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July 17, 2017

Board of Parole Hearings  
Attn: Nonviolent Parole Review Process  
P. O. Box 4036  
Sacramento, CA 95812-4036

**Re: Inmate Jennifer Joann Zito; CDCR #WE1858  
Ventura County Superior Court Case #2009005679  
Opposition Letter Due to Board of Parole Hearings August 2, 2017**

Dear Board Members:

This letter is written to recommend denial of early parole for inmate Jennifer Zito. This recommendation is based upon:

- 1) The inmate's commitment offense.
- 2) The effect of the inmate's crimes on the victims, including the lack of restitution.
- 3) The inmate's lack of veracity, as demonstrated by her perjury, proffering of false evidence in court, and attempts to deny the victim's restitution.

## **CIRCUMSTANCES OF COMMITMENT OFFENSE**

In 1999, Rod Kubes, the owner of Simi Valley Cycle (SVC), hired the inmate as a bookkeeper on the recommendation of a friend that the inmate was honest. From 2001, until she quit in March 2006, the inmate stole cash from SVC's daily receipts. She concealed her embezzlement by manufacturing, altering, or destroying SVC's internal records. She made it nearly impossible to detect the mismatch between the actual bank deposits and SVC's records of the deposits. Through these means, the inmate stole more than \$800,000 over a five-year period. She used this money to finance her horse training and show business, to remodel her home, and to drive expensive cars and boats.

On five separate occasions during that period, the inmate also stole five vehicles from SVC. She concealed these vehicle thefts by having a straw purchaser tender a check, which the inmate then removed from SVC's daily deposits. She then used the vehicles herself, gave them away, or resold them for a profit. As of the time of sentencing in

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June 2011, the inmate owed SVC and Mr. Kubes \$1,473,783 in restitution. With interest imposed pursuant to Penal Code section 1202.4(3)(G), **the inmate currently owes Simi Valley Cycle and its 78-year-old owner more than \$2.3 million dollars in restitution.**

The inmate also failed to pay taxes on the money she stole and filed false state income tax returns for five tax years. At the time of her sentencing, the inmate owed the California Franchise Tax Board \$186,464 in back taxes, penalties, interest and costs of investigation.

The court selected Count One, corporate embezzlement, as the principal count and imposed the upper term of four years. The court cited four reasons for choosing the upper term:

- 1) The inmate's crime showed "planning and sophistication."
- 2) "There was a great amount of loss."
- 3) The inmate violated a position of trust and confidence.
- 4) The inmate "rather cruelly stood by" as "a firsthand eyewitness" "to the pain and difficulties that she was causing [Kubes] and [SVC], and that was not sufficient to make her stop."

To this four-year base term, the court added another five years of consecutive time for two different loss enhancements, namely, a two-year enhancement under Penal Code section 12022.6, subdivisions (a)(2) and (b), and a three-year enhancement under Penal Code section 186.11, subdivision (a)(2). The court then imposed consecutive subordinate terms of one year (one-third the middle term of three years) on each of the vehicle embezzlement counts (counts one through six). The court acknowledged that the vehicle thefts were part "of an overarching scheme of stealing from the employer." However, the court opted for consecutive rather than concurrent terms. In the court's view, "[t]he crimes were independent of each other," "[t]hey were committed at different times," and "there were thefts of different items and vehicles." As such, the crimes were "not part of such a tightly woven scheme that one can say this should be treated as part and parcel of the same ongoing offense." The inmate's total sentence was 18 years in prison.

#### **THE EFFECT OF THE INMATE'S CRIMES ON THE VICTIMS INCLUDING THE WAY SHE DENIED THEM RESTITUTION.**

While SVC is the named victim in this matter, the actual victim is Rod Kubes, now aged 78. The effects of the inmate's crimes on Mr. Kubes have all the classic hallmarks of a financial crime against an elder. In his testimony and his statements for sentencing purposes, Mr. Kubes stressed the financial anxiety and health problems this matter caused him and his inability to make the money back due to his advanced age. Financially, Mr. Kubes kept the business alive by loaning it money during the thefts, and the money he lost denied him his well-deserved retirement.

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In a civil deposition and pretrial hearing, the inmate perjured herself by claiming that Mr. Kubes and his son, Duane Kubes, were the actual thieves, and that they stole the money to avoid paying taxes on the money. At trial, during cross-examination, the Kubes were confronted with these same accusations of criminal wrongdoing. In his victim impact statement, Mr. Kubes asserted his belief that he suffered a heart attack due to the stress the inmate's crimes caused. Moreover, Duane Kubes was further victimized when his 20-year-old criminal convictions for forgery was used against him at trial and reported in the local newspaper.

After trial, the inmate stripped significant value from a house she owned and that the People had liened, to try and get the victim restitution, pursuant to Penal Code § 186.11. The People obtained a criminal temporary restraining order to keep the inmate from dissipating the value of a house she owned, the only asset that could potentially get Mr. Kubes restitution. Yet, as she admitted in an audiotaped jail call, the inmate furtively went into the house and ripped out the designer kitchen that had been purchased and installed with the money the inmate stole.

**BPH SHOULD VIEW ANY STATEMENT'S THE INMATE MAKES WITH SKEPTICISM DUE TO HER PROPENSITY TO LIE AND ACTIONS DURING PRE-TRIAL HEARINGS AND AT TRIAL.**

The inmate's other tactics during her crime wave, pretrial hearings, at trial and after trial reflect poorly on her veracity and likelihood to tell this Board the truth. The inmate was a skilled enough liar to continue her ruse for five years. She told people a variety of stories about where her she got the money for seven expensive show horses, a \$100,000 horse trailer, a luxury custom speedboat, a Porsche, BMW, pickup truck and other trappings of wealth. If the witness did not know the inmate's husband before she started stealing, she told them her husband was a wealthy doctor. If they knew her husband was a respiratory therapist, she told them she had family money. She is a habitual liar and cannot be trusted.

As set forth in detail in the attached People's Statement in Aggravation, at trial, the inmate attempted to get her attorney to submit false and forged documents as exhibits.

While the inmate does not have a criminal history, she committed these crimes over a protracted five-year period. Each time she stole, she had the ability to reflect on her actions and decide whether to steal again. On more than 300 occasions, she chose to steal and victimize the people who were paying her salary.

**DISCUSSION**

As Justice Benjamin Cardozo stated, "[j]ustice, though due to the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament.

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We are to keep the balance true.” *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934). California Rules of Court Rule 4.410, sets forth the “[g]eneral objectives in sentencing.”

(a) General objectives of sentencing include:

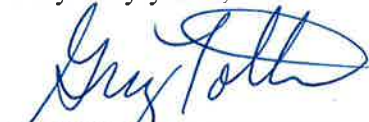
- (1) Protecting society.
- (2) Punishing the defendant.
- (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses.
- (4) Deterring others from criminal conduct by demonstrating its consequences.
- (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration.
- (6) Securing restitution for the victims of crime.
- (7) Achieving uniformity in sentencing.
- (8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

These were the factors the trial judge considered in imposing the sentence for the inmate’s devastating crimes. These objectives favor the inmate serving out her full sentence, the sentence imposed on her after a fair trial and full appellate review. Moreover, at sentencing, Mr. Kubes argued in favor of the inmate getting the longest possible sentence. The victim was contacted today by my office and he adamantly opposes early parole.

## CONCLUSION

The inmate poses an unreasonable risk to the community, if granted early parole. Moreover, a grant of early parole does not sufficiently punish the inmate for her commitment offense because she has not served the full sentence imposed by the court. I respectfully request the Board deny early parole for the inmate.

Very truly yours,



GREGORY D. TOTTEN  
District Attorney

GDT:hw

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