

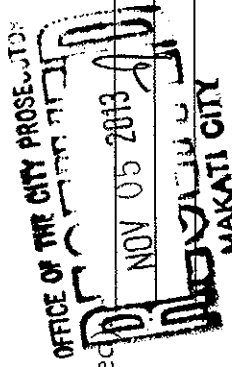
Republic of the Philippines
Department of Justice
National Prosecution Service
OFFICE OF THE CITY PROSECUTOR
Makati City

INVESTIGATION DATA FORM

To be accomplished by the Office

DATE RECEIVED:

(stamped and initialed)
Time Received
Receiving Staff



NPS DOCKET NO:

13 R 4122

Assigned to: _____
Date Assigned: _____

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

COMPLAINANT/S: Name, Sex, Age & Address
[REDACTED] represented by
25th Floor, Yuchengco Tower 1, RCBC Plaza,
6819 Ayala Avenue, Makati City

RESPONDENT/S: Name, Sex, Age & Address
JAN ROBERT GUSTAFSSON
Swedish
25A Amoroso East Tower, Rockwell Center,
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

LAW/S VIOLATED:

ESTABA under Article 315 (2) (a) or Qualified Theft
under Article 310 of the Revised Penal Code

DATE & TIME OF COMMISSION:

March - December 2012

PLACE OF COMMISSION:

MAKATI CITY

WITNESS/ES: Name & Address

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]
(Signature over printed name)

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

[REDACTED]

Complainant,

- versus -

NPS Docket No. _____

For: Estafa under Article 315 (2) (a) or
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, [REDACTED] 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 Estafa under Article 315 (2) (a) or 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 [REDACTED], which conducted a forensic audit on [REDACTED] complainant. I was duly authorized by complainant's Board of


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

Directors to institute the instant criminal complaint and to represent 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 Amoroso East Tower, Rockwell Center, 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  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 audit team found, based on the records, that:

6.1 Respondents Gustafsson and Quiambao used to be complainant's Managing Director and Finance Manager, respectively.

² A copy of the *Secretary's Certificate* dated 4 November 2013 is hereto attached and made integral part hereof as **Annex "B."**

6.2 Respondents Gustafsson and Aldaba had duties to authorize the issuance of payment vouchers to pay legitimate, legal, valid and demandable obligations of complainant. The authorization of illegitimate, illegal, invalid or non-demandable obligations were beyond the scope of their functions.

6.3 Respondents Gustafsson, de Guzman and Quiambao were joint signatories in complainant's Checking Account No. 003568015497 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.

6.4 As a perk, respondent Gustafsson was issued a corporate credit card, *i.e.*, BDO Gold Master Card No. 5312-2801-0004-4205.

6.5 Respondent Gustafsson charged various expenses to the corporate credit card issued to him.

6.6 BDO billed complainant for the expenses charged by respondent Gustafsson to the corporate credit card.

6.7 Complainant paid the charges made by respondent Gustafsson to the corporate credit card.

6.8 Notwithstanding such payment by complainant of said charges by respondent Gustafsson, respondent Gustafsson presented to complainant the invoices representing the same expenses earlier charged to the corporate credit card and already paid by complainant. Respondent Gustafsson presented the invoices to claim reimbursement therefor.

6.9 In doing so, respondent Gustafsson falsely represented to complainant that he was entitled to such reimbursement from complainant despite the fact that respondent Gustafsson did not advance the payment therefor and complainant already paid the same.

6.10 Respondents Gustafsson and Aldaba "authorized" the preparation of payment vouchers for various reimbursements in favor of respondent Gustafsson.

6.11 Respondents Gustafsson and Aldaba's action was *ultra-vires* because the authorization of illegitimate, illegal, invalid or non-demandable obligations was beyond the scope of their functions. Respondents thus acted without the approval, authority and consent of complainant.

6.12 Relying on respondent Gustafsson and Aldaba's false representations that the former was entitled to reimbursements, complainant issued corporate checks in favor of respondent Gustafsson even though complainant had no such liability to reimburse him.

6.13 The corporate checks issued in favor of respondent Gustafsson were signed by any two of respondents Gustafsson, De Guzman and Quiambao.

6.14 The drawing and issuance of the corporate checks were also *ultra-vires* as the supposed obligation of complainant to reimburse respondent Gustafsson was non-existent and a sham.

6.15 Respondents acted in conspiracy with one another in "authorizing" the issuance of payment vouchers, and in drawing and issuing corporate checks as co-signatories. Each individual respondent would not have been able to carry out the fraud or theft without the direct participation or indispensable cooperation of the others.

7. The details of the transactions were as follows:

I.

8. On 15 March 2012, respondent Gustafsson charged a P7,896.25 expense at Peoples Palace to the corporate credit card.³

³ A copy of the invoice is hereto attached and made integral part hereof

9. BDO billed said expense in the 28 March 2012 monthly billing statement of the corporate credit card.⁴

10. Complainant paid said expense charged to the corporate credit card.⁵

11. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement but the amount he actually claimed was P7,500.00.

12. Payment Voucher No. BDOPV03-117-2012 dated 27 March 2012 for various reimbursements in favor of respondent Gustafsson, including said expense, was prepared.⁶

13. Respondents de Guzman and Quiambao drew and issued Check No. 0425403 dated 27 March 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.⁷

14. Respondent Gustafsson caused the check to be deposited and credited on 29 March 2012 at BDO Pacific Star, Makati Branch.⁸

II.

15. On 14 June 2012, respondent Gustafsson charged a P26,486.20 expense at Maseto to the corporate credit card.⁹

16. BDO billed said expense in the 28 June 2012 monthly

as **Annex "C."**

4 A copy of the billing statement is hereto attached and made integral part hereof as **Annex "C-1."**

5 A copy of the payment slip is hereto attached and made integral part hereof as **Annex "C-2."**

6 A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "C-3."**

7 A copy of the check is hereto attached and made integral part hereof as **Annex "C-4."**

8 *Supra.*

9 A copy of the invoice is hereto attached and made integral part hereof as **Annex "D."**

billing statement of the corporate credit card.¹⁰

17. Complainant paid said expense charged to the corporate credit card.¹¹

18. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

19. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV11-82-2012 dated 21 November 2012 for various reimbursements in his favor, including said expense.¹²

20. Respondents Gustafsson and Quiambao drew and issued Check No. 0527739 dated 21 November 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.¹³

21. Respondent Gustafsson caused the check to be encashed on 21 November 2012 at BDO Pacific Star, Makati Branch.¹⁴

III.

22. On 10 July 2012, respondent Gustafsson charged a GBP600.75 or P39,863.44 expense at Piccolino, London to the corporate credit card.¹⁵

23. BDO billed said expense in the 29 July 2012 monthly billing statement of the corporate credit card.¹⁶

¹⁰ A copy of the billing statement is hereto attached and made integral part hereof as **Annex "D-1."**

¹¹ A copy of the payment slip is hereto attached and made integral part hereof as **Annex "D-2."**

¹² A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "D-3."**

¹³ A copy of the check is hereto attached and made integral part hereof as **Annex "D-4."**

¹⁴ *Supra.*

¹⁵ A copy of the invoice is hereto attached and made integral part hereof as **Annex "E."**

¹⁶ A copy of the billing statement is hereto attached and made integral part hereof as **Annex "E-1."**

24. Complainant paid said expense charged to the corporate credit card.¹⁷

25. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement but the amount he actually claimed was P40,220.20.

26. Respondents Gustafsson and Aldaba signed and authorized Payment Voucher No. BDOPV10-41-2012 dated 11 October 2012 for various reimbursements in favor of respondent Gustafsson, including said expense.¹⁸

27. Respondents Gustafsson and Quiambao drew and issued Check No. 0527438 dated 11 October 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.¹⁹

28. Respondent Gustafsson caused the check to be encashed on 12 October 2012 at BDO Pacific Star, Makati Branch.²⁰

IV.

29. On 24 September 2012, respondent Gustafsson charged a P51,874.40 expense at Masseto to the corporate credit card.²¹

30. BDO billed said expense in the 27 September 2012 monthly billing statement of the corporate credit card.²²

31. Complainant paid said expense charged to the corporate

¹⁷ A copy of the payment slip is hereto attached and made integral part hereof as **Annex "E-2."**

¹⁸ A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "E-3."**

¹⁹ A copy of the check is hereto attached and made integral part hereof as **Annex "E-4."**

²⁰ *Supra.*

²¹ A copy of the invoice is hereto attached and made integral part hereof as **Annex "F."**

²² A copy of the billing statement is hereto attached and made integral part hereof as **Annex "F-1."**

credit card.²³

32. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

33. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV11-82-2012 dated 21 November 2012 for various reimbursements in his favor, including said expense.²⁴

34. Respondents Gustafsson and Quiambao drew and issued Check No. 0527739 dated 21 November 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.²⁵

35. Respondent Gustafsson caused the check to be encashed on 21 November 2012 at BDO Pacific Star, Makati Branch.²⁶

V.

36. On 22 August 2012, respondent Gustafsson charged a P3,989.40 expense at Masseto to the corporate credit card.²⁷

37. BDO billed said expense in the 28 August 2012 monthly billing statement of the corporate credit card.²⁸

38. Complainant paid said expense charged to the corporate credit card.²⁹

39. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

²³ A copy of the payment slip is hereto attached and made integral part hereof as **Annex "F-2."**

²⁴ *Supra.*

²⁵ *Supra.*

²⁶ *Supra.*

²⁷ A copy of the invoice is hereto attached and made integral part hereof as **Annex "G."**

²⁸ A copy of the billing statement is hereto attached and made integral part hereof as **Annex "G-1."**

²⁹ A copy of the payment slip is hereto attached and made integral part hereof as **Annex "G-2."**

40. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV11-82-2012 dated 21 November 2012 for various reimbursements in his favor, including said expense.³⁰

41. Respondents Gustafsson and Quiambao drew and issued Check No. 0527739 dated 21 November 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.³¹

42. Respondent Gustafsson caused the check to be encashed on 21 November 2012 at BDO Pacific Star, Makati Branch.³²

VI.

43. On 16 October 2012, respondent Gustafsson charged a P7,461.71 expense at Kashmir Specialty Cuts to the corporate credit card.³³

44. BDO billed said expense in the 28 October 2012 monthly billing statement of the corporate credit card.³⁴

45. Complainant paid said expense charged to the corporate credit card.³⁵

46. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

47. Payment Voucher No. BDOPV01-161-2013 dated 31 January 2013 for various reimbursements in favor of respondent Gustafsson, including said expense, was prepared.³⁶

³⁰ *Supra.*

³¹ *Supra.*

³² *Supra.*

³³ A copy of the invoice is hereto attached and made integral part hereof as **Annex "H."**

³⁴ A copy of the billing statement is hereto attached and made integral part hereof as **Annex "H-1."**

³⁵ A copy of the payment slip is hereto attached and made integral part hereof as **Annex "H-2."**

³⁶ A copy of the payment voucher is hereto attached and made integral

48. Respondents Gustafsson and de Guzman drew and issued Check No. 0587406 dated 24 January 2013 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.³⁷

49. Respondent Gustafsson caused the check to be encashed on 28 January 2013 at BDO Pacific Star, Makati Branch.³⁸

VII.

50. On 18 October 2012, respondent Gustafsson charged a P1,256.60 expense at Masseto to the corporate credit card.³⁹

51. BDO billed said expense in the 28 October 2012 monthly billing statement of the corporate credit card.⁴⁰

52. Complainant paid said expense charged to the corporate credit card.⁴¹

53. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

54. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV11-82-2012 dated 21 November 2012 for various reimbursements in his favor, including said expense.⁴²

55. Respondents Gustafsson and Quiambao drew and issued Check No. 0527739 dated 21 November 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.⁴³

part hereof as **Annex "H-3."**

³⁷ A copy of the check is hereto attached and made integral part hereof as **Annex "H-4."**

³⁸ *Supra.*

³⁹ A copy of the invoice is hereto attached and made integral part hereof as **Annex "I."**

⁴⁰ *Supra.*

⁴¹ *Supra.*

⁴² *Supra.*

⁴³ *Supra.*

56. Respondent Gustafsson caused the check to be encashed on 21 November 2012 at BDO Pacific Star, Makati Branch.⁴⁴

VIII.

57. On 22 October 2012, respondent Gustafsson charged a P3,050.00 expense at Masetto to the corporate credit card.⁴⁵

58. BDO billed said expense in the 28 October 2012 monthly billing statement of the corporate credit card.⁴⁶

59. Complainant paid said expense charged to the corporate credit card.⁴⁷

60. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

61. Respondent Gustafsson signed and authorized Payment Voucher No. 601-3087 dated 6 March 2013 for various reimbursements in his favor, including said expense.⁴⁸

62. Respondents Gustafsson and de Guzman drew and issued Check No. 0587680 dated 8 March 2013 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.⁴⁹

63. Respondent Gustafsson caused the check to be encashed on 8 March 2013 at BDO Pacific Star, Makati Branch.⁵⁰

IX.

64. On 6 November 2012, respondent Gustafsson charged a

⁴⁴ *Supra*.

⁴⁵ A copy of the invoice is hereto attached and made integral part hereof as **Annex "J."**

⁴⁶ *Supra*.

⁴⁷ *Supra*.

⁴⁸ A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "J-1."**

⁴⁹ A copy of the check is hereto attached and made integral part hereof as **Annex "J-2."**

⁵⁰ *Supra*.

P7,073.00 expense at Savoy Bistro to the corporate credit card.⁵¹

65. BDO billed said expense in the 28 November 2012 monthly billing statement of the corporate credit card.⁵²

66. Complainant paid said expense charged to the corporate credit card.⁵³

67. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

68. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV12-50-2012 dated 12 December 2012 for various reimbursements in his favor, including said expense.⁵⁴

69. Respondents Gustafsson and de Guzman drew and issued Check No. 0527864 dated 12 December 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.⁵⁵

70. Respondent Gustafsson caused the check to be encashed on 14 December 2012 at BDO Pacific Star, Makati Branch.⁵⁶

X.

71. On 27 November 2012, respondent Gustafsson charged a HK\$5,297.60 or P28,859.25 expense at W Hong Kong to the corporate credit card.⁵⁷

⁵¹ A copy of the invoice is hereto attached and made integral part hereof as **Annex "K."**

⁵² A copy of the billing statement is hereto attached and made integral part hereof as **Annex "K-1."**

⁵³ A copy of the payment slip is hereto attached and made integral part hereof **Annex "K-2."**

⁵⁴ A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "K-3."**

⁵⁵ A copy of the check is hereto attached and made integral part hereof as **Annex "K-4."**

⁵⁶ *Supra.*

⁵⁷ A copy of the invoice is hereto attached and made integral part hereof as **Annex "L."**

72. BDO billed said expense in the 28 November 2012 monthly billing statement of the corporate credit card.⁵⁸

73. Complainant paid said expense charged to the corporate credit card.⁵⁹

74. Respondent Gustafsson presented the invoice representing said expense to complainant for reimbursement.

75. Respondent Gustafsson signed and authorized Payment Voucher No. BDOPV12-50-2012 dated 12 December 2012 for various reimbursements in his favor, including said expense.⁶⁰

76. Respondents Gustafsson and de Guzman drew and issued Check No. 0527864 dated 12 December 2012 in favor of respondent Gustafsson from complainant's corporate checking account with BDO Pacific Star, Makati Branch.⁶¹

77. Respondent Gustafsson caused the check to be encashed on 14 December 2012 at BDO Pacific Star, Makati Branch.⁶²

78. I was advised by my counsel that respondents may be indicted for Estafa under Article 315 (2) (a) of the Revised Penal Code, which provides in part:

ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

[P]rovided that in the four cases mentioned, the fraud be committed by any of the following means:

xxx xxx xxx

(2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending

58 *Supra.*

59 *Supra.*

60 *Supra.*

61 *Supra.*

62 *Supra.*

to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions;

xxx

xxx

xxx

79. All of the essential elements of the foregoing offense were present, to wit:

i) there must be false pretense, fraudulent act or fraudulent means - respondents falsely represented to complainant, by submitting invoices and through other false pretexts, that they were entitled to various reimbursements when, in truth and in fact, they were not;

ii) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud - respondents submitted the invoices and made other false pretexts prior to the issuance of the payment vouchers, and the drawing, issuance and encashment of the corporate checks;

iii) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he must have been induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means - complainant relied on the invoices submitted by respondents and other false pretexts, and, without them, complainant would not have issued payment vouchers, and drawn and issued corporate checks to respondents; and

iv) as a result thereof, the offended party suffered damage - complainant drew and issued corporate checks worth P177,770.76 to respondents, and respondents were able to encash them, even in the absence of any legal and valid obligation to do so, to complainant's damage and prejudice; and

v) the drawing, issuance and encashment of the corporate checks were performed in Makati City,

within the territorial jurisdiction of this Honorable Office.⁶³

80. I was advised by my counsel that respondents may also be indicted for Qualified Theft under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code.

80.1 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 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.

80.2 Article 309 of the Revised Penal Code provides:

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

1. The penalty of *prison 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 *prison mayor* or *reclusion*.

⁶³ *Uy vs. People*, 564 SCRA 542, 558-559 (2008).

temporal, as the case may be.

2. The penalty of *prison 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 *prison 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 *prison 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.

80.3 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.

81. 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 amount of P177,770.76 was deducted from complainant's corporate checking account in Makati City, within the territorial jurisdiction of this Honorable Office, and credited to respondents to pay a non-existent and bogus obligation;
- ii) the property belonged to another – the funds deducted belonged to 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 money has not been returned to complainant;
- iv) the taking was done without the consent of the owner – the “authorization” of the issuance of the payment vouchers, and the drawing and issuance of the corporate checks were *ultra-vires*, and beyond the functions of respondents as corporate officers and signatories; thus, these acts were performed by respondents without the approval, authority and consent of complainant; and
- v) the taking was accomplished without the use of violence against or intimidation of persons or force upon things.⁶⁴

82. 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 processing a reimbursement for, issuing payment vouchers, and drawing and issuing corporate checks to pay, non-existent and bogus

⁶⁴ 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.

obligations.

83. I am executing this *Complaint-Affidavit* to attest to the truth of the foregoing and to support complainant's criminal complaint against respondent for Estafa under Article 315 (2) (a) and Qualified Theft under Article 310 of the Revised Penal Code.

84. 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.

85. 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.

86. 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.



CERTIFICATION

SUBSCRIBED AND SWORN TO before me this
NOV 05 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.

CELESTINO R. ALCALA
Assistant City Prosecutor
ASSISTANT ~~CITY~~ PROSECUTOR