

Republic of the Philippines
Department of Justice
National Prosecution Service
OFFICE OF THE CITY PROSECUTOR
Makati City

INVESTIGATION DATA FORM

OFFICE OF THE CITY PROSECUTOR

To be accomplished by the Office

DATE RECEIVED: NOV 20 2013

NPS DOCKET NO.:

13 **K** 4281

(stamped and initialed)

Time Received

MAKATI CITY

Assigned to:

Receiving Staff

Date Assigned:

To be accomplished by complainant/counsel/law enforcer
(Use back portion if space is not sufficient)

COMPLAINANT/S: Name, Sex, Age & Address

RESPONDENT/S: Name, Sex, Age & Address

✓ [REDACTED]

IAN ROBERT GUSTAFSSON (Makati City),

SYLVIA BERNADETTE GONZALES DE

GUZMAN (Quezon City), SHERWIN

QUIAMBAO (Makati City) and MARIA

ARLEEN ALDABA (Cavite)

WITNESS/ES: Name & Address

JESULITO R. CABAS

25th Floor, Yuchengco Tower 1, RCBC Plaza,

6819 Ayala Avenue, Makati City

LAW/S VIOLATED:

Qualified Theft under Article 310 of the Revised
Penal Code

DATE & TIME OF COMMISSION:

May 2011 to December 2012

PLACE OF COMMISSION:

Makati City

1. Has a similar complaint been filed before any other office? * YES ☐ NO ☒
2. Is this complaint in the nature of counter-affidavit? * YES ☐ NO ☒ If yes, indicate details below.
3. Is this complaint related to another case before this office? * YES ☐ NO ☒ If yes, indicate details below.

I.S. No.:

Handling Prosecutor:

CERTIFICATION *

I CERTIFY, under oath, that all the information on this sheet are true and correct to the best of my knowledge and belief, that I have not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasijudicial agency, and that if I should thereafter learn that a similar action has been filed and/or is pending, I shall report that fact to this Honorable Office, within five (5) days from knowledge thereof.

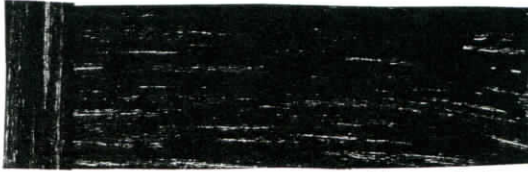
✓ [REDACTED]
(Signature)

SUBSCRIBED AND SWORN TO before me this 20 NOV 2013, 20__ in

Wilfredo Barredo Go
Assistant City Prosecutor
Prosecutor Administering Oath

*1, 2, 3 and Certification need not be accomplished for inquest cases

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
NATIONAL PROSECUTION SERVICE
Office of the City Prosecutor
MAKATI CITY



Complainant,


- versus -

NPS Docket No. _____
For: Qualified Theft under Article 310
of the Revised Penal Code



JAN ROBERT GUSTAFSSON,
SYLVIA BERNADETTE
GONZALES DE GUZMAN,
SHERWIN QUIAMBAO and
MARIA ARLEEN ALDABA,
Respondents.

x-----x

COMPLAINT-AFFIDAVIT

✓I,  of legal age, Filipino, and with postal address at the 25th Floor, Yuchengco Tower 1, RCBC Plaza, 6819 Ayala Avenue, Makati City, respectfully complain against Jan Robert Gustafsson, Sylvia Bernadette Gonzales de Guzman, Sherwin Quiambao and Maria Arleen Aldaba for Qualified Theft under Article 310 of the Revised Penal Code, and after having been duly sworn to in accordance with law, respectfully state:

1. Complainant is a corporation duly organized and validly existing under Philippine laws, with principal office at Cagayan Economic Zone Authority (CEZA) Complex, Sta. Ana, Cagayan.¹

2. I am a 
 which conducted a forensic audit on complainant. I was duly authorized by complainant's Board of Directors to institute the instant criminal complaint and to represent

¹ A copy of complainant's Amended Articles of Incorporation is hereto attached and made integral part hereof as **Annex "A."**

complainant herein.²

3. Respondents are all of legal age. The other pertinent details of respondents are as follows:

NAME	NATIONALITY	LAST KNOWN ADDRESS
Jan Robert Gustafsson	Swedish	25A Amorsolo East Tower, Rockwell Center, Makati City - or - 20 th Flr., Zuellig Bldg., Makati Ave. cor. Paseo Ave., Makati City
Sylvia Bernadette Gonzales de Guzman	American and Spanish	2 Embassy Gardenhomes, T. Benitez Street, West Triangle, Quezon City
Sherwin Quiambao	Filipino and Canadian	Unit 3906N Joya Lofts & Tower, Rockwell Center, Makati City
Maria Arleen Aldaba	Filipino	11 Sampaloc Place, Ayala West Grove Height, Silang, Cavite

4. Respondents may be served with *subpoena* and other processes of this Honorable Office at their foregoing addresses.

5. As [REDACTED] and in the course of a forensic audit on complainant, I reviewed all the pertinent records of certain suspicious and irregular transactions, including the transactions complained of herein, as well as conducted interviews.

6. The [REDACTED] found, based on the records, that:

6.1 Respondents Gustafsson, de Guzman, Quiambao

² A copy of the *Secretary's Certificate* dated 20 November 2013 is hereto attached and made integral part hereof as **Annex "B."**

and Aldaba used to be complainant's Managing Director, Director, Finance Manager and Chief Financial Officer, respectively.

6.1.1 Respondents Gustafsson and Quiambao had the duty to approve or authorize the issuance of payment vouchers to pay legitimate, legal, valid and demandable obligations of complainant. Conversely, the "approval" or "authorization" of illegitimate, illegal, invalid or non-demandable obligations was beyond the scope of their functions.

6.1.2 It was incumbent upon respondent Aldaba to ensure that corporate funds are spent only for legitimate, legal, valid and demandable obligations of complainant.

6.2 Respondents Gustafsson, de Guzman and Quiambao were joint signatories in complainant's various bank accounts maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch located at the Ground Floor Pacific Star Building, Sen. Gil Puyat Avenue corner Makati Avenue, Makati City.

6.2.1 Respondents Gustafsson, de Guzman and Quiambao had the duty to issue and draw corporate checks, and effect telegraphic transfers and withdrawals to pay legitimate, legal, valid and demandable obligations of complainant. The payment of illegitimate, illegal, invalid or non-demandable obligations was beyond the scope of their functions.

6.3 From May 2011 to December 2012, respondents Quiambao and Gustafsson "approved" and "authorized" the preparation of payment vouchers for the payment of the tuition and other school fees of respondent Gustafsson's son, Sten Karl William Gustafsson Jon.

6.3.1 Respondents Quiambao and Gustafsson's actions were *ultra-vires* because they cannot approve or authorize the issuance of payment vouchers to pay a personal liability. Respondents Quiambao and Gustafsson acted without the approval, authority and consent of

complainant.

6.3.1.1 The payment of the tuition and other school fees of his son, Sten Karl William Gustafsson Jon, was not part of respondent Gustafsson's *Employment Agreement* dated 25 October 2010,³ Section 3 (c) of which specifically provided:

. . . The compensation and benefits specified in this Agreement shall be in lieu of any and all other compensation and benefits. Payment of all compensation and benefits to Employee hereunder shall be made in accordance with the relevant Company policies in effect from time to time to the extent the same are consistently applied, including normal payroll practices, and shall be subject to all applicable employment and withholding taxes.

No such benefit for the payment of tuition and other school fees of any dependent or child of respondent Gustafsson was provided in the *Employment Agreement*.

6.3.1.2 In the absence of any express stipulation in the *Employment Agreement*, board approval or authorization was necessary. However, there was no such board approval or authorization for the payment of Sten Karl William Gustafsson Jon's tuition and other school fees.

6.3.2 Therefore, the liability to pay the tuition and other school fees of Sten Karl William Gustafsson Jon was not a corporate liability but a personal liability of respondent Gustafsson.

6.4. Since there was no showing that the payment of Sten Karl William Gustafsson Jon's tuition and other school fees was a corporate liability, it was incumbent upon respondent Aldaba to flag, stop or disallow such payment with corporate funds. But respondent Aldaba did not do so, and instead allowed the payment to be effected.

³ A copy of the *Employment Agreement* dated 25 October 2010 is hereto attached and made integral part hereof as **Annex "C."**

6.4.1 Respondent Aldaba's omission or inaction was not approved or authorized by, and was contrary to the instruction of, complainant.

6.5 Respondent Gustafsson, de Guzman and Quiambao issued and drew corporate checks, and effected telegraphic transfers and withdrawals to pay the personal liability of respondent Gustafsson with corporate funds.

6.5.1 The drawing and issuance of the corporate checks, effecting of telegraphic transfers and withdrawals, were *ultra-vires* because respondents cannot effect payment of a personal liability using corporate funds. Respondents Gustafsson, de Guzman and Quiambao acted without the approval, authority and consent of complainant.

6.6 Respondents acted in conspiracy with one another in "approving" and "authorizing" the issuance of payment vouchers, not flagging, stopping or disallowing the payment vouchers, and drawing and issuing corporate checks, and effecting telegraphic transfers and withdrawals. Each individual respondent would not have been able to carry out the theft without the direct participation or indispensable cooperation of the others.

7. The details of the transactions were as follows:

I.

8. Despite the absence of any express benefit in his *Employment Agreement* or corresponding board approval, respondent Gustafsson, on 3 May 2011, ordered the preparation of a payment voucher for the payment of the tuition and other school fees of his son, Sten Karl William Gustafsson Jon.⁴

9. Payment Voucher No. USDPV040511 dated 10 May 2011 in the amount of US\$3,000.00, payable to "International School Manila," and purportedly for "PUR 18245 - William Gustafsson School fee/Matriculation" was prepared.⁵

⁴ A printout of respondent Gustafsson's email dated 3 May 2011 is hereto attached and made integral part hereof as **Annex "D."**

⁵ A copy of Payment Voucher No. USDPV040511 dated 10 May 2011 is hereto attached and made integral part hereof as **Annex "D-1."**

10. Despite the absence of any showing that said expense was a corporate liability, respondents Gustafsson and Quiambao signed *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 11 May 2011 in the amount of US\$3,000.00 in favor of "International School Manila." The funds for the telegraphic transfer were taken from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.⁶

II.

11. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, respondent Quiambao, on 19 July 2011, cleared the preparation of a payment voucher for the payment of the tuition and other school fees of Sten Karl William Gustafsson Jon.⁷

12. Payment Voucher No. USDPV090711 dated 15 July 2011 in the amount of US\$6,320.00, payable to "International School Manila," and purportedly for "PUR 18245 - William Gustafsson tuition fee in USD for 1st Semester" was prepared.⁸

13. Despite the absence of any showing that said expense was a corporate liability, and based on the payment voucher, a wire transfer on 19 July 2011 for US\$6,320.00 was made, the funds for which were taken from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.⁹

III.

14. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, respondent Quiambao "authorized" and respondent Gustafsson "approved" the preparation of Payment Voucher No. BDOPV510711 dated 19 July 2011 in the amount of P162,750.00, payable to "International School Manila," and purportedly for "PUR

⁶ A copy of *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 11 May 2011 is hereto attached and made integral part hereof as **Annex "D-2."**

⁷ A printout of respondent Quiambao's email dated 19 July 2011 is hereto attached and made integral part hereof as **Annex "E."**

⁸ A copy of Payment Voucher No. USDPV090711 dated 15 July 2011 is hereto attached and made integral part hereof as **Annex "E-1."**

⁹ *Supra.*

18245 – William Gustafsson tuition fee in Peso for 1st semester.”¹⁰

15. Despite the absence of any showing that said expense was a corporate liability, and as shown in the payment voucher, a corporate check (BDO Check No. 323865) for the amount of P162,750.00 was drawn on 19 July 2011 from complainant’s PhP Checking Account No. 3560085009 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.¹¹ The corporate check was deposited in Account No. 003073-3730-25 of “International School Manila” maintained with Bank of the Philippine Islands.¹²

IV.

16. Despite the absence of any express benefit in respondent Gustafsson’s *Employment Agreement* or corresponding board approval, respondent Quiambao “authorized” and respondent Gustafsson “approved” the preparation of Payment Voucher No. BDOPV12-18-2011 dated 7 December 2011 in the amount of P162,750.00, payable to “International School Manila,” and purportedly for “PUR 18245 – William Gustafsson tuition fee in Peso for 2nd semester.”¹³

17. Despite the absence of any showing that said expense was a corporate liability, and as shown in the payment voucher, a corporate check (BDO Check No. 381591) was drawn on 7 December 2011 for the amount of P162,750.00 from complainant’s PhP Checking Account No. 3560085009 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.¹⁴ The corporate check was deposited in Account No. 003073-3730-25 maintained with Bank of the Philippine Islands.¹⁵

V.

18. Despite the absence of any express benefit in respondent Gustafsson’s *Employment Agreement* or corresponding board approval, Payment Voucher No. USDPV12-03-2011 dated 8

¹⁰ A copy of Payment Voucher No. BDOPV510711 dated 19 July 2011 is hereto attached and made integral part hereof as **Annex “F.”**

¹¹ *Supra*.

¹² A copy of *BPI Deposit/Payment Receipt* dated 20 July 2011 is hereto attached and made integral part hereof as **Annex “F-1.”**

¹³ A copy of Payment Voucher No. BDOPV12-18-2011 dated 7 December 2011 is hereto attached and made integral part hereof as **Annex “G.”**

¹⁴ *Supra*.

¹⁵ A copy of *BPI Deposit/Payment Receipt* dated 8 December 2011 is hereto attached and made integral part hereof as **Annex “G-1.”**

December 2011 in the amount of US\$5,070.00, payable to "International School Manila," and purportedly for "PUR 18245 - William Gustafsson tuition fee in USD for 2nd semester" was prepared.¹⁶

19. Despite the absence of any showing that said expense was a corporate liability, respondents Gustafsson and Quiambao signed *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 8 December 2011 in the amount of US\$5,070.00 in favor of "International School Manila." The funds for the telegraphic transfer were taken from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.¹⁷

VI.

20. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, Payment Voucher No. USDPV12-07-2011 dated 16 December 2011 in the amount of US\$1,250.00, payable to "International School Manila," and purportedly for "PUR 18245 - William Gustafsson tuition fee in USD for 2nd semester" was prepared.¹⁸

21. Despite the absence of any showing that said expense was a corporate liability, respondents de Guzman and Quiambao signed *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 19 December 2011 in the amount of US\$1,250.00 in favor of "International School Manila." The funds for the telegraphic transfer were taken from complainant's US\$ Savings Account No. 103560117636 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.¹⁹

¹⁶ A copy of Payment Voucher No. USDPV12-03-2011 dated 8 December 2011 is hereto attached and made integral part hereof as **Annex "H."**

¹⁷ A copy of *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 8 December 2011 is hereto attached and made integral part hereof as **Annex "H-1."**

¹⁸ A copy of Payment Voucher No. USDPV12-07-2011 dated 16 December 2011 is hereto attached and made integral part hereof as **Annex "I."**

¹⁹ A copy of *BDO Foreign/ Domestic Telegraphic Transfer Application Form* dated 19 December 2011 is hereto attached and made integral part hereof as **Annex "I-1."**

VII.

22. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, Payment Voucher No. BDOPV07-47-2012 dated 13 July 2012 in the amount of P179,313.00, payable to "International School Manila," and purportedly for "Tuition Fee-William Gustafsson-1st Semester" was prepared.²⁰

23. Despite the absence of any showing that said expense was a corporate liability, respondent Aldaba did not flag, stop or disallow the payment thereof with corporate funds, and thereby allowed the payment to be effected.

24. Despite the absence of any showing that said expense was a corporate liability, and as shown in the payment voucher, a corporate check (BDO Check No. 4710298) for the amount of P179,313.00 was drawn on 13 July 2012 from complainant's PhP Checking Account No. 3560085009 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.²¹ The corporate check was deposited in Account No. 003073-3730-25 maintained with Bank of the Philippine Islands.²²

VIII.

25. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, Payment Voucher No. USDPV07-18-2012 dated 13 July 2012 in the amount of US\$5,500.00, payable to "International School Manila," and purportedly for "Tuition Fee-William Gustafsson-1st Semester" was prepared.²³

26. Despite the absence of any showing that said expense was a corporate liability, respondent Aldaba did not flag, stop or disallow the payment thereof with corporate funds, and thereby allowed the payment to be effected.

27. Despite the absence of any showing that said expense was

²⁰ A copy of Payment Voucher No. BDOPV07-47-2012 dated 13 July 2012 is hereto attached and made integral part hereof as **Annex "J."**

²¹ *Supra*.

²² A copy of *BPI Deposit/Payment Receipt* dated 13 July 2012 is hereto attached and made integral part hereof as **Annex "J-1."**

²³ A copy of Payment Voucher No. USDPV07-18-2012 dated 13 July 2012 is hereto attached and made integral part hereof as **Annex "K."**

a corporate liability, respondents de Guzman and Quiambao signed BDO Foreign/ Domestic Telegraphic Transfer Application Form dated 13 July 2012 in the amount of US\$5,500.00 in favor of "International School Manila." The funds for the telegraphic transfer were taken from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.²⁴

IX.

28. Despite the absence of any express benefit in respondent Gustafsson's *Employment Agreement* or corresponding board approval, Payment Voucher No. USDPV07-31-2012 dated 23 July 2012 in the amount of US\$50.00, payable to "International School Manila," and purportedly for "Tuition Fee-William Gustafsson-1st Semester" was prepared.²⁵

29. Despite the absence of any showing that said expense was a corporate liability, respondent Aldaba did not flag, stop or disallow the payment thereof with corporate funds, and thereby allowed the payment to be effected.

30. Despite the absence of any showing that said expense was a corporate liability, and based on the payment voucher, the amount of US\$50.00 was withdrawn on 23 July 2012 from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.²⁶

X.

31. Despite the absence of any express benefit in his *Employment Agreement* or corresponding board approval, respondent Gustafsson "authorized" the preparation of Payment Voucher No. BDOPV12-12-2012 dated 5 December 2012 in the amount of P178,750.00, payable to "Jasmin Singh," and purportedly for "Tuition Fee-William Gustafsson-2nd Semester."²⁷

²⁴ A copy of BDO Foreign/ Domestic Telegraphic Transfer Application Form dated 13 July 2012 is hereto attached and made integral part hereof as **Annex "K-1."**

²⁵ A copy of Payment Voucher No. USDPV07-31-2012 dated 23 July 2012 is hereto attached and made integral part hereof as **Annex "L."**

²⁶ *Supra.*

²⁷ A copy of Payment Voucher No. BDOPV12-12-2012 dated 5 December 2012 is hereto attached and made integral part hereof as **Annex "M."**

32. Despite the absence of any showing that said expense was a corporate liability, respondent Aldaba did not flag, stop or disallow the payment thereof with corporate funds, and thereby allowed the payment to be effected.

33. Despite the absence of any showing that said expense was a corporate liability, and as shown in the payment voucher, a corporate check (BDO Check No. 527837) for the amount of P178,750.00 was drawn on 5 December 2012 from complainant's Php Checking Account No. 3560085009 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.²⁸

XI.

34. Despite the absence of any express benefit in his *Employment Agreement* or corresponding board approval, respondent Gustafsson "authorized" the preparation of Payment Voucher No. BDOPV12-03-2012 dated 6 December 2012 in the amount of US\$5,550.00, payable to "International School Manila," and purportedly for "Tuition Fee-William Gustafsson-2nd Semester."²⁹

35. Despite the absence of any showing that said expense was a corporate liability, respondent Aldaba did not flag, stop or disallow the payment thereof with corporate funds, and thereby allowed the payment to be effected.

36. Despite the absence of any showing that said expense was a corporate liability, and as shown in the payment voucher, the amount of US\$5,550.00 was withdrawn on 6 December 2012 from complainant's US\$ Savings Account No. 3560083375 maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch.³⁰

37. I was advised by my counsel that respondents are guilty of Qualified Theft under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code.

37.1 Article 308 of the Revised Penal Code provides:

Art. 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence

²⁸ *Supra*.

²⁹ A copy of Payment Voucher No. BDOPV12-03-2012 dated 6 December 2012 is hereto attached and made integral part hereof as **Annex "N."**

³⁰ *Supra*.

against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

37.2 Article 309 of the Revised Penal Code provides:

Art. 309. Penalties. - Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the property stolen is more than 6,000 pesos but does not exceed 12,000 pesos.
3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.
4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.
5. *Arresto mayor* in its full extent, if such value is over 5 pesos but does not exceed 50 pesos.
6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed five pesos.
7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of

the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

37.3 Article 310 of the Revised Penal Code provides:

Art. 310. Qualified theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

38. All of the essential elements of the offense of Theft under Article 308 of the Revised Penal Code were present in the instant case, to wit:

- i) there was taking of personal property - the amounts totaling US\$26,740.00 and P683,563.00 were taken, through issuance and drawing of corporate checks, telegraphic transfers and withdrawals, from complainant's bank account in Makati City, within the territorial jurisdiction of this Honorable Office, to pay a personal liability;
- ii) the property belonged to another - the funds taken belonged complainant, not respondents;
- iii) the taking was done with intent to gain - which is presumed from the unlawful taking of personal property belonging to another, and, in fact, the funds have not been returned to complainant;
- iv) the taking was done without the consent of the owner - the funds were taken without the requisite corporate approval, authority or instruction, and in the absence of any legitimate purpose; and

- v) the taking was accomplished without the use of violence against or intimidation of persons or force upon things.³¹

39. The theft herein was qualified under Article 310 of the Revised Penal Code by the circumstance that it was committed with grave abuse of confidence. Respondents, who formerly occupied high-ranking positions and acted as authorized signatories of complainant, gravely abused the trust and confidence reposed in them, and violated their fiduciary duties when they colluded in causing and making the unauthorized, illegitimate and illegal drawing from, transfer and withdrawal of corporate funds to pay a personal liability.

40. I am executing this *Complaint-Affidavit* to attest to the truth of the foregoing and to support complainant's criminal complaint against respondents for Qualified Theft under Article 310 of the Revised Penal Code.

41. Complainant has not commenced any other action or proceeding involving the same criminal liability or issue in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.

42. To the best of my knowledge, no other action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.


43. If I should thereafter learn that a similar action or proceeding has been filed or is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency, I undertake to report such fact within five (5) days therefrom to this Honorable Office.



³¹ Reyes, Luis B. *The Revised Penal Code Criminal Law*. 2012 Eighteenth Revised Edition. Book Two, p. 732; citing *U.S. vs. de Vera*, 43 Phil. 1000 and *People vs. Yusay*, 50 Phil. 598.

CERTIFICATION

SUBSCRIBED AND SWORN TO before me this
20 NOV 2013. I hereby certify that I have personally examined
the affiant, and that I am satisfied that the foregoing *Complaint-*
Affidavit was freely and voluntarily executed by him.


Wilhelmina D. Pineda Go
Assistant City Prosecutor
ASSISTANT CITY PROSECUTOR