

**COPY FOR CLIENT**  
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

OFFICE OF THE CITY PROSECUTOR

JAN 30 2014

MAKATI CITY

NPS DOCKET NO.:

XV-05-INV-

14A0270

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]

**RESPONDENT/S: Name, Sex, Age & Address**

PATRIK SELIN, IAN ROBERT GUSTAFSSON,  
SYLVIA BERNADETTE GONZALES DE  
GUZMAN, SHERWIN QUIAMBAO, JASMIN  
SINGH, ANTHONY ARCILLA, ROSEMARIE  
FEGUEROA FRIALDE, MARIANO MONTERAS,  
MARY JANE DE GUZMAN, et al.

**LAW/S VIOLATED:**

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

**WITNESS/ES: Name & Address**

[REDACTED]

**DATE & TIME OF COMMISSION:**

April 2013

**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]

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in \_\_\_\_\_

EDNA J. CONDE  
Prosecutor  
Makati City

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

**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 postal address at the 25<sup>th</sup> Floor, **Yachengco Tower 1**, RCBC Plaza, 6819 Ayala Avenue, Makati City.<sup>1</sup>

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

NAME	NATIONALITY	LAST KNOWN ADDRESS
Patrik Selin	Swedish	c/o 25A Amorsolo East Tower, Rockwell Center, Makati City
Jan Robert Gustafsson	Swedish	14C Luna Gardens, 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	321 L Joya Lofts and Towers, Rockwell Center, Makati City
Jasmin Singh	Filipino	14 Dama de Noche Street, De Castro Subdivision, Ortigas Avenue Extension, Pasig City
Anthony Arcilla	Filipino	14 Dama de Noche Street, De Castro Subdivision, Ortigas Avenue Extension, Pasig City
Rosemarie Fegueroa Frialde	Filipino	7766 JB Roxas Street, Brgy. Olympia, Makati City

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

<b>Mariano Monteras</b>	Filipino	7766 JB Roxas Street, Brgy. Olympia, Makati City
<b>Mary Jane Buenafe de Guzman</b>	Filipino	Block 8, Lot 3, Elizabeth Serrano Street, BF Resort Village, Las Piñas City
<b>Edwin Rejano Erpe</b>	Filipino	422 Plaridel Street, San Roque, Cavite City
<b>Maria Arleen Aldaba</b>	Filipino	11 Sampaloc Place, Ayala West Grove Height, Silang, Cavite

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

4. I am the President of complainant. As such, I have complete access to its records, including those pertaining to its properties.

5. I am also the President and Chief Financial Officer of the Asset Management Group, which conducted a forensic audit on complainant. As such and in the course of a forensic audit on complainant, I reviewed all the pertinent records of certain suspicious and irregular transactions, including the transaction complained of herein, as well as conducted interviews.

6. I was duly authorized by complainant's Board of Directors to institute the instant criminal complaint and to represent complainant herein.<sup>2</sup>

7. The following were culled from the records:

8. From January 2013 to March 2013, respondent Sylvia Bernadette de Guzman repeatedly instructed [REDACTED] the former bookkeeper and the Corporate Secretary of complainant, to prepare the necessary disbursement documents (*i.e.*, check voucher

<sup>2</sup> A copy of the *Secretary's Certificate* dated 29 January 2014 is hereto attached and made integral part hereof as **Annex "B."**

<sup>3</sup> A copy of the *Affidavit* dated 29 January 2014 of Victoria Tavera is hereto attached and made integral part hereof as **Annex "C."**

and check) for the payment of the importation duties for the following vehicles:

1 used 2012 R12JT9EAW Polaris  
VIN No. 4XAJT9EA8CB590627  
(all-terrain vehicle)

1 used 2008 Yamaha FX 1800 SNO Cruiser Supercharged  
VIN US-YAMA3288A808  
(jet ski)

1 Yamaha Cover for 2008 WV FX Sno.<sup>4</sup>

9. Respondent Sylvia Bernadette de Guzman represented to [REDACTED] that certain papers, permits or clearances were still being processed, which were holding back the release of the imported vehicles. Nevertheless, respondent Sylvia Bernadette de Guzman wanted and instructed [REDACTED] to immediately prepare the check voucher covering the payment for the importation duties, which had not yet fallen due. Respondent Sylvia Bernadette de Guzman wanted the money immediately released to her allegedly for safekeeping and to facilitate the payment of the importation duties once they fall due.

10. As instructed, on 15 January 2913, [REDACTED] prepared a check voucher<sup>5</sup> in the amount Nine Hundred Thousand Pesos (P900,000.00) for the payment of the estimated importation duties for said vehicles.

11. On 12 April 2013, and about thirty days when the importation duties were expected to fall due in May 2013, Ms. [REDACTED] brought the check voucher to the 25<sup>th</sup> Floor, Yuchengco Tower 1, RCBC Plaza, 6819 Ayala Avenue, Makati City, where respondent Maria Arleen Aldaba held office. [REDACTED] presented the check voucher to respondent Maria Arleen Aldaba, who was complainant's Chief Financial Officer.

12. As Chief Financial Officer, respondent Maria Arleen Aldaba was duty-bound to review, check and clear the payment,

<sup>4</sup> Copies of the bill of lading and packing list are hereto attached and made integral part hereof as **Annex "D"** and **Annex "E,"** respectively.

<sup>5</sup> A copy of *Check Voucher No. 04-002* dated 15 January 2013 is hereto attached and made integral part hereof as **Annex "F."**

including making the necessary inquiries, discussions and coordination with respondent Sylvia Bernadette de Guzman (who was the payee under the check voucher), as well as giving the go-signal to or coordinating with respondent Sherwin Quiambao (who at that time was the sole signatory of complainant) to sign the corresponding check.

13. Respondent Maria Arleen Aldaba approved the check voucher by affixing her signature thereon in the presence of Ms. Victoria Tavera.

14. Later that day, 12 April 2013, [REDACTED] presented the check voucher to respondent Sherwin Quiambao at the 22<sup>nd</sup> Floor, Enterprise Center Tower 2, 6766 Ayala Avenue corner Paseo de Roxas Avenue, Makati City, where respondent Sherwin Quiambao held office. Respondent Sherwin Quiambao, who was the sole signatory of complainant, instructed Ms. Victoria Tavera to prepare the corresponding check by filling-in the necessary details.

15. As instructed, [REDACTED] prepared the corresponding check<sup>6</sup> in the amount of Nine Hundred Thousand Pesos (P900,000.00) drawn from complainant's Account No. 003568015543 maintained with BDO Unibank, Inc., Pacific Star, Makati City Branch. Respondent Sherwin Quiambao signed the check in the presence of [REDACTED]

16. As previously instructed by respondent Sylvia Bernadette de Guzman, [REDACTED] deposited the check on the same day, 12 April 2013, in the personal account of respondent Sylvia Bernadette de Guzman under Account No. 3938000648 maintained with BDO Unibank, Inc., Pacific Star, Makati City Branch, as borne by the machine validation on the lower front portion of the check.

17. Respondent Sylvia Bernadette de Guzman was obliged to account every month for the funds that she held in trust without further notice or demand.

18. Sometime in May 2013, respondent Sylvia Bernadette de Guzman told [REDACTED] that she had not yet paid the importation duties for said vehicles, and thus respondent Sylvia

<sup>6</sup> A copy of Check No. 0152343 dated 12 April 2013 is hereto attached and made integral part hereof as **Annex "G."**

**Bernadette de Guzman** would not yet be able to liquidate the **P900,000.00** that she held in trust for complainant.

19. About two more months passed but respondent Sylvia **Bernadette** still failed to liquidate the **P900,000.00** or present proof that the importation duties had been paid.

20. Sometime in the early part of July 2013, respondent Sylvia **Bernadette de Guzman** admitted to [REDACTED] that she pocketed the **P900,000.00** for herself. Respondent Sylvia **Bernadette de Guzman** further instructed Ms. Victoria Tavera not to show the disbursement documents to complainant to erase any paper trail of the amount.

21. Ms. Victoria Tavera's consultancy contract as bookkeeper was terminated on 31 July 2013. However, she was retained as Corporate Secretary of complainant. During her turnover, Ms. [REDACTED] submitted the summary of the expenses to me as complainant's President. It was through this summary that I first got wind of the illegal taking or misappropriation of the **P900,000.00** involved herein.

22. In August and September 2013, respondent Sylvia **Bernadette de Guzman** continued to exchange text messages with [REDACTED]. In one exchange, [REDACTED] asked respondent Sylvia **Bernadette de Guzman** about the **P900,000.00** that the latter pocketed. Respondent Sylvia **Bernadette de Guzman** replied to [REDACTED] to let complainant's auditors find the missing amount if they can. In jest, [REDACTED] asked for a share. Respondent Sylvia **Bernadette de Guzman** said yes.

23. The theft herein was committed in the course of a criminal conspiracy perpetrated by a cabal made up of respondents.

24. A forensic audit revealed that respondents Jan Robert Gustafsson, Sylvia **Bernadette de Guzman**, Sherwin Quiambao and Maria Arleen Aldaba, *inter alia* acted in concert in stealing various amounts from complainant and its related companies while they were still connected thereat. Various cases for estafa and/or qualified theft have been filed against these individuals, to wit:

NPS Docket No. 13J4055

██████████ vs. Jan Robert Gustafsson, Sylvia Bernadette  
Gonzales de Guzman and Sherwin Quiambao"

(ACP Danilo Emelo, Office of the City Prosecutor, Makati)

NPS Docket No. 13K4122

██████████ vs. Jan Robert Gustafsson, Sylvia Bernadette  
Gonzales de Guzman, Sherwin Quiambao and Maria Arleen  
Aldaba"

(ACP Analie O. Brual, Office of the City Prosecutor, Makati)

NPS Docket No. 13K4279

██████████ vs. Jan Robert Gustafsson, Sylvia Bernadette  
Gonzales de Guzman, Sherwin Quiambao and Maria Arleen  
Aldaba"

(ACP Amador Y. Pineda, Office of the City Prosecutor,  
Makati)

NPS Docket No. 13K4280

██████████ vs. Jan Robert Gustafsson, Sylvia Bernadette  
Gonzales de Guzman, Sherwin Quiambao and Maria Arleen  
Aldaba"

(ACP Amador Y. Pineda, Office of the City Prosecutor,  
Makati)

NPS Docket No. 13K4281

██████████ vs. Jan Robert Gustafsson, Sylvia Bernadette  
Gonzales de Guzman, Sherwin Quiambao and Maria Arleen  
Aldaba"

(ACP Amador Y. Pineda, Office of the City Prosecutor,  
Makati)

25. Within months during the middle part of 2013, all of the above-named respondents resigned, or were removed or separated from complainant and its related companies for various reasons. Respondents were not happy about it and harbored ill will against these companies. Respondents banded together to get back at these companies by committing various illegal acts like planting drugs, making unauthorized withdrawals from corporate bank accounts, making baseless claims on nominal shares that they knew full well were not theirs, and fabricating and filing baseless suits.

26. The illicit plans and deeds of respondents were admitted, disclosed and revealed, among other things, when they tried but failed to recruit certain individuals to join their gang, to whom respondents disclosed the conspiracy, the members thereof, and their

nefarious plans and deeds.

26.1 Starting in the middle of 2013, respondent Sylvia Bernadette de Guzman frequently called [REDACTED]<sup>7</sup>. Among other things, the former told the latter about her plan to plant drugs and stage an entrapment.

26.2 Sometime in August 2013, respondent Sylvia Bernadette de Guzman called [REDACTED]<sup>8</sup> encouraging the latter to join the former's group. Respondent Sylvia Bernadette de Guzman told [REDACTED] that all of those who resigned, or were removed or separated have banded together to get back at the companies. A few days later, respondent Jasmin Singh called [REDACTED]. With the help of another confederate (who is a politician's associate and who then posed as a lawyer), respondent Jasmin Singh disclosed to [REDACTED] the cases, albeit all fabricated and baseless, which they will file in order for them to exact revenge.

26.3 On 28 August 2013, [REDACTED] was invited by respondents Sylvia Bernadette de Guzman and Jasmin Singh to a meeting at Zuellig Building, Makati City. Respondents Sylvia Bernadette de Guzman, Jasmin Singh and Jan Robert Gustafsson, among others, were present during the meeting. Said respondents encouraged [REDACTED] to join their group and discussed their plans, including falsely claiming ownership over certain nominal shares in their names and filing bogus cases to take these shares. Later that day, respondents Sylvia Bernadette de Guzman and Jasmin Singh took [REDACTED] to another meeting, this time respondents Mary Jane de Guzman, Edwin Erpe and Anthony Arcilla joined the meeting. Said respondents again persuaded [REDACTED] to join them. Respondent Anthony Arcilla discussed how he planned to plant drugs.

<sup>7</sup> A copy of the *Affidavit* dated 6 November 2013 of Nonnato Lopez is hereto attached and made integral part hereof as **Annex "H."**

<sup>8</sup> A copy of the *Affidavit* dated 16 January 2014 of Victoria Tavera is hereto attached and made integral part hereof as **Annex "I."**

<sup>9</sup> A copy of the *Affidavit* dated 31 October 2013 of Katherine Antonio is hereto attached and made integral part hereof as **Annex "J."**



26.4 [REDACTED]<sup>10</sup> was bribed and threatened by respondent Sylvia Bernadette de Guzman with suits and imprisonment in order to persuade her to join their group. Respondent Sylvia Bernadette de Guzman disclosed the plan of her group to plant drugs and stage an entrapment. Respondent Sylvia Bernadette de Guzman also revealed that respondent Rosemarie Frialde was spying for her, and that respondents Jan Robert Gustafsson and Jasmin Singh were part of the group. Moreover, respondents Sylvia Bernadette de Guzman, Jasmin Singh, Anthony Arcilla, Mary Jane de Guzman, Edwin Erpe, Rosemarie Frialde and Mariano Monteras detained and watched over [REDACTED] in a hotel in Makati City, then in an apartment in Hulo, Mandaluyong City while she was being recruited. During her captivity, respondent Edwin Erpe admitted that the group tried but failed to illegally withdraw corporate funds, and that he took and retained a corporate motorcycle upon the instructions of respondent Sylvia Bernadette de Guzman. Meanwhile, respondent Rosemarie Frialde admitted that she filed a fabricated rape case upon the instructions of respondent Sylvia Bernadette de Guzman, which respondent Rosemarie Frialde thus later recanted.<sup>11</sup> Furthermore, respondents Sylvia Bernadette de Guzman, Rosemarie Frialde and Mariano Monteras coerced Ms. [REDACTED] into executing certain false deeds and affidavits.

27. The conspiracy was also revealed through the crimes perpetrated by respondents.

27.1 Respondents Sylvia Bernadette de Guzman, Jasmin Singh, Anthony Arcilla and Mary Jane de Guzman coerced Ms. [REDACTED] into signing a bogus secretary's certificate to enable respondents' group to illegally withdraw corporate funds. Their attempts were thwarted because of the vigilance of the bank.

27.2 Respondent Sylvia Bernadette de Guzman threatened bank officials with physical harm by cutting off their tongues, and in the same process confirmed that respondents Jan Robert Gustafsson, Jasmin Singh and Edwin Erpe were her

<sup>10</sup> A copy of the *Affidavit* dated 31 October 2013 of Hannah Mae Fabila is hereto attached and made integral part hereof as **Annex "K."**

<sup>11</sup> A copy of the *Sinumpaang Salaysay ng Pagtiwalag* dated 14 October 2013 of Rosemarie Frialde is hereto attached and made integral part hereof as **Annex "L."**

confederates. The matter was recorded in the following police blotter<sup>12</sup> made at the instance of bank officials:

FACTS OF THE CASE: AT 9:30 AM A TEL. CALL RECEIVE BY [REDACTED] COMING FROM SYLVIA BERNADETTE DE GUZMAN. THAT SHE IS THREATENING ALL EMPLOYEE OF B.D.O. THAT SHE WILL CUT THERE TONGUE AND SHE IS VERY POWERFUL BECAUSE SHE WAS ALSO WELL KNOWN BY CHAVIT SINGSON. AND SHE MENTION SOME OF HIS COLLEAGUES THEY ARE JASMIN A. SINGH, ROBERT GUSTAFSSON, EDWIN ERPE, [REDACTED], ATTY. GAYLE & ATTY. ALINTAHAN AND SHE WILL SUE HIM. . .

27.3 True to their threats, respondents filed various fabricated cases against those who refused to join their group,

NPS No. XV-05-INV-131-03562

"Sylvia Bernadette de Guzman vs. [REDACTED]"

(ACP Alex G. Bagaoisan, Office of the City Prosecutor, Makati)

NPS No. XV-07-INV-131-06282

"Sylvia Bernadette de Guzman vs. [REDACTED]"

(ACP Roman T. Cobrado, Office of the City Prosecutor, Manila)

The bogus case docketed as NPS No. XV-07-INV-131-06282 was dismissed in a *Resolution* dated 10 January 2014.<sup>13</sup>

28. Clearly, the theft herein was not an isolated crime. It was perpetrated during the course of an organized effort to steal from and exact revenge against complainant and its related companies by persons who commonly harbored malice and spite towards them, and who banded together, and planned and executed various illicit

<sup>12</sup> A copy of the police blotter dated 3 September 2013 is hereto attached and made integral part hereof as **Annex "M."**

<sup>13</sup> A copy of the *Resolution* dated 10 January 2014 is hereto attached and made integral part hereof as **Annex "N."**

acts in concert with one another.

29. The stolen money was also used by the conspirators to fund and further their conspiracy.

30. 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:

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

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

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

- i) there must be false pretense, fraudulent act or fraudulent means – respondent Sylvia Bernadette de Guzman falsely represented to complainant that she was receiving the P900,000.00 in trust from complainant to pay for the importation duties of certain vehicles; when, in truth and in fact, she intended to pocket the money for herself;
- ii) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud – respondent Sylvia Bernadette de Guzman made such false pretense prior to the issuance of the payment voucher, the drawing and issuance of the check, and the debiting of the amount from complainant's bank account and crediting thereof to respondent Sylvia Bernadette de Guzman's bank

account;

- 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 said representation of respondent Sylvia Bernadette de Guzman; and, without said representation, complainant would not have issued the payment voucher, and drawn, issued and deposited the check to respondent Sylvia Bernadette de Guzman's bank account; and
- iv) as a result thereof, the offended party suffered damage – complainant drew, issued and deposited the check in the amount of P900,000.00 to respondent Sylvia Bernadette de Guzman's bank account, which she later took, converted or misappropriated for herself, to complainant's damage and prejudice; and
- v) the issuance of the check voucher, the drawing and issuance of the check, and the debiting and crediting of the bank accounts were all performed in Makati City, within the territorial jurisdiction of this Honorable Office.<sup>14</sup>

32. I was also 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.

32.1 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

<sup>14</sup> *Uy vs. People*, 564 SCRA 542, 558-559 (2008).

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.

### 32.2 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.

32.3 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.

33. 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 P900,000.00 was debited from complainant's bank account and credited to respondent Sylvia Bernadette de Guzman's bank account in Makati City, within the territorial jurisdiction of this Honorable Office, which amount was admittedly taken, converted or misappropriated by respondent Sylvia Bernadette de Guzman and her confederates;
- ii) the property belonged to another - the money 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 taking, conversion or misappropriation was admitted and the money taken was not returned to complainant;
- iv) the taking was done without the consent of the owner - the money was used for another purpose that was neither intended nor authorized by complainant; and
- v) the taking was accomplished without the use of

violence against or intimidation of persons or force upon things.<sup>15</sup>

34. 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 were former managerial officers, corporate officers or check signatories, gravely abused the trust and confidence reposed in them, and violated their fiduciary duties when they colluded in feloniously taking, converting or misappropriating corporate funds.

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

36. 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.

37. 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.

38. 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.

SUBSCRIBE AND SWORN to before me  
this 30th day of Jan - 20 14 at  
Makati City

**CERTIFICATION**

I hereby certify that I have personally examined the Affiant and that I am satisfied that he/she voluntarily executed and understood his/her Affidavit.

<sup>15</sup> Reyes, Luis B. The Revised Penal Code of Criminal Law. 2012 Eighteenth Revised Edition, Book Two, p. 732, citing *S. vs. de Vera*, 43 Phil. 1000 and *People vs. Yusay*, 50 Phil. 598.

*Edna J. Conde*  
**EDNA J. CONDE**  
Asst. City Prosecutor  
JAN 16 2014

CERTIFICATION

SUBSCRIBED AND SWORN TO, before me this \_\_\_\_\_, 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.

ASSISTANT CITY PROSECUTOR