical care.</p> <p><b>Evidence:</b>  <b>Fay E. Clark: “Marine mammal cognition and captive care: A proposal for cognitive enrichment in zoos and aquariums” July 24, 2013</b></p>
69.		Scrolling Statement: “SeaWorld repeatedly declined to be interviewed for this film.”	<p>As is shown in the Film, the filmmakers had complete access to the transcript and other materials from the OSHA hearing. SeaWorld’s trainers and veterinary staff provided over 71 hours of recorded testimony under oath before OSHA, yet the Film misleadingly incorporates only several sentences – each taken out of context – in a transparent attempt to cast SeaWorld in a false and extremely negative light. In addition, in the days, weeks and months following Ms. Brancheau’s death, SeaWorld personnel and executives, including CEO Jim Atchison, COO Dan Brown and Chief Zoological Officer Brad Andrews gave hundreds of media interviews. Chuck Tompkins, Head of Animal Training, gave more than 50 interviews, most of which were via satellite link, and Mr. Atchison gave a press conference, broadcast live via satellite around the world, at which he took questions from more than 30 media outlets. Accordingly, had it been the purpose of the Film to fairly and legitimately present SeaWorld’s position on the various issues and events portrayed in the Film, there was a mountain of testimony and interview material from which to choose. However, as was apparent from the filmmaker’s very first communication with SeaWorld, and as is obvious from the Film and the comments of the filmmakers, the cast and third parties such as PETA in the media, the purpose of the Film was not to present a balanced treatment of the issues, but to pursue an anti-SeaWorld agenda. Under these circumstances, SeaWorld correctly chose not to participate in the Film.</p>