

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City  
**FOURTH DIVISION**

*Minutes of the proceedings held on October 18, 2016.*

*Present:*

Hon. JOSE R. HERNANDEZ..... Associate Justice  
Hon. ALEX L. QUIROZ..... Associate Justice  
Hon. GERALDINE FAITH A. ECONG..... Associate Justice

*The following resolution was adopted:*

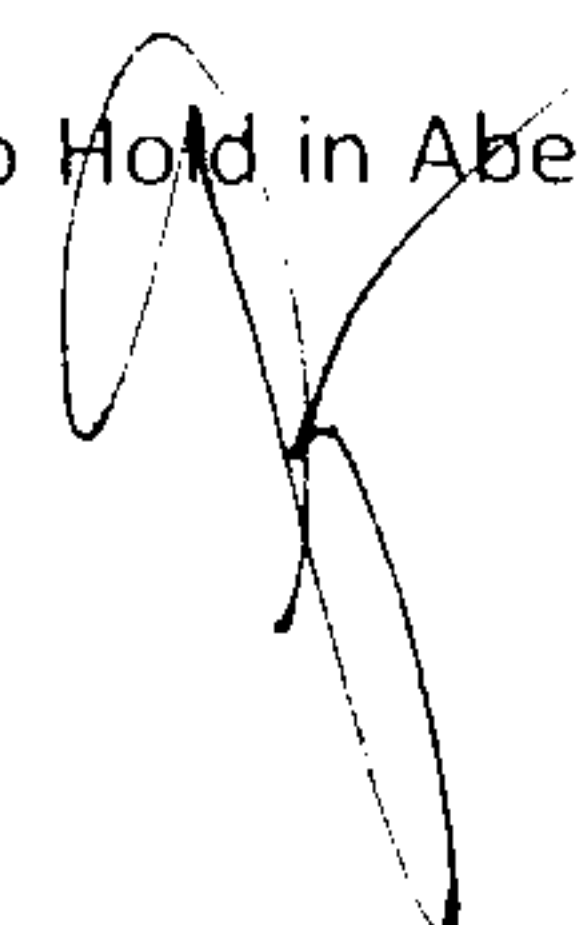
**SB-16-CRM-0425 to 0432 - PEOPLE vs. PROSPERO ARREZA PICHAY, EDUARDO ALVAREZ BANGAYAN, AURELIO O. PUENTEVELLA, ENRIQUE SENEN GABALDON MONTILLA III, WILFREDO MANALILI FELEO, JR., DANIEL A. LANDINGIN (allegedly deceased), WESLIE T. GATCHALIAN, WILLIAM T. GATCHALIAN, YOLANDA T. DELA CRUZ, DEE HUA T. GATCHALIAN, ARTHUR R. PONSARAN, GERONIMO VELASCO, JR., PETER S. SALUD, ROGELIO D. GARCIA, LAMBERTO B. MERCADO, JR., EVELYN DELA ROSA, JOAQUIN P. OBIETA, ELVIRA A. TING, KENNETH T. GATCHALIAN, SHERWIN T. GATCHALIAN, GEORGE SIA CHUA, GREGORIO TOMPOC IPONG, WILFRED DE LEON BILLENA, EDITA SELVA BUENO, GENEROSO DELA CRUZ TULAGAN, ARNALDO M. ESPINAS**

Before this Court are the following motions filed by the accused together with the responsive pleadings subsequently filed:

**1. Urgent Omnibus Motion for Judicial Determination of Probable Cause and to Hold in Abeyance Issuance of Warrant of Arrest<sup>1</sup> (“Motion of accused Bangayan”) filed by accused Eduardo A. Bangayan**

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<sup>1</sup> Urgent Omnibus Motion for Judicial Determination of Probable Cause and to Hold in Abeyance Issuance of Warrant of Arrest, dated July 18, 2016 and filed on the same date.



In his Urgent Omnibus Motion for Judicial Determination of Probable Cause and to Hold in Abeyance Issuance of Warrant of Arrest, accused Bangayan claims that he acted with good faith upon honest belief based on information made available to him by the management of the Local Water Utilities Administration (LWUA), that the acquisition of the ESBI (Express Savings Bank, Inc.) had the approval of the Bangko Sentral ng Pilipinas (BSP) and all the applicable laws and regulations were complied with. He argues that there is no probable cause against him for violation of Section 3(e) of R.A. No. 3019, Article 217 of the Revised Penal Code (RPC), Section X126.2 (C)(1)(2) of the Manual of Regulation for Banks in relation to Sections 36 and 37 of R.A. No. 7653. Accused Bangayan also argues that there is no prima facie evidence that he acted in conspiracy with other accused.

**2. Omnibus Motion (for Judicial Determination of Probable Cause and/or to Dismiss the Case)<sup>2</sup> (“Motion of accused Pichay”) filed by accused Prospero A. Pichay**

In his Omnibus Motion (for Judicial Determination of Probable Cause and/or to Dismiss the Case), accused Prospero A. Pichay claims that there is no probable cause to hold him liable for three (3) counts of violation of Section 3(e) of R.A. No. 3019 because the element of bad faith is wanting. He argues that the LWUA Charter or other laws cited by the Ombudsman do not require prior approval by the President of its board resolutions. He also explains that the acquisitions of the ESBI shares, the additional subscription amounting to Php400million and the deposit of Php300million to LWUA's ESBI account were never opposed but approved by the Monetary Board. He argues that bad faith cannot be deduced from the purchase price of the share alone because pricing of shares is a technical matter, as well as from ESBI's acceptance of government deposits since there is no prohibition. Accused Pichay also states that the element of manifest partiality is lacking and that he did not cause any undue injury to any party including the government. He claims that he did not give unwarranted benefits to anyone in this case. As for the charge of three (3) counts of malversation under Article 217 of the RPC, he states that the second, third and fourth elements

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<sup>2</sup> Omnibus Motion (for Judicial Determination of Probable Cause and/or to Dismiss the Case), dated July 14, 2016 and filed on July 15, 2016.

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are wanting. He also argues that he did not violate any provision of the MORB. On the charge of violation of Sections 19 and 66 of R.A. No. 8791, accused argues that the prohibition under Section 19 does not apply in this case where the ESBI ceased to fall under the category of a private bank and became a government bank after its majority shares were acquired. Accused Pichay also argues that the case must be dismissed for violation of the right to speedy trial since it took the Office of the Ombudsman six (6) years to conclude the fact-finding investigation and preliminary investigation.

**3. Reiterative Motion to Dismiss with Prayer to Defer Arraignment of Accused<sup>3</sup> (“Reiterative Motion of accused Pichay”) filed by accused Prospero A. Pichay**

In his Reiterative Motion to Dismiss with Prayer to Defer Arraignment of Accused, accused Pichay restates that the Complaint against him was filed by the Field Investigation Office (FIO) with the Office of the Ombudsman in July of 2013 but the FIO already conducted a fact-finding investigation in September of 2010. He states that he only received the Resolution denying his Motion of Reconsideration on May 26, 2016 and the Information was filed only on July of 2016. He reiterates that he was unjustly deprived of his right to speedy disposition of the charges warranting the dismissal of the present criminal cases.

**4. Omnibus Motion (To Defer Arraignment, Recall or Hold in Abeyance Issuance of Warrant of Arrest, Suspend Further Proceedings to Remand Case for Reinvestigation and in the Alternative to Dismiss the Instant Case)<sup>4</sup> (“Motion of accused Espinas”) filed by accused Arnaldo M. Espinas**

In his Omnibus Motion (To Defer Arraignment, Recall or Hold in Abeyance Issuance of Warrant of Arrest, Suspend Further Proceedings to Remand Case for Reinvestigation and in the Alternative to Dismiss the Instant Case, accused Arnaldo M. Espinas argues that he was already exonerated in a similar case arising from the same set of facts and

<sup>3</sup> Reiterative Motion to Dismiss with Prayer to Defer Arraignment of Accused, dated August 11, 2016 and filed on August 12, 2016.

<sup>4</sup> Omnibus Motion (To Defer Arraignment, Recall or Hold in Abeyance Issuance of Warrant of Arrest, Suspend Further Proceedings to Remand Case for Reinvestigation and in the Alternative to Dismiss the Instant Case), dated July 20, 2016 and filed on July 28, 2016.



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circumstances for Plunder, Malversation and violation of R.A. No. 3019 in OMB Case No. C-C-10-0402-I entitled, "*Rustico B. Tutol, et al. versus Prospero Pichay, Daniel Landingin, Wilfredo Feleo and Arnaldo Espinas*". He argues that the issue of alleged violation of Sections 19 and 66 of R.A. No. 8791 in relation to Section 36 of R.A. No. 7653 could have been raised in the prior litigated case. Accused Espinas also states that in his Petition for Certiorari and Prohibition filed on June 13, 2016 docketed as CA GR SP No. 146047 entitled, "*Arnaldo M. Espinas versus Hon. Conchita Carpio Morales, etc.*", he asserts that there is no probable cause for violation of Sections 19 and 66 of R.A. No. 8791 in relation to Section 36 of R.A. No. 7653. He argues that the prohibition under Section 19 is limited to officers of private banks. He also argues that when the issue raised in the Petitions before the Court of Appeals are resolved, it would be determinative *juris et de jure* of his guilt or innocence. He also claims denial of due process and states that there was no allegation of conspiracy in the initiatory Complaint-Affidavit.

**5. Omnibus Motion: 1. To Defer Arraignment and Proceedings, and 2. For Judicial Determination of Probable Cause and Receive Evidence on the Motion<sup>5</sup> ("Motion of accused Feleo") filed by accused Wilfredo Manalili Feleo, Jr.**

In his Omnibus Motion: 1. To Defer Arraignment and Proceedings, and 2. For Judicial Determination of Probable Cause and Receive Evidence on the Motion, accused Wilfredo Manalili Feleo, Jr. argues that a judicial re-determination of probable cause is allowed even if the Office of the Ombudsman recommended criminal prosecution. He claims that there is no probable cause to prosecute for Section 3(e) of R.A. No. 3019 since bad faith is absent because he did not brush aside the legal requirements and the repeated admonitions of the OGCC, DOF, OP and BSP and the acquisition of the shares in ESBI were given implied and tacit approval. He also claims that there is no manifest partiality because he held the position of Acting Deputy Administrator for Investment and Finance and never became a member of the LWUA Board. He said that in this case, only one group was involved, that of the private complainants. He also argues that there was no undue

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<sup>5</sup> Omnibus Motion: 1. To Defer Arraignment and Proceedings, and 2. For Judicial Determination of Probable Cause and Receive Evidence on the Motion, dated August 8, 2016 and filed on August 12, 2016

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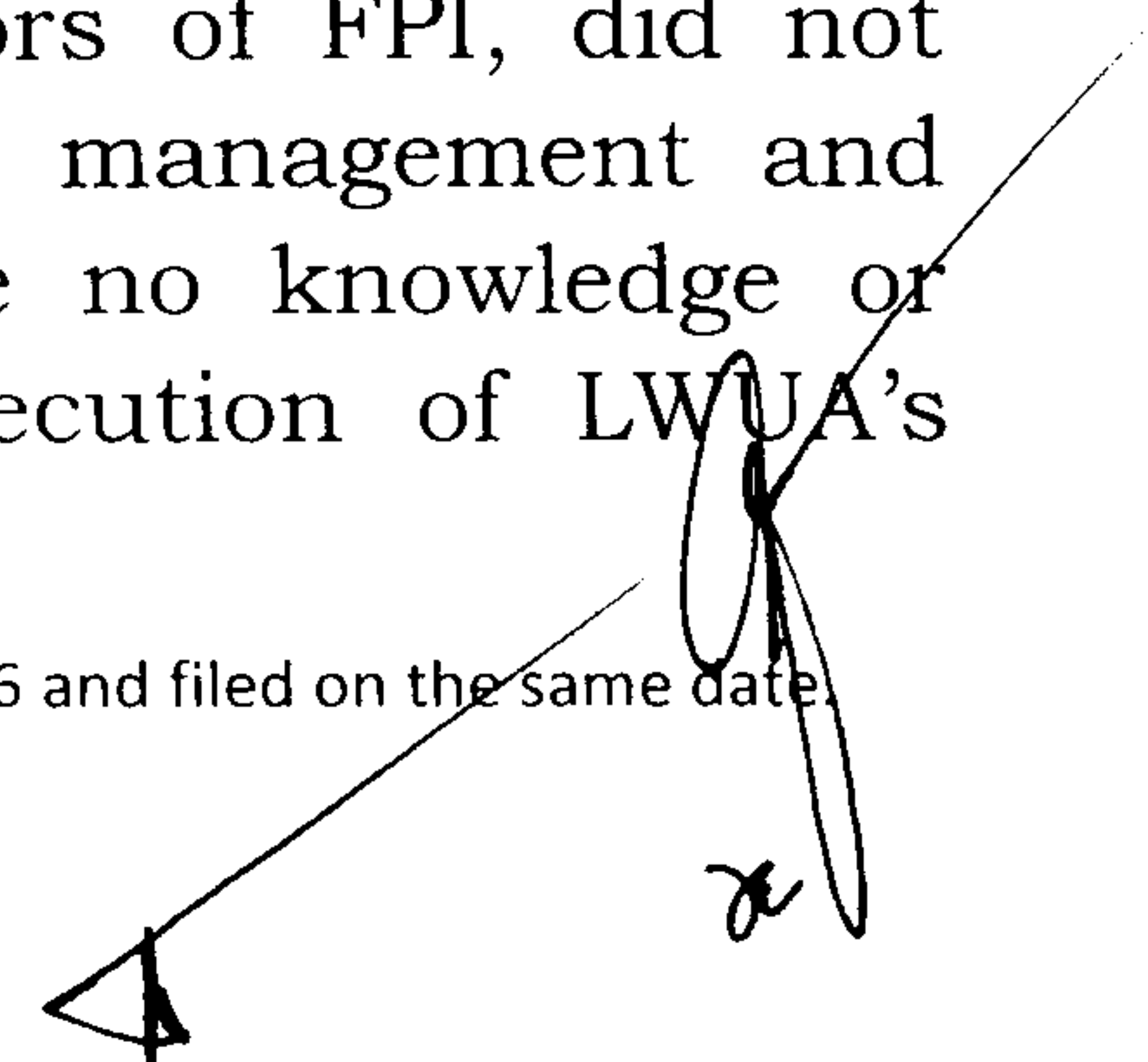
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injury because evidence did not show that the ESBI shares are worthless and the Php700 million deposit is still intact. Accused Feleo argues that there is absence of unwarranted benefits given to ESBI's officers and shareholders because all the deposits and ESBI investment are all in the name of LWUA. He also argues that there is no malversation in this case because the second and third elements are absent. He reiterates that he was not a member of the LWUA board and here merely negotiated the reduction of the offered price of the ESBI shares. He also argues that the fourth element is also not present and that there is no violation of Section X126.2 of the MORB. He avers that there is no violation of Sections 16 and 66 of R.A. No. 8791 in relation to Section 36 thereof. Lastly, he points out that the arraignment must be deferred pending the re-determination of probable cause.

**6. Motion for Judicial Determination of Probable Cause<sup>6</sup> (“Motion of Peter Salud, Weslie Gatchalian, Rogelio Garcia, Lamberto Mercado and Evelyn Dela Rosa”) filed by Peter S. Salud, Weslie T. Gatchalian, Rogelio D. Garcia, Lamberto B. Mercado, Jr. and Evelyn Dela Rosa**

In their Motion for Judicial Determination of Probable Cause, accused Peter Salud, Weslie Gatchalian, Rogelio Garcia, Lamberto Mercado and Evelyn Dela Rosa aver that the supposed conspiracy with the accused public officers is not supported by any evidence on record. They state that there is no evidence to show that they induced or caused the accused LWUA officers to commit a criminal offense by purchasing common shares of Forum Pacific, Inc. (FPI) in ESBI. They argue that their act of approving the sale does not *ipso facto* constitute an intentional participation on the alleged crimes or conspiracy. They argue that the Ombudsman erred in finding probable cause against them for the alleged crimes because as directors, there was no actual proof of their intentional participation in the alleged criminal acts of the corporation. Moreover, they aver that the FPI's acquisition and ownership of the 127,415 common shares in ESBI was purely for investment purposes and they, as directors of FPI, did not have any participation in the day-to-day management and operations of ESBI. They claim to have no knowledge or participation in the negotiations and execution of LWUA's

<sup>6</sup> Motion for Judicial Determination of Probable Cause, dated July 15, 2016 and filed on the same date.



purchase of 60% interest in ESBI. They said that when accused Rogelio Garcia, designated as FPI's and WGI's authorized representative, signed the Terms of Reference of LWUA's acquisition of 445,377 common shares of ESBI and received payments, there was no indication of his supposed complicity to any alleged crime. They also claim that there is no probable cause to indict them with malversation, violation of Section X126.2 (c)(1)(2) of the Manual of Regulations for Banks in relation to Sections 36 and 37 of R.A. No. 7653.

**7. Motion to Dismiss (Pursuant to Section 5, Rule 112, For Lack of Evidence on Record to Establish Probable Cause)<sup>7</sup> ("Motion of accused Velasco") filed by accused Geronimo F. Velasco, Jr.**

In his Motion to Dismiss (Pursuant to Section 5, Rule 112, For Lack of Evidence on Record to Establish Probable Cause), accused Geronimo F. Velasco, Jr. argues that he cannot be held criminally liable simply because he was an independent director of FPI who attended a single board meeting where the "sale" was discussed. He claims that there is no allegation or evidence that he knowingly induced or caused any public officer to violate Section 3(e) of the Anti-Graft Law. Moreover, he avers that, as a private individual, he cannot be held liable for malversation. He claims that there is no evidence that he was among those who took or appropriated for himself public funds. Lastly, he states that he, who had no connection with ESBI or the LWUA, cannot be held liable for the banking offense.

**8. Urgent Motion for the Judicial Determination of Probable Cause<sup>8</sup> ("Motion of accused Dela Cruz") filed by accused Yolanda T. Dela Cruz**

In her Urgent Motion for the Judicial Determination of Probable Cause, accused Yolanda dela Cruz claims that in the absence of conspiracy, there is no probable cause. She argues that there is no evidence that she participated in the approval of the sale and no evidence of any overt act to prove her intentional participation in the transaction for the furtherance of a common design or purpose. She states that she was a

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<sup>7</sup> Motion to Dismiss (Pursuant to Section 5, Rule 112, For Lack of Evidence on Record to Establish Probable Cause), dated July 15, 2016 and filed on July 18, 2016.

<sup>8</sup> Urgent Motion for the Judicial Determination of Probable Cause, dated July 18, 2016 and filed on the same date.

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mere member of the board of directors of Wellex Group, Inc. (WGI) and does not participate in the day-to-day management of the affairs of the corporation. She also argues that she cannot be held liable even assuming *arguendo* that she signed the resolution approving the sale in the absence of proof that she knowingly and willfully intended to commit a patently illegal act with evident bad faith or gross negligence. She argues that she has no share, participation or interest whatsoever in the object of the sale.

**9. Motion for Judicial Determination of Probable Cause<sup>9</sup> (“Motion of accused Sherwin Gatchalian”) filed by accused Sherwin T. Gatchalian**

In his Motion for Judicial Determination of Probable Cause, accused Sherwin T. Gatchalian claims that he did not receive any unwarranted benefit from LWUA for the sale of his 14 shares in ESBI to LWUA but only Php2,514.82 which was the purchase price. He claims that he did not commit malversation of public funds by receiving the purchase price of the 14 shares. He argues that he did not violate Section X126.2 of the Manual of Regulations for banks in the sale of his 14 shares to LWUA which only comprised 0.001886% of ESBI’s total subscribed shares and such sale could not have resulted to LWUA’s control of more than twenty percent of the voting stock of ESBI.

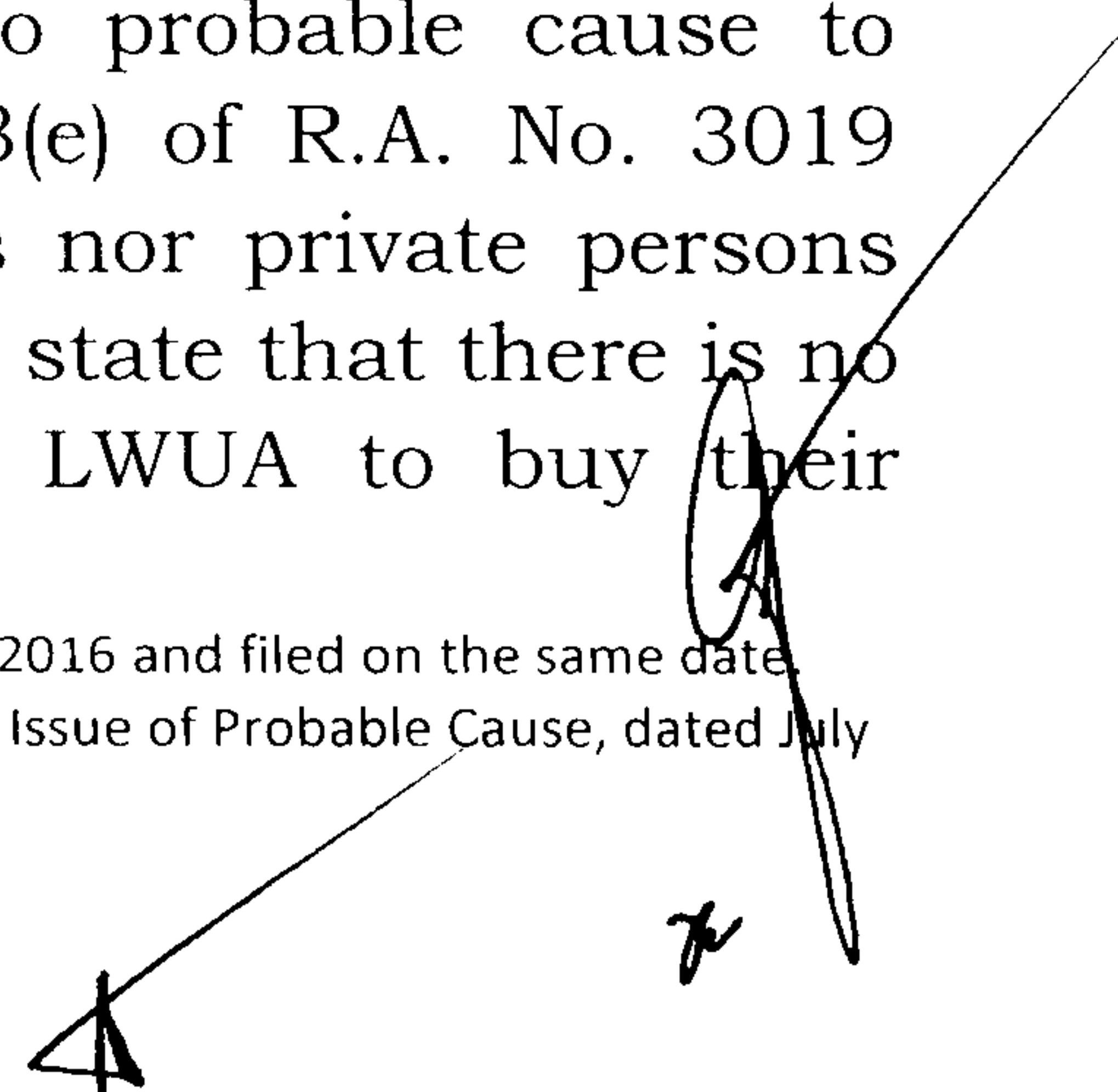
**10. Entry of Appearance as Counsel and Very Respectful Motion on the Issue of Probable Cause<sup>10</sup> (“Motion of accused Dee Hua Gatchalian, William Gatchalian, Kenneth Gatchalian and Elvira Ting”) filed by Dee Hua T. Gatchalian, William T. Gatchalian, Kenneth T. Gatchalian and Elvira A. Ting**

In their Entry of Appearance as Counsel and Very Respectful Motion on the Issue of Probable Cause, accused Dee Hua Gatchalian, William Gatchalian, Kenneth Gatchalian and Elvira Ting argue that there is no probable cause to charge them with violation of Section 3(e) of R.A. No. 3019 because they are neither public officers nor private persons who conspired with public officers. They state that there is no evidence that they caused or induced LWUA to buy their

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<sup>9</sup> Motion for Judicial Determination of Probable Cause, dated July 15, 2016 and filed on the same date.

<sup>10</sup> Entry of Appearance as Counsel and Very Respectful Motion on the Issue of Probable Cause, dated July 15, 2016 and filed on the same date.





shares in ESBI and in fact, LWUA voluntarily bought their shares at a price freely agreed upon by the parties. They aver that the issue of the requirement of joint submission to obtain Monetary Board approval is a separate issue and in fact, the Ombudsman separately charged them with violation of Section X126.2 of the Manual of Regulation for Banks in relation to Sections 36 and 37 of R.A. No. 7653. They emphasize that since the subject transaction was entered by the parties on June 3, 2009, the applicable MORB was the 2008 MORB and not the 2011 MORB.

**11. Omnibus Motion (For Judicial Determination of Probable Cause, Quashal of Information-and-Suspension of Arraignment)<sup>11</sup> (“Motion of Ponsaran and Obieta”) filed by accused Arthur R. Ponsaran and Joaquin P. Obieta**

In their Omnibus Motion (For Judicial Determination of Probable Cause, Quashal of Information-and-Suspension of Arraignment), accused Arthur R. Ponsaran and Joaquin P. Obieta argue that the evidence on record clearly fails to establish probable cause for the crimes charged against them. They claim that the application of the concept of “implied conspiracy” is misplaced and the finding of probable cause was not based on evidence on record. They aver that the finding of conspiracy was based on what the accused ought to have done as opposed to what they did. Moreover, they argue that there was no proof of undue injury to the government or unwarranted benefits in favor of the accused because a) the Santillano ruling cannot be applied in this case, b) ESBI was not sold as insolvent to LWUA, and c) the sale of ESBI shares to LWUA was not overpriced. They also claim that there is no evidence that they deliberately violated the 2008 BSP Manual of Regulations for Banks. They argue that the Information should be quashed for the facts charged do not constitute an offense and the Court trying the case has no jurisdiction over the offense charged.

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<sup>11</sup> Omnibus Motion (For Judicial Determination of Probable Cause, Quashal of Information and Suspension of Arraignment), dated August 9, 2016 and August 10, 2016.



**12. Motion for Judicial Determination of Probable Cause<sup>12</sup>  
("Motion of accused Bueno") filed by accused Edita S.  
Bueno**

In her Motion for Judicial Determination of Probable Cause, accused Edita Bueno alleges that she has never been an officer of the Local Water Utilities Administration (LWUA) and the prosecution relied solely on the General Information Sheet (GIS) of ESBI which was in glaring contradiction with the other documents, i.e., LWUA Board resolutions. She also states that there is no evidence that as a member of the board of ESBI, she personally and actually authorized ESBI to accept LWUA's Php300million and Php400million deposits or that she participated in the issuance of various LWUA Board resolutions related to said deposits.

**13. Verified Motion for Judicial Determination of Probable Cause (With Prayer to Hold in Abeyance Arraignment of Accused/Movant Pending Resolution of this Motion)<sup>13</sup>  
("Motion of accused Tulagan") filed by accused Generoso Dela Cruz Tulagan**

In his Verified Motion for Judicial Determination of Probable Cause (With Prayer to Hold in Abeyance Arraignment of Accused/Movant Pending Resolution of this Motion), accused Generoso Tulagan claims that during the time material to the charges, he was not an employee, officer or director of the LWUA. He avers that there is no evidence to constitute his participation in a conspiracy to misappropriate LWUA funds, or consent to their malversation, as well as proof that he gave undue benefit or preference to any party to the damage or prejudice of the government. He also avers that there is no evidence that he knew or participated in the decision, negotiation and eventual purchase of LWUA of 60% of the ESBI shares of stock. He also argues that there is no evidence that as a member of the board of directors of ESBI, he had anything to do with the decision to disburse the Php400million of LWUA funds as advance payment for stock subscription in ESBI or to deposit the Php300million in its savings account in ESBI.

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<sup>12</sup> Motion for Judicial Determination of Probable Cause, dated July 18, 2016 and filed on the same date.

<sup>13</sup> Verified Motion for Judicial Determination of Probable Cause (With Prayer to Hold in Abeyance Arraignment of Accused/Movant Pending Resolution of this Motion), dated July 18, 2016 and filed on July 19, 2016.

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**14. Omnibus Motion for Judicial Determination of Probable Cause, and for Immediate Dismissal of the Case<sup>14</sup> (“Motion of accused Chua”) filed by accused George Sia Chua**

In his Omnibus Motion for Judicial Determination of Probable Cause, and for Immediate Dismissal of the Case, accused George Chua states that there is no direct or indirect evidence against him of conspiracy with the other accused in relation to the acquisition by LWUA of 60% of ESBI’s shares of stock. He claims that all the questioned resolutions to acquire a bank and transfer of funds transpired prior to his acceptance of his independent director nomination to the ESBI Board on July 17, 2009, or almost four (4) months after LWUA Board Resolution No. 56 Series of 2009 was passed approving the acquisition of ESBI. He also emphasizes that he had already been resigned as of April 8, 2011 and it was only on June 7 and 13 of 2011 that ESBI President Wilfredo M. Feleo, Jr. received letters of request from LWUA to immediately return the deposits totaling Php700million. He also submits that the administrative case, if any, has already prescribed under Section 20 of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, because the complaint was filed more than four (4) years after the alleged act/s.

**15. Very Urgent Motion to Quash<sup>15</sup> (“Motion of accused Ipong”) filed by accused Gregorio T. Ipong**

In his Very Urgent Motion to Quash (“Motion of accused Ipong”), accused Gregorio T. Ipong moves for the quashal of the Information against him for lack of jurisdiction. He emphasizes that when Resolution No. 129-A, Series of 2009 dated May 26, 2009 was passed approving the acquisition of the 445,370 shares of stock of ESBI, he was not yet a member of the ESBI Board of Directors and when the deed of sale was executed on June 3, 2009, he was not yet connected with ESBI in any way. He avers that when LWUA took over ESBI in June 2009, he was not yet a nominee to ESBI. Accused Ipong also states that conspiracy does not exist and he could have not participated in the adoption of the resolutions authorizing

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<sup>14</sup> Omnibus Motion for Judicial Determination of Probable Cause, and for Immediate Dismissal of the Case, dated July 15, 2016 and filed on the same date.

<sup>15</sup> Very Urgent Motion to Quash, dated August 12, 2016 and filed on the same date.





the transfer of LWUA funds and the takeover of ESBI since he was not yet a nominee to ESBI.

On August 11, 2016, the prosecution filed its Consolidated Comment/Opposition where it argues that the motions for judicial determination of probable cause are superfluous and that it is not necessary for all the accused to move this Court to exercise its duty to determine probable cause in these cases. The prosecution maintains that probable cause exists for the indictment of all the accused. For violation of Section 3(e) of R.A. No. 3019, the prosecution states that conspiracy was established as discussed in the Joint Order dated April 4, 2016, which provides:

“Each and every respondent trustee and officer allowed the transactions to proceed, when each and every one of them had the power to forestall the subject transactions. Respondents’ concerted failure to comply with pertinent banking laws and regulations and to protect LWUA’s interests indicates their conspiratorial intent. In the same vein, respondent directors, shareholders, and officers of ESBI, FPI and WGI, also conspired with their co-respondents since, being in the banking industry, they knew too well the requisite approvals for the sale of ESBI xxx aside from the proceeds of the sale of shares, these respondents also stood to benefit from the revival of ESBI through LWUA’s deposits and capital infusion, as they continue to possess a stake in ESBI.”

The prosecution also states that the second element of Section 3(e) is present since LWUA’s acquisition of the 445,377 shares in ESBI did not have the approval of the BSP, Monetary Board or the DOF. It argues that despite the negative findings of Jose U. Pontiveros and Associates (JPA) in its due diligence audit of ESBI, accused still passed the resolution authorizing the sale. On the presence of undue injury, the prosecution claims that the amount could have been utilized by LWUA to fund lawful projects if it was not illegally expended. As to the charge of malversation, the OSP avers that the accused allowed their co-accused to take and appropriate for themselves public funds amounting to Php80,003,070.51 (LWUA’s irregular purchase of ESBI shares) and Php700million (improper deposits made by LWUA to ESBI). The prosecution also points out that the accused allowed

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LWUA to assume DOSRI loans incurred by accused/private persons with the bank amounting to Php20million and they also allowed the use of investment in ESBI for real estate loans (Php8,580,400) and auto loans (Php15,868,954). The prosecution also argues that the constitutional right to speedy disposition of cases was not violated because other incidents occurred during the interval between July 30, 2013 when the Field Investigation Office filed its complaint and April 4, 2016 when the Office of the Ombudsman issued its Joint Order after concluding the preliminary investigation. Contrary to the claims of accused Pichay and Chua, the prosecution explains that the Special Panel resolved the cases on March 16, 2015, barely four months from November 21, 2014 when accused Sherwin Gatchalian filed his counter-affidavit. It also points out that it resolved the motions for reconsideration on April 4, 2016, less than four months from December 8, 2015 when accused Dela Cruz filed an Addendum to the Motion for Reconsideration. On the issue of jurisdiction, the OSP argues that this Court has jurisdiction over the persons of all the accused. The prosecution claims that the defense of *res judicata* is misplaced and that there exists no prejudicial question. It also states that conspiracy was properly alleged in the Information.

On August 15, 2016, accused Aurelio O. Puentevella, Wilfred de Leon Billena and Enrique Senen Gabaldon Montilla III adopted, in open court, the motions filed by their co-accused.<sup>16</sup>

On August 23, 2016, accused Geronimo F. Velasco, Jr. filed an Urgent Manifestation (Re: Consolidated Comment/Opposition filed by the Office of the Prosecutor)<sup>17</sup> ("Urgent Manifestation of accused Velasco") where he said that the OSP wholly ignored and glossed over his main defense and failed to address it. He states that the failure of the OSP to refute gives the impression of admission. He claims that the OSP failed to identify any act which would show his participation in the three crimes charged and failed to identify any evidence showing that he profited from the sale. He also points out that the OSP failed to identify any overt act in the supposed criminal conspiracy.

<sup>16</sup> Minute Resolution, August 15, 2016.

<sup>17</sup> Urgent Manifestation (Re: Consolidated Comment/Opposition filed by the Office of the Special Prosecutor, dated August 22, 2016 and filed on August 23, 2016.

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On August 30, 2016, the prosecution filed its Comment/Opposition (Re: Accused Geronimo F. Velasco, Jr.'s Urgent Manifestation)<sup>18</sup> where it asserts that accused Velasco's earlier motion to dismiss is baseless and should be denied. The prosecution states that this contention that there is no proof of complicity is without merit. The prosecution mentions that there are facts and circumstances showing his active participation in the questioned sale. The prosecution argues that the concerted actions of all the accused led to the consummation of the anomalous acquisition of ESBI by LWUA.

On the same date, accused Yolanda T. Dela Cruz filed a Reply to the Consolidated Comment/Opposition<sup>19</sup> where she argues that the OSP clings to the sweeping and generic statements in the Joint Resolution dated March 16, 2015 and Joint Order dated April 5, 2016 when these two documents failed to substantiate the allegations of conspiracy. She claims that she did not receive anything from the sale. She prays that the Court should look into the circumstances of her alleged participation so as not to unnecessarily drag an eighty-one year old under the taxing procedures of trial. She said that the allegations against her are false and groundless because they are based on her mere membership in the Board of Directors of WGI and the existence of an alleged board resolution allowing the sale of WGI's shares of stocks in ESBI.

On August 31, 2016, accused Edita S. Bueno filed a Reply to the Consolidated Comment of the OSP. In her pleading, she reiterates that she was merely impleaded in the controversy simply because her name appeared in the General Information Sheet of ESBI. According to her, this does not prove that she was present at the meetings of the ESBI Board of Directors. She also points out that the board resolutions do not contain her signature.

On September 26, 2016, accused Enrique Montilla III and Aurelio O. Puentevella filed a Manifestation and Motion to Adopt Omnibus Motion<sup>20</sup> adopting the Omnibus Motion of

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<sup>18</sup> Comment/Opposition (Re: Accused Geronimo F. Velasco, Jr' Urgent Manifestation), dated August 26, 2016 and filed on August 30, 2016.

<sup>19</sup> Reply to the Consolidated Comment/Opposition, filed on August 30, 2016.

<sup>20</sup> Manifestation & Motion to Adopt Omnibus Motion, dated September 21, 2016 and filed on September 26, 2016.

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their co-accused, Arthur R. Ponsaran and Joaquin P. Obieta. They stated that they are similarly situated with accused Ponsaran and Obieta since they were members of a collegial body in corporate entities and not part of the management. They did not have a hand or participation in “any acts of their respective corporate executives except to approve through Board Resolutions meritorious recommendations presented before them”.

On September 27, 2016, accused Sherwin Gatchalian filed a Manifestation<sup>21</sup> stating that he has not received a copy of the Comment/Opposition of the prosecution dated August 11, 2016.

### **Case Background**

A complaint was filed by Rustico Tutol, et al. against accused Pichay, Board of Directors of ESBI, accused Landingin, Feleo, Jr. and Espinas for plunder, malversation of public funds under Article 217 of the Revised Penal Code (RPC) and violations of Section 3(a), (d), (e), (g), (h) and (i) of R.A. No. 3019 in relation to the purchase by LWUA of 445,377 shares in ESBI in 2009. This was docketed as OMB-C-C-10-0402-I.

The same transaction was the subject of another complaint filed by Cesar V. Purisima against accused Pichay, Renato S. Velasco, Susana Dumlao-Vargas, Bonifacio Mario Peña and Daniel Landingin for violation of Section X126.2 (c)(1) of the MORB, violation of Section 3(e) and (g) of R.A. No. 3019 and malversation under Section 217 of the RPC. This was docketed as OMB-C-C-12-0031-A.

In the latter complaint, the Department of Justice issued a Resolution dated January 10, 2012 recommending the indictment of accused Pichay and Landingin only and submitting it for review by the Office of the Ombudsman.

The Field Investigation Office filed its Complaint-Affidavit on July 30, 2013 docketed as OMB-C-C-13-0212, OMB-C-C-

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<sup>21</sup> Manifestation, dated September 26, 2016 and filed on September 27, 2016.

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13-0213, OMB-C-C-13-0214 and OMB-C-A-13-0211. In OMB-C-C-13-0212, accused Pichay, et al. were charged with violation of Section 3(e) and (g) of R.A. No. 3019, malversation under Article 217 of the RPC, violation of Section X126.2 (c)(1) of the MORB, in relation to Sections 36 and 37 of R.A. No. 7653 in relation to the purchase by LWUA of 445,377 shares in ESBI in 2009. In OMB-C-C-13-0213, they were charged with violation of Section 3(e) of R.A. No. 3019 and malversation under Article 217 of the RPC in relation to LWUA's two separate deposits with ESBI in 2009 amounting to Php700million. In OMB-C-C-13-0214, accused Pichay, et al. were charged with violation of Sections 19 and 66 of R.A. No. 8791 in relation to Section 36 of R.A. No. 7653 for serving as officers of a private bank while simultaneously holding appointive or elective public offices or positions. In OMB-C-A-13-0211, accused Espinas, Chua, Ipong, Tulagan, Billena and Bueno were charged with grave misconduct and conduct prejudicial to the best interest of service under P.D. No. 807 and the Revised Rules on Administrative Cases in the Civil Service for disregarding existing bank laws and regulations by approving ESBI's acceptance of the deposits of LWUA amounting to Php700million.

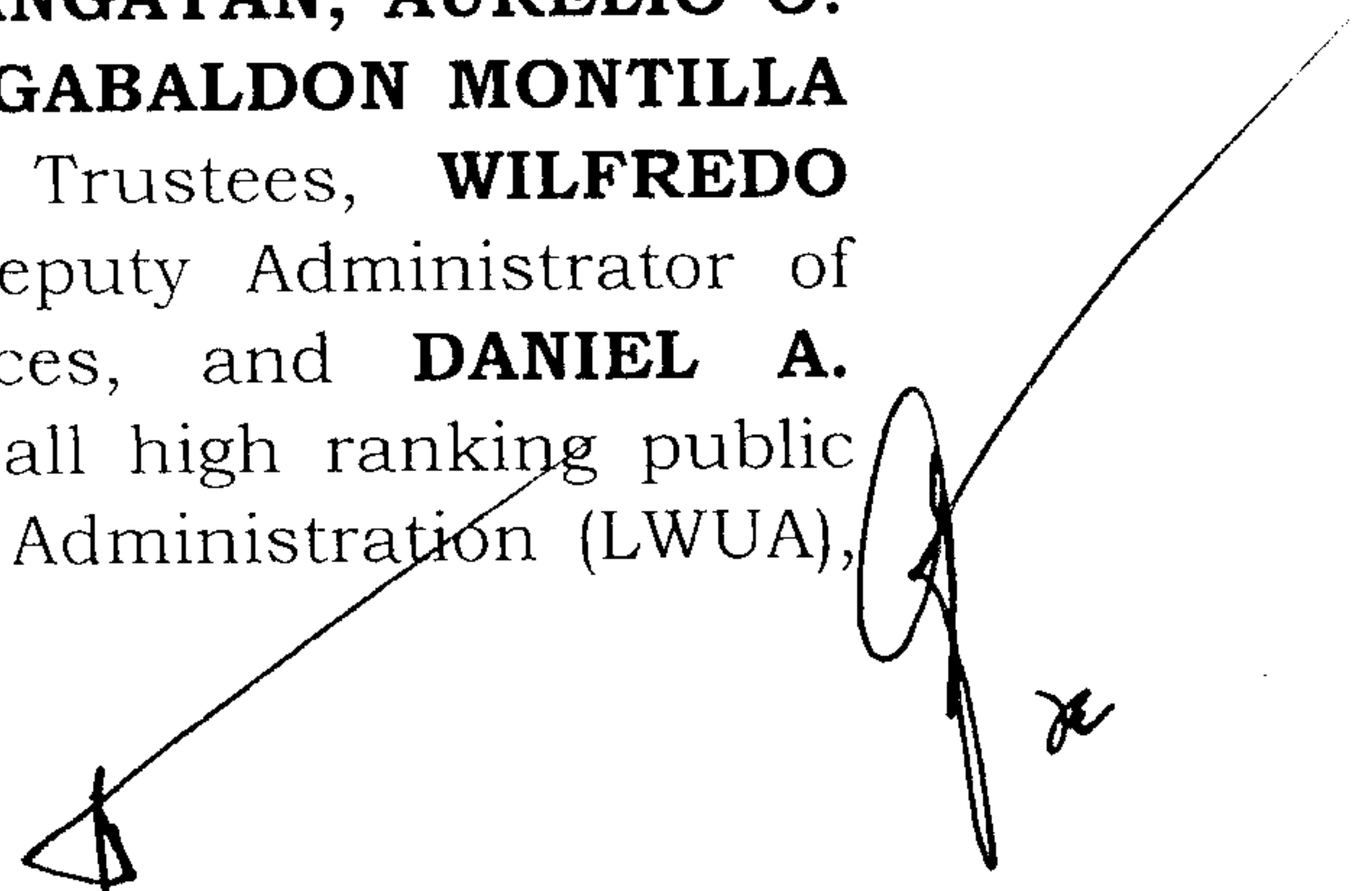
The Office of the Ombudsman issued a Joint Resolution dated March 16, 2015 finding probable cause to indict the accused. In its Joint Order dated April 4, 2016, it resolved the Motions of Reconsideration separately filed by the accused.

The Informations filed before this Court against the accused are quoted as follows:

**SB-16-CRM-0425**

For: Violation of Section 3(e) of  
R.A. No. 3019

“That on May 19, 2009 to October 2009, or sometime prior or subsequent thereto in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA),

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committing the offense in the discharge of their official functions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence and conspiring and confederating with each other and with accused **WESLIE T. GATCHALIAN**, Director of Forum Pacific, Inc., (FPI), **WILLIAM T. GATCHALIAN**, President/Chairman and Director of The Wellex Group, Inc. (WGI), **YOLANDA T. DELA CRUZ**, Director of WGI, **DEE HUA T. GATCHALIAN**, Treasurer and Director of WGI, **ARTHUR R. PONSARAN**, Corporate Secretary and Director of WGI, **GERONIMO VELASCO, JR.**, Chairman and Director of FPI, **PETER S. SALUD**, President/CEO and Director of FPI, **ROGELIO D. GARCIA**, Director of FPI, **LAMBERTO B. MERCADO, JR.**, Director of FPI, **EVELYN DELA ROSA**, Director of FPI, **JOAQUIN P. OBIETA**, Director of FPI, **ELVIRA A. TING**, Director of FPI, **KENNETH T. GATCHALIAN**, Director of WGI and Treasurer/Director of FPI, and **SHERWIN T. GATCHALIAN**, Executive Vice President of FPI, did then and there, willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Express Savings Bank, Inc.'s (ESBI) owners and/or corporate and individual stockholders, as follows: 1) The Wellex Group, Inc., 2) Forum Pacific, Inc., 3) accused Dee Hua T. Gatchalian, 4) Sherwin T. Gatchalian and 5) Kenneth T. Gatchalian, and its directors and officers, by causing LWUA, a government owned and controlled corporation created as a specialized lending institution of local water utilities, to purchase 445,377 shares of stocks in ESBI owned by The Wellex Group, Inc., Forum Pacific, Inc. accused Dee Hua T. Gatchalian, Sherwin T. Gatchalian and Kenneth T. Gatchalian, valued at Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51), which shares of stocks represented more than 60% of the outstanding common shares of ESBI, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Office of the President, Department of Finance, the Monetary Board and Bangko Sentral ng Pilipinas, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) by absorbing the debts incurred to the bank of the accused in their capacities as directors, officers, stockholders which amounted to Php20,842,807.34; and 6)

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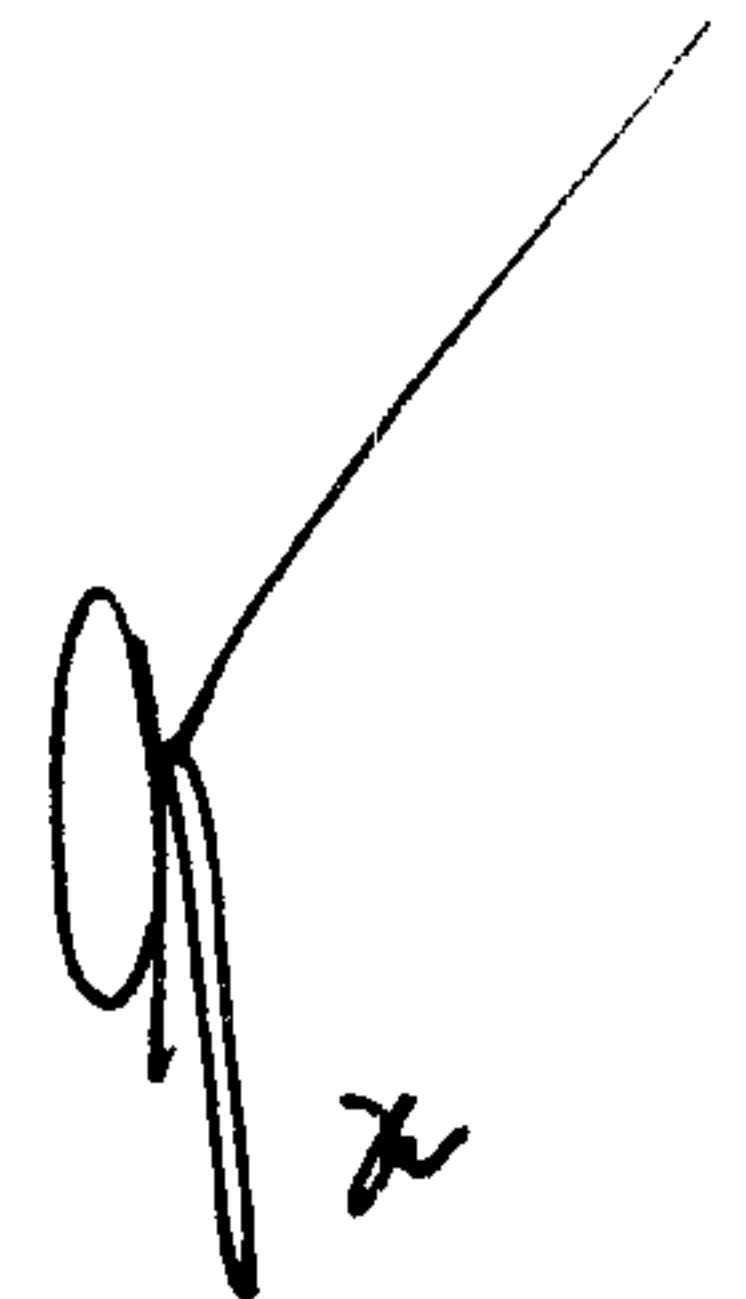
by assuming the unpaid subscription balance of accused Dee Hua T. Gatchalian and Elvira A. Ting in the combined amount of Php517,425.00, and thereafter causing the disbursement of the total amount of Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51) in cash, per different Landbank of the Philippines managers checks issued in different dates in June to October 2009, in payment for the said 445,377 shares of stocks, which shares of stock became worthless because ESBI was placed thereafter under receivership by the Monetary Board because of the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation, thereby causing undue injury to the government/LWUA in the amount of at least Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51).”

**SB-16-CRM-0426**

For: Violation of Section 3(e) of  
R.A. No. 3019

“That on August 4, 2009 to August 8, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), committing the offense in the discharge of their official functions, acting with evident bad faith, manifest partiality and or gross inexcusable negligence, and conspiring and confederating with each other and with accused **GEORGE SIA CHUA**, **GREGORIO TOMPOC IPONG**, **WILFRED DE LE ON BILLENA**, **EDITA SELVA BUENO**, and **GENEROSO DELA CRUZ TULAGAN**, Members of the Board of Directors (Board) of Express Savings Bank, Inc. (ESBI) and LWUA's nominees to the ESBI Board, did then and there, willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Express Savings Bank (ESBI), its stockholders,

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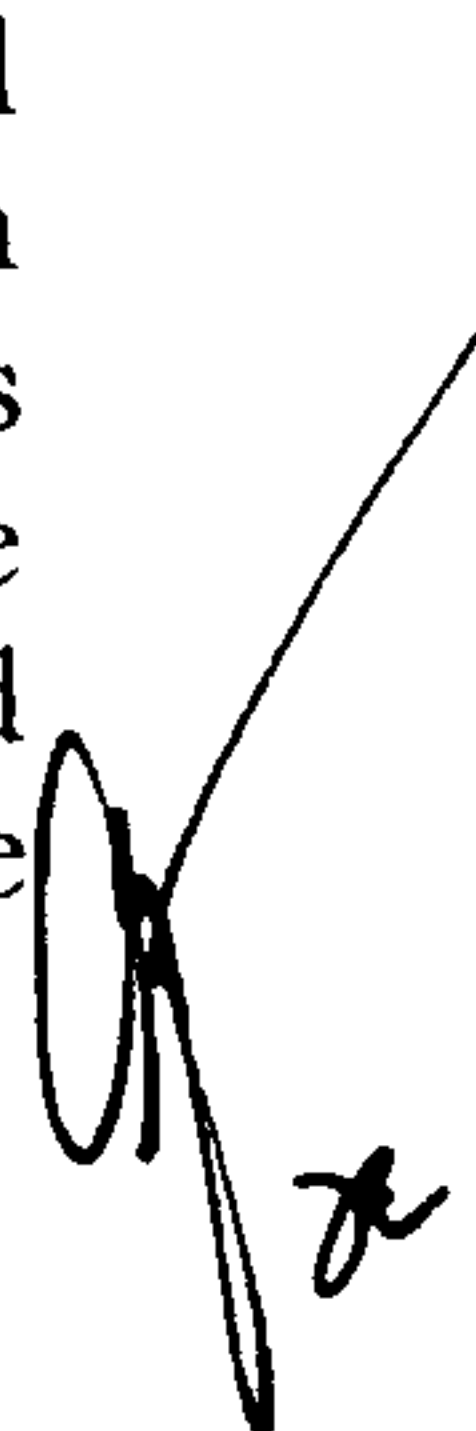


board of directors and officers, by causing LWUA to deposit Three Hundred Million Pesos (PhP300,000,000) of its funds in its savings account in ESBI, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Monetary Board, Bangko Sentral ng Pilipinas, Department of Finance, Office of the President, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) despite knowledge of the inadequacy of ESBI's capital and ESBI being rehabilitated by BSP; 6) despite repeated demands to comply with banking rules and regulations; and 7) without approval from the Securities and Exchange Commission; which deposit and its corresponding interest LWUA failed to recover when ESBI was later placed under receivership by the Monetary Board for the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation, thereby causing undue injury to the government/LWUA in the amount of at least Three Hundred Million Pesos (Php300,000.000.00)."

**SB-16-CRM-0427**

For: Violation of Section 3(e) of  
R.A. No. 3019

"That on August 17, 2009 to August 25, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), committing the offense in the discharge of their official functions, acting with evident bad faith, manifest partiality and/or gross inexcusable



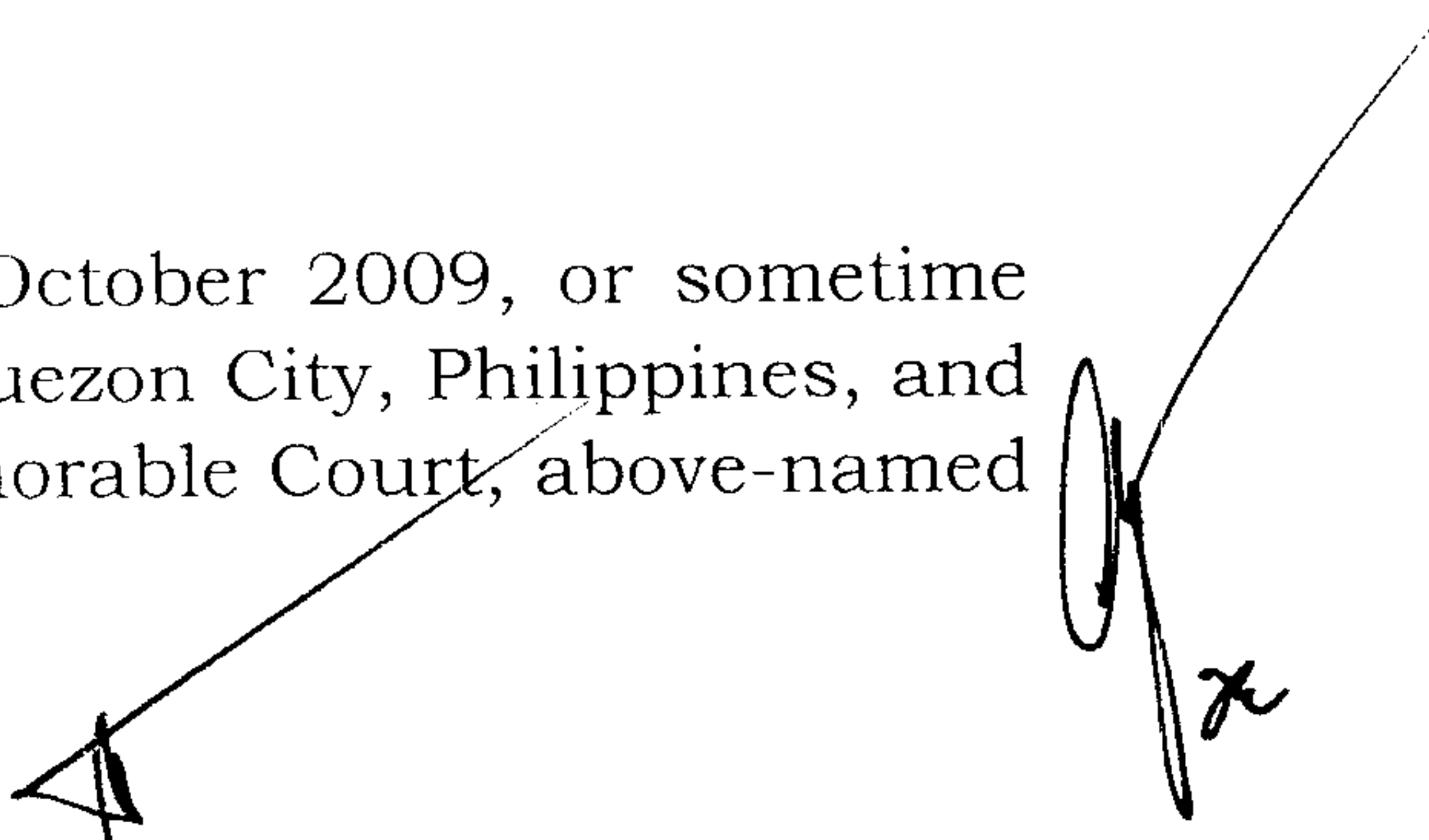


negligence, and conspiring and confederating with each other and with accused **GEORGE SIA CHUA, GREGORIO TOMPOC IPONG, WILFRED DE LEON BILLENA, EDITA SELVA BUENO, and GENEROSO DELA CRUZ TULAGAN,** Members of the Board of Directors (Board) of Express Savings Bank, Inc. (ESBI), and LWUA's nominees to the said Board, did then and there, willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to ESBI, its stockholders, board of directors and officers, by causing LWUA to pay and/or disburse Four Hundred Million Pesos (Php400,000,000.00) of its funds to ESBI, as advance payment for stock subscription, per Development Bank of the Philippines manager's check, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Monetary Board, Bangko Sentral ng Pilipinas, Department of Finance and Office of the President, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) despite knowledge of the inadequacy of ESBI's capital and ESBI being rehabilitated by BSP; 6) despite repeated demands from proper authorities to comply with banking rules and regulations, and 7) without approval from the Securities and Exchange Commission; which advance payment caused undue injury to the government/LWUA in the amount of Four Hundred Million Pesos (Php400,000,000.00) and its corresponding interest or earnings, since ESBI was later placed under receivership by the Monetary Board for the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation.”

**SB-16-CRM-0428**

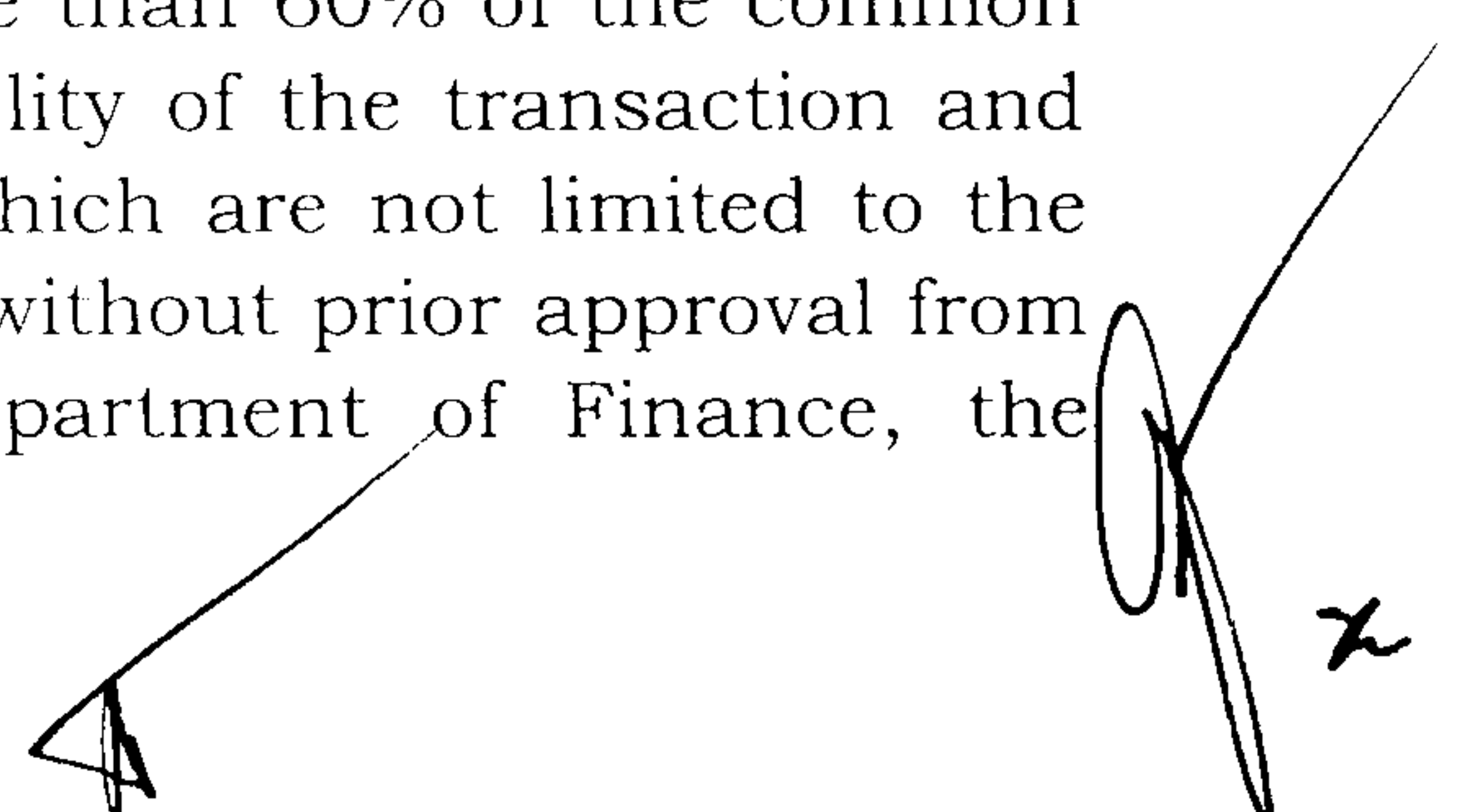
For: Malversation of Public  
Funds

“That on May 19, 2009 to October 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named

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accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), and as such have custody and control over public funds by reason of their office and for which they are accountable, while in the performance of their official functions, conspiring and confederating with each other and with accused **WESLIE T. GATCHALIAN**, Director of Forum Pacific, Inc., (FPI), **WILLIAM T. GATCHALIAN**, President/Chairman and Board of Director of The Wellex Group, Inc. (WGI), **YOLANDA T. DELA CRUZ**, Board of Director of WGI, **DEE HUA T. GATCHALIAN**, Treasurer and Board of Director of WGI, **ARTHUR R. PONSARAN**, Corporate Secretary and Board of Director of WGI, **GERONIMO VELASCO, JR.**, Chairman and Board of Director of FPI, **PETER S. SALUD**, President/CEO and Board of Director of FPI, **ROGELIO D. GARCIA**, Board of Director of FPI, **LAMBERTO B. MERCADO, JR.**, Board of Director of FPI, **EVELYN DELA ROSA**, Board of Director of FPI, **JOAQUIN P. OBIETA**, Board of Director of FPI, **ELVIRA A. TING**, Board of Director of FPI, **KENNETH T. GATCHALIAN**, Director of WGI and Treasurer/Director of FPI, and **SHERWIN T. GATCHALIAN**, Executive Vice President of FPI, did then and there, willfully, unlawfully and feloniously permit or consent to the taking by accused **WESLIE T. GATCHALIAN**, **WILLIAM T. GATCHALIAN**, **YOLANDA T. DELA CRUZ**, **DEE HUA T. GATCHALIAN**, **ARTHUR R. PONSARAN**, **GERONIMO VELASCO, JR.**, **PETER S. SALUD**, **ROGELIO D. GARCIA**, **LAMBERTO B. MERCADO, JR.**, **EVELYN DELA ROSA**, **JOAQUIN P. OBIETA**, **ELVIRA A. TING**, **KENNETH T. GATCHALIAN**, and **SHERWIN T. GATCHALIAN**, of public funds amounting to Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51), by causing LWUA, a government owned and controlled corporation created to serve as a specialized lending institution of local water utilities, to purchase 445,377 shares of stocks in Express Savings Bank, Inc. (ESBI) owned by the following: 1) The Wellex Group, Inc.; 2) Forum Pacific, Inc.; 3) accused Dee Hua T. Gatchalian; 4) Sherwin T. Gatchalian; and 5) Kenneth T. Gatchalian, which shares of stocks represented more than 60% of the common shares of ESBI, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Office of the President, Department of Finance, the

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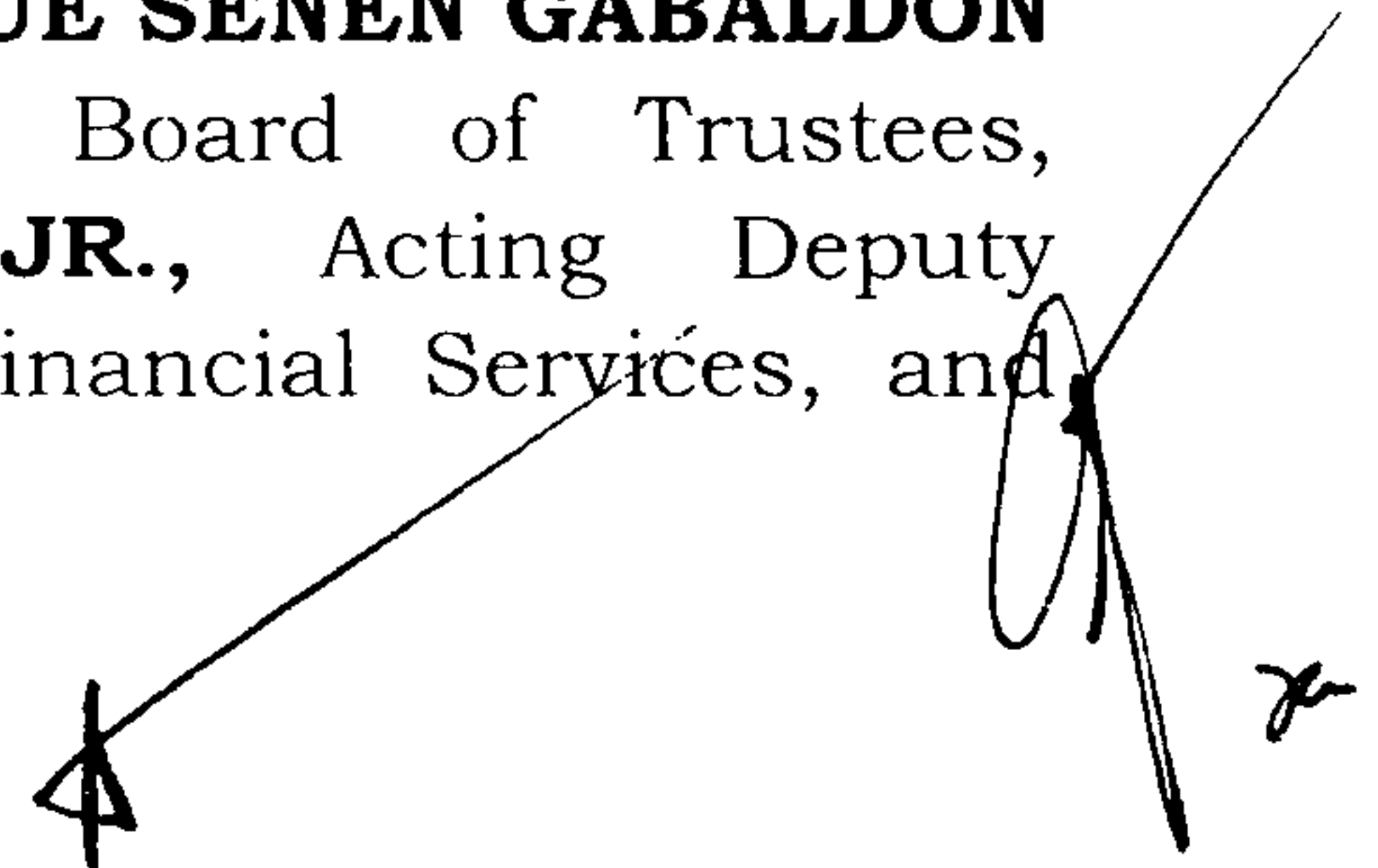


Monetary Board and Bangko Sentral ng Pilipinas, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) by absorbing the debts incurred to the bank of the accused in their capacities as directors, officers, stockholders which amounted to Php20,842,807.34; and 6) by assuming the unpaid subscription balance of accused Dee Hua T. Gatchalian and Elvira A. Ting in the combined amount of Php517,425.00, and thereafter causing the disbursement of the total amount of Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51) in cash, per the different Landbank of the Philippines managers checks issued in different dates in June to October 2009, in payment for the said 445,377 shares of stocks, which shares of stock became worthless because ESBI was placed thereafter under receivership by the Monetary Board because of the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation, thereby causing damage to the government/LWUA in the amount of at least Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51).”

**SB-16-CRM-0429**

For: Malversation of Public  
Funds

“That on August 4, 2009 to August 8, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and

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**DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), and as such have custody and control over public funds by reason of their office and for which they were accountable, while in the performance of their official functions, conspiring and confederating with each other and with accused **GEORGE SIA CHUA**, **GREGORIO TOMPOC IPONG**, **WILFRED DE LEON BILLENA**, **EDITA SELVA BUENO**, and **GENEROSO DELA CRUZ TULAGAN**, Members of the Board of Directors (Board) of Express Savings Bank, Inc. (ESBI), and LWUA's nominees to the said Board, did then and there, willfully, unlawfully and feloniously permit or consent to the taking by ESBI, its stockholders, board of directors and officers, public funds in the amount of Three Hundred Million Pesos (PhP300,000,000.00), by causing LWUA to deposit PhP300,000,000.00 of its funds in its savings account in ESBI, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Monetary Board, Bangko Sentral ng Pilipinas, Department of Finance, Office of the President, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429.00 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) despite knowledge of the inadequacy of ESBI's capital and ESBI being rehabilitated by BSP; 6) despite repeated demands to comply with banking rules and regulations; and 7) without approval from the Securities and Exchange Commission; which deposit and its corresponding interest LWUA failed to recover when ESBI was later placed under receivership by the Monetary Board for the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation, to the damage of the government/LWUA in the amount of at least Three Hundred Million Pesos (PhP300,000,000.00)."

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**SB-16-CRM-0430**

For: Malversation of Public  
Funds

“That on August 17, 2009 to August 25, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), and as such have custody and control over public funds by reason of their office and for which they were accountable, while in the performance of their official functions, conspiring and confederating with each other and with accused **GEORGE SIA CHUA**, **GREGORIO TOMPOC IPONG**, **WILFRED DE LEON BILLENA**, **EDITA SELVA BUENO**, and **GENEROSO DELA CRUZ TULAGAN**, Members of the Board of Directors (Board) of Express Savings Bank, Inc. (ESBI), and LWUA's nominees to the said Board, did then and there, willfully, unlawfully and feloniously permit or consent to the taking by ESBI, its stockholders, board of directors and officers, public funds in the amount of Four Hundred Million Pesos (Php400,000,000.00) by causing LWUA to pay and/or disburse Four Hundred Million Pesos (Php400,000,000.00) of its funds to ESBI, as advance payment for stock subscription due from LWUA, per Development Bank of the Philippines manager's check, despite, the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Monetary Board, Bangko Sentral ng Pilipinas, Department of Finance and Office of the President, and in violation of banking rules and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, and had a net realizable value of negative Php12,932,429 as of March 2009; 3) despite the ESBI's Financial Statements for the years 2005 to 2009 showing substantial net losses and capital deficits for five straight years; 4) despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI; 5) despite knowledge of the inadequacy of ESBI's capital and ESBI being rehabilitated by

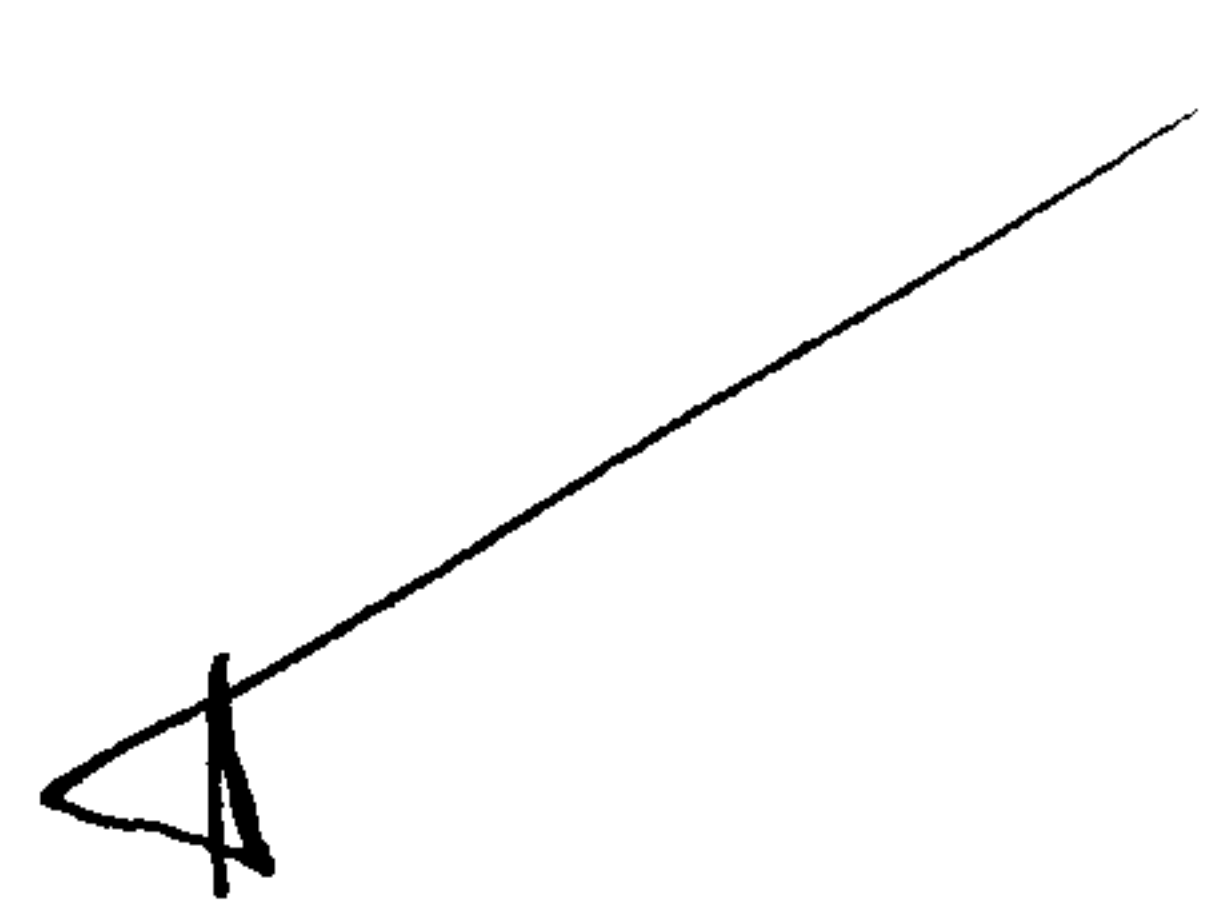
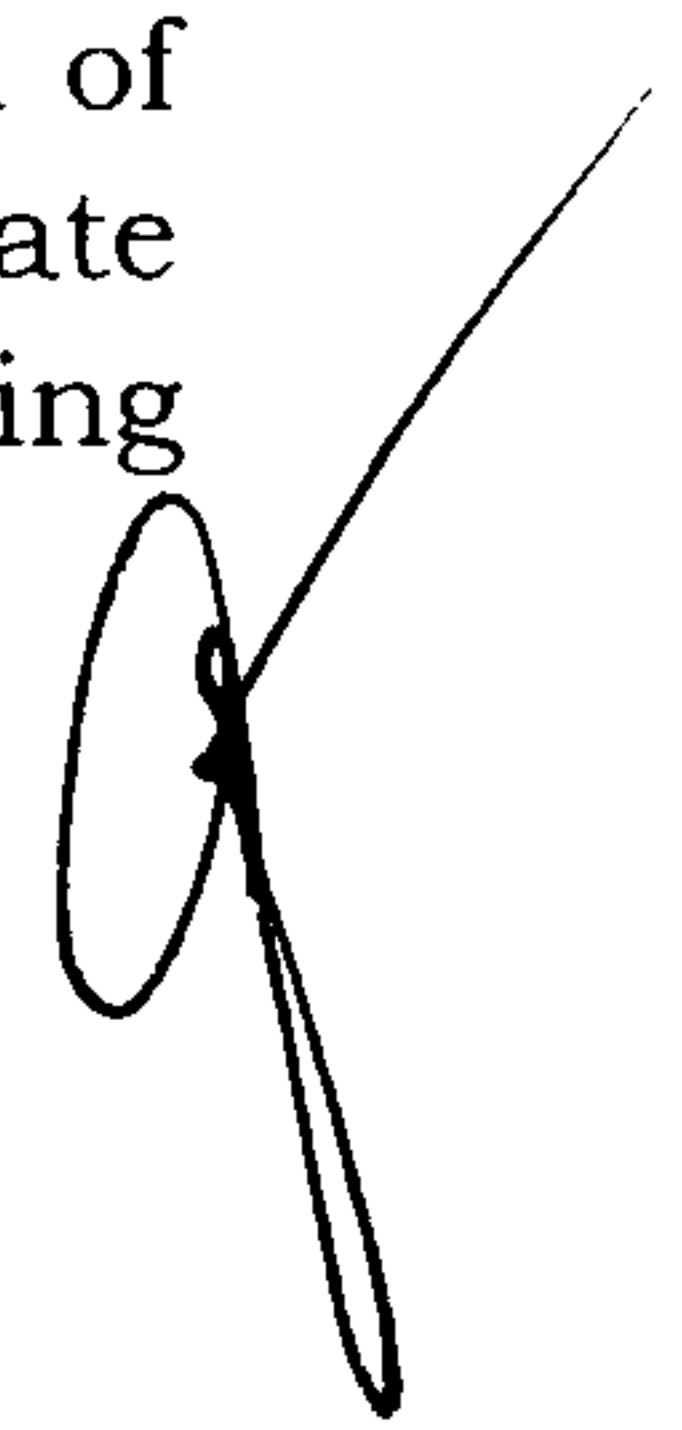
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BSP; 6) despite repeated demands from proper authorities to comply with banking rules and regulations, and 7) without approval from the Securities and Exchange Commission; which advance payment caused damage to the government/LWUA in the amount of Four Hundred Million Pesos (Php400,000,000.00) and its corresponding interest or earnings, since ESBI was later placed under receivership by the Monetary Board for the following reasons: a) its inability to pay its liabilities as these became due in the ordinary course of business; (b) its inability to continue operating without involving probable losses to its depositors and creditors; and (c) failure of its Board and management to restore the bank's financial health and viability despite being given considerable time within which to address its financial problems; and by its subsequent liquidation of assets by the Philippine Deposit Insurance Corporation.”

**SB-16-CRM-0431**

For: Violation of Sections 19 and 66 of R.A. No. 8791 in relation to Section 36 of R.A. No. 7653

“That on July 13, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **ENRIQUE SENEN GABALDON MONTILLA III**, Member of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services and **ARNALDO M. ESPINAS**, Corporate Legal Officer/Board Secretary, all high ranking public officers of the Local Water Utilities Administration (LWUA), committing the offense in the discharge of their official functions, and conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally serve as bank officers of Express Savings Bank, Inc., a private bank, by holding the position of Chairman, Vice Chairman, Treasurer and Assistant Corporate Secretary, respectively, thereof, while at the same time serving as appointive public officers of LWUA.”



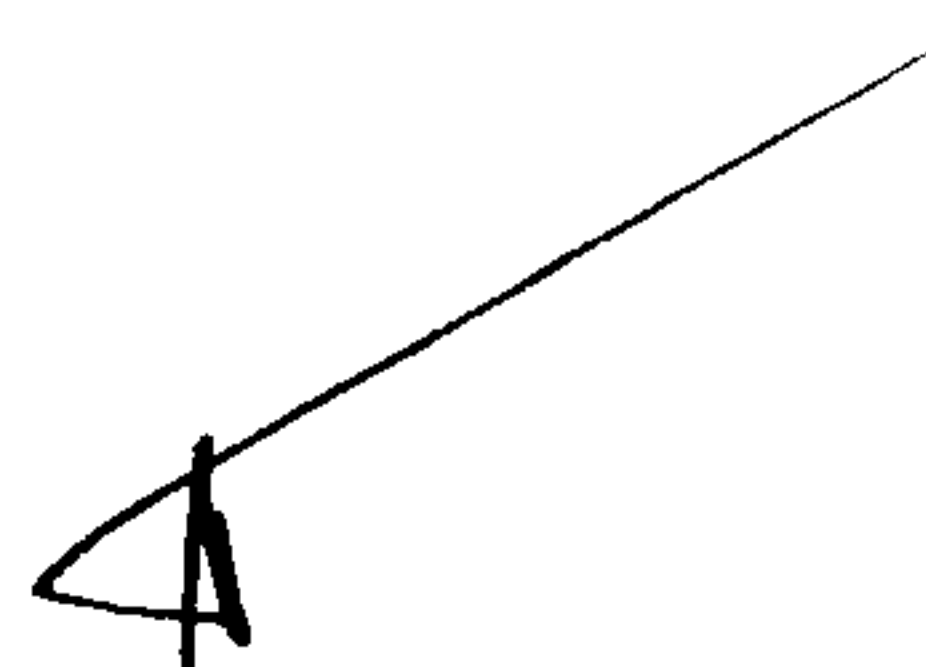
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**SB-16-CRM-0432**

For: Violation of Section X126.2 (c)(2) of the Manual of Regulation for Banks (MORB) in relation to Sections 36 and 37 of R.A. No. 7653

“That on May 19, 2009 to June 3, 2009, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **PROSPERO ARREZA PICHAY**, being then the Chairman, **EDUARDO ALVAREZ BANGAYAN**, **AURELIO O. PUENTEVELLA**, **ENRIQUE SENEN GABALDON MONTILLA III**, Members of the Board of Trustees, **WILFREDO MANALILI FELEO, JR.**, Acting Deputy Administrator of Investments and Financial Services, and **DANIEL A. LANDINGIN**, Acting Administrator, all high ranking public officers of the Local Water Utilities Administration (LWUA), committing the offense in the discharge of their official functions, and conspiring and confederating with each other and with accused **WESLIE T. GATCHALIAN**, Director of Forum Pacific, Inc., (FPI), **WILLIAM T. GATCHALIAN**, President/Chairman and Director of The Wellex Group, Inc. (WGI), **YOLANDA T. DELA CRUZ**, Director of WGI, **DEE HUA T. GATCHALIAN**, Treasurer and Director of WGI, **ARTHUR R. PONSARAN**, Corporate Secretary and Director of WGI, **GERONIMO VELASCO, JR.**, Chairman and Director of FPI, **PETER S. SALUD**, President/CEO and Director of FPI, **ROGELIO D. GARCIA**, Director of FPI, **LAMBERTO B. MERCADO, JR.**, Director of FPI, **EVELYN DELA ROSA**, Director of FPI, **JOAQUIN P. OBIETA**, Director of FPI, **ELVIRA A. TING**, Director of FPI, **KENNETH T. GATCHALIAN**, Director of WGI and Treasurer/Director of FPI, and **SHERWIN T. GATCHALIAN**, Executive Vice President of FPI) did then and there, willfully, unlawfully and criminally cause the sale/transfer of 445,377 shares of stocks in ESBI owned by The Wellex Group, Inc., Forum Pacific, Inc., accused Dee Hua T. Gatchalian, Sherwin T. Gatchalian and Kenneth T. Gatchalian to LWUA, at the cost of Eighty Million Three Thousand Seventy Pesos and 51/100 (Php80,003,070.51), representing more than 60% of the outstanding common shares in ESBI, thereby resulting in the ownership or control of LWUA of at least 60% of the voting stock of ESBI, without prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP), and in violation of banking laws and regulations.”



Under P.D. No. 198, otherwise known as The Provincial Water Utilities Act of 1973, the LWUA of the Local Water Utilities Administration is a government-owned and controlled corporation created for the following purposes:

SECTION 50. Purposes. — The Administration shall primarily be a specialized lending institution for the promotion, development and financing of local water utilities. In the implementation of its functions, the Administration shall, among others: (1) prescribe minimum standards and regulations in order to assure acceptable standards of construction materials and supplies, maintenance, operation, personnel training, accounting and fiscal practices for local water utilities; (2) furnish technical assistance and personnel training programs for local water utilities; (3) monitor and evaluate local water standards; and (4) effect systems integration, joint investment and operations, district annexation and deannexation whenever economically warranted.<sup>22</sup>

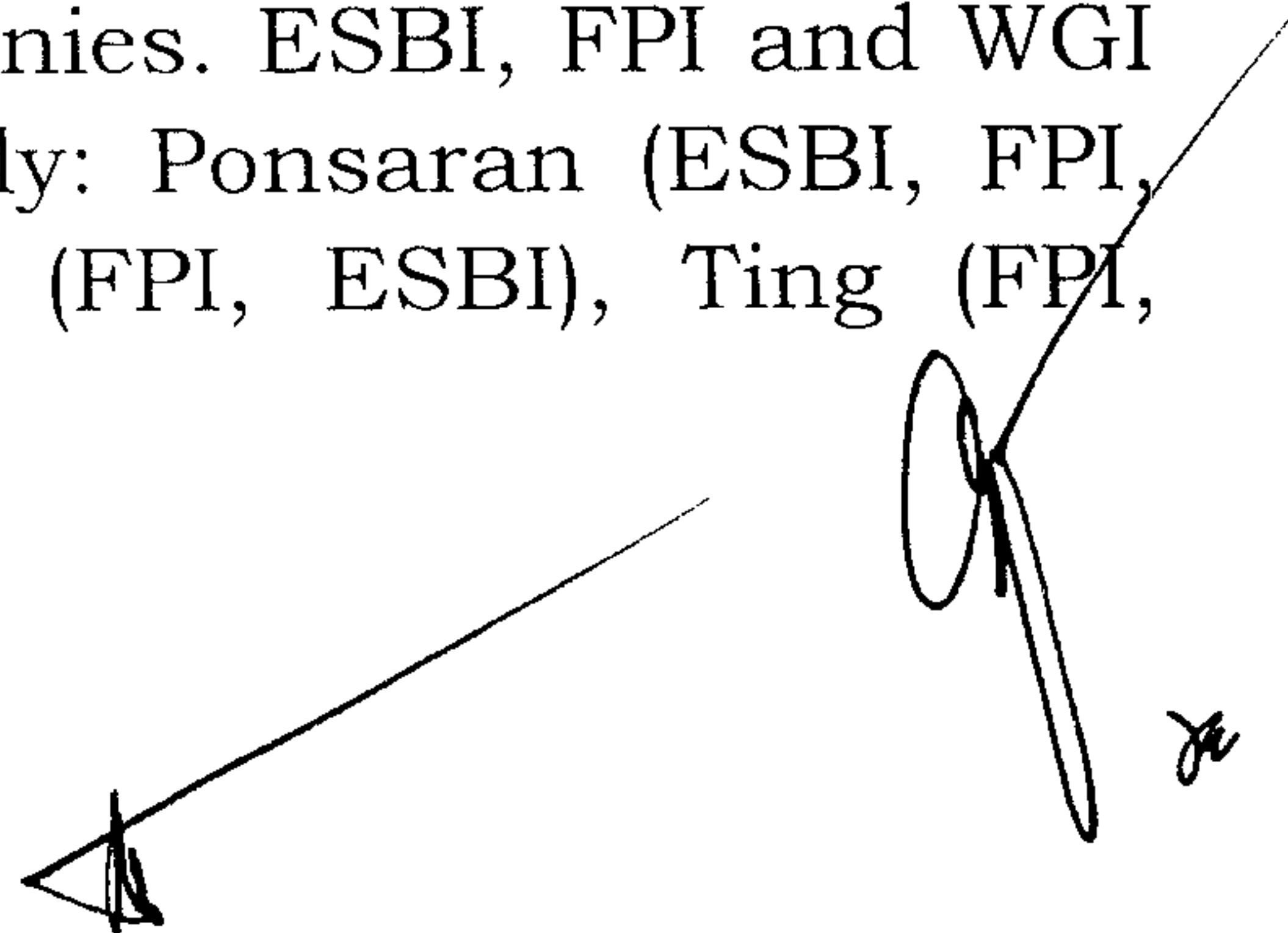
Under Section 54, it is provided that all of the business and affairs of the Administration shall be carried on and its powers shall be exercised by and through the board of trustees. The function of the trustees, however, shall be to establish policy, not to engage in the detailed management of the Administration.

The accused in these cases were charged in their following capacities as officers of the LWUA:

1. Prospero A. Pichay - Chairman
2. Eduardo A. Bangayan - Member of the Board of Trustees
3. Aurelio O. Puentevella - Member of the Board of Trustees
4. Enrique G. Montilla III - Member of the Board of Trustees
5. Wilfredo M. Feleo, Jr. - Acting Deputy Administrator of Investments and Financial Services
6. Daniel Landingin - Acting Administrator
7. Arnaldo M. Espinas - Corporate Legal Officer/Board Secretary

ESBI or Express Savings Bank, Inc. is a local thrift bank based in Cabuyao, Laguna. Most of its shares were owned by accused Ting, Garcia, Dee Hua, Kenneth, Sherwin Gatchalian, FPI (Forum Pacific, Inc.) and WGI (Wellex Group, Inc.). FPI and WGI are financial holding companies. ESBI, FPI and WGI have some common directors, namely: Ponsaran (ESBI, FPI, WGI), Garcia (FPI, ESBI), Mercado (FPI, ESBI), Ting (FPI,

<sup>22</sup> Title III, Chapter 2, Section 50 of P.D. No. 198.





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ESBI), Kenneth Gatchalian (FPI, ESBI), Dee Hua Gatchalian (WGI, ESBI), and Dela Cruz (WGI, ESBI).

The other accused were charged in their following capacities as officers of these entities:

1. Forum Pacific, Inc. (FPI) officers
  - a. Weslie T. Gatchalian – Director
  - b. Geronimo Velasco, Jr. – Chairman and Director
  - c. Peter S. Salud – President/CEO and Director
  - d. Rogelio D. Garcia – Director
  - e. Lamberto B. Mercado, Jr. – Director
  - f. Evelyn Dela Rosa – Director
  - g. Joaquin P. Obieta – Director
  - h. Elvira A. Ting – Director
  - i. Kenneth T. Gatchalian – Treasurer/Director
  - j. Sherwin T. Gatchalian – Executive Vice-President
2. Wellex Group, Inc. (WGI) officers
  - a. William T. Gatchalian – President/Chairman and Director
  - b. Yolanda T. Dela Cruz – Director
  - c. Dee Hua T. Gatchalian – Treasurer and Director
  - d. Arthur R. Ponsaran – Corporate Secretary and Director
  - e. Kenneth T. Gatchalian – Director
3. Express Savings Bank, Inc. (ESBI) Board
  - a. George S. Chua – Member of the Board of Directors
  - b. Gregorio T. Ipong – Member of the Board of Directors
  - c. Wilfred D. Billena – Member of the Board of Directors
  - d. Edita S. Bueno – Member of the Board of Directors
  - e. Generoso D. Tulagan – Member of the Board of Directors

On September 22, 2008, LWUA Administrator Orlando Honrade recommended to the LWUA Board the approval in principle of the creation of a LWUA Bank and for LWUA management to work out the details as well as the necessary approval of the Bangko Sentral ng Pilipinas (BSP). Thus, Resolution No. 145, Series of 2008 was passed by the LWUA Board approving “the establishment of a **Water Development Bank** which shall be a wholly-owned subsidiary of the Local Water Utilities Administration, subject to the compliance with all the laws and regulations for the establishment thereof”.<sup>23</sup> In the September 23, 2008 Minutes of the Meeting of the LWUA Board of Trustees<sup>24</sup>, accused Bangayan said that the Board shall pass a resolution to put up a bank and then

<sup>23</sup> Annex J of the FIO Complaint-Affidavit, dated July 29, 2013.

<sup>24</sup> Annex 8, p. 12 of the Motion of Accused Bangayan filed on July 19, 2016.

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“other legal and financial requirements could be worked out”. Trustee Ester Laconico-Feria added that “prudence would dictate that Management should first make a feasibility study on the matter.”

Accused Pichay, in his capacity as Chairman of LWUA, wrote a letter to then Government Corporate Counsel Alberto C. Agra requesting for legal advice for the proposed creation of a Water Development Bank. Agra opined that such creation of a subsidiary is well within the corporate powers of the LWUA but subject to the review of Department of Finance (DOF) and approval of the Office of the President (OP), as well as the applicable banking laws and regulations.<sup>25</sup>

Accused Pichay then wrote the DOF and OP. OP referred the same letter to the BSP for comment and recommendation.<sup>26</sup> He also wrote another letter addressed to the *Bangko Sentral ng Pilipinas* (BSP) signifying the intention of the LWUA to acquire a bank instead of establishing a new one. Deputy Governor Nestor A. Espenilla, Jr. of the BSP replied to accused Pichay in a letter where he explained that LWUA may own up to 60% of the voting stock of a domestic bank and that sale or transfer of ownership or control of more than 20% of the voting stock a bank will require the prior approval of the Monetary Board.<sup>27</sup>

Prior to the acquisition of a thrift bank, the LWUA conducted a due diligence audit where the services of Jose U. Pontiveros were engaged. He conducted a due diligence audit for the proposed acquisition of ESBI by the LWUA. The audit firm had the following conclusion and recommendations in its audit report and findings dated May 16, 2009:

1. LWUA should negotiate for the reduction of the purchase price;
2. It should require the settlement of all DOSRI loans net of capital interests retained by the seller;
3. As soon as the management take-over is effected, it should discontinue the practice of granting

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<sup>25</sup> Annex K of the FIO Complaint-Affidavit.

<sup>26</sup> Annexes L, M and N of the FIO Complaint-Affidavit.

<sup>27</sup> Annex P of the FIO Complaint-Affidavit.

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- loans with maturities of up to ten (10) years without requiring any payments on the principal;
4. LWUA should inform the BSP of its acquisition of 60% of the voting shares of ESBI; and
  5. It should effect the immediate rehabilitation of ESBI upon acquisition and submit a comprehensive rehabilitation plan.<sup>28</sup>

In a meeting on May 19, 2009, the Board of Trustees of the LWUA passed Resolution No. 120. It resolved, as recommended by LWUA Management, to approve the acquisition of 60% of the outstanding shares of ESBI provided however, that the Management shall negotiate the offered price of Php100million to the range of Php70million to Php85million, as well as to negotiate for favorable terms and conditions as mentioned in the Due Diligence Report<sup>29</sup> and clothed the Acting LWUA Administrator and his Deputy to negotiate for the acquisition of EBSI in accordance with the said resolution.

The Terms of Reference for the purchase of 60% of the outstanding shares of ESBI dated May 22, 2009 was signed by accused Landingin, Feleo, Jr. and Garcia. Accused Landingin and Feleo, Jr. signed in behalf of LWUA while accused Garcia signed as a representative of FPI. The TOR provided for the agreed purchase price of Php80million, the terms of payment, the hold over of directors and officers, number of outstanding shares and the duties and obligations of the seller and buyer.<sup>30</sup>

In Resolution No. 129-A adopted on May 26, 2009, the Board of Trustees of LWUA resolved to approve the acquisition of 445,337(sic) shares constituting 60% of the outstanding shares of ESBI in the amount of Php80million.<sup>31</sup> And on June 3, 2009, a Deed of Sale was executed between the sellers (WGI, FPI, accused Sherwin, Kenneth and Dee Hua Gatchalian, accused Ting) and the buyer (LWUA).<sup>32</sup> Accused Dee Hua Gatchalian signed on behalf of WGI. Accused Salud signed on

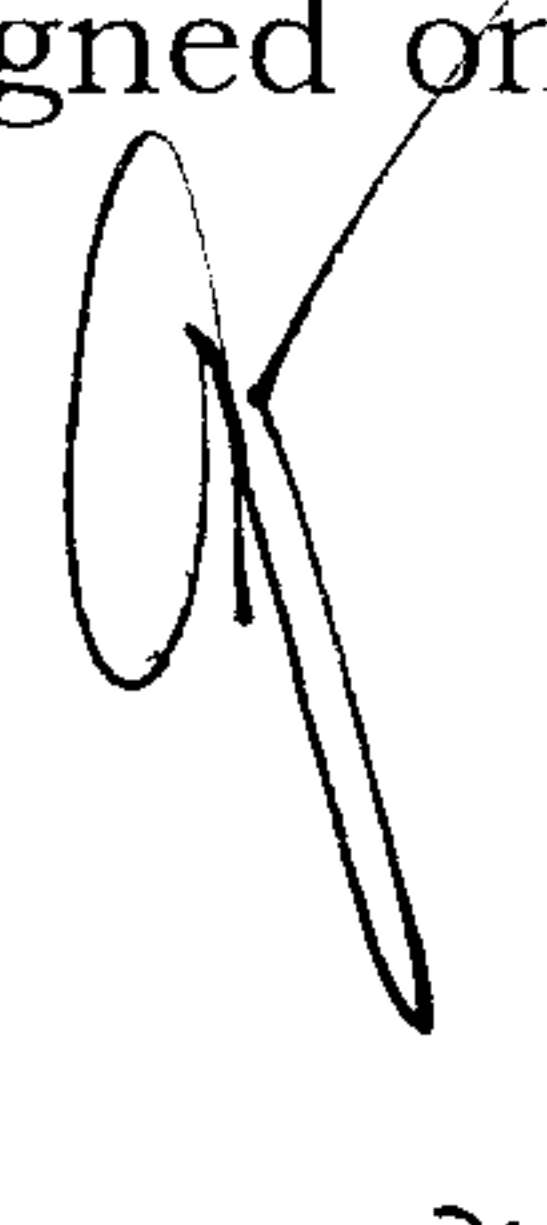
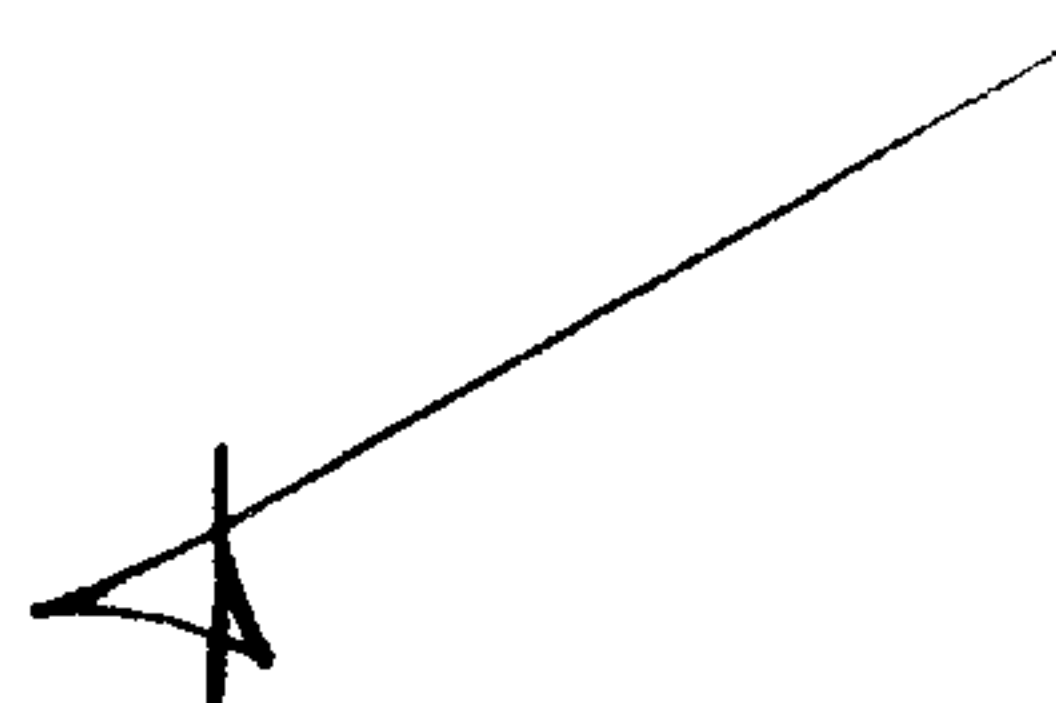
<sup>28</sup> Annex Q of the FIO Complaint-Affidavit.

<sup>29</sup> Annex W-1 of the FIO Complaint-Affidavit.

<sup>30</sup> Annex F of the FIO Complaint-Affidavit.

<sup>31</sup> Annex Y of the FIO Complaint-Affidavit.

<sup>32</sup> Annex Z of the FIO Complaint-Affidavit.



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behalf of FPI. Accused Sherwin, Kenneth, Dee Hua and Ting signed in their own capacities. Accused Landingin signed on behalf of LWUA as its Acting Administrator.

LWUA took over the management of ESBI and accused Pichay became the Chairman of the Board of Directors of ESBI.<sup>33</sup> On August 4, 2009, the Board of Trustees of LWUA issued Resolution No. 303 where it resolved to make ESBI as its major depository bank.<sup>34</sup> One of the "WHEREAS" clauses of this resolution provides that the acquisition by LWUA of majority of the ownership of ESBI qualifies the said bank to be its depository "subject to final authorization from the Monetary Board". Landbank manager's checks were then issued payable to ESBI in the amount of Php300million<sup>35</sup> to be deposited to ESBI under the account of LWUA. Later, the authorized capital stock of ESBI was increased from Php500million to Php2billion. On August 17, 2009, Resolution No. 336 was adopted authorizing the advance payment of Php400 million "for stock subscription to the increase in the authorized capital of Express Savings Bank, Inc."<sup>36</sup> The "WHEREAS" clauses state that the purpose of LWUA's capital infusion is to "meet the requirements imposed by Bangko Sentral ng Pilipinas, as part of ESBI's rehabilitation program" and that the increase in capitalization is "subject to the approval of the Bangko Sentral ng Pilipinas".

Accused Pichay sent letters of clarification to the Office of the Government Corporate Counsel regarding its purchase of the 60% of the voting stock of ESBI, which would later be renamed as Water and Power Bank, Inc.<sup>37</sup> Government Corporate Counsel Agra replied that LWUA's equity investment is within its corporate powers. Accused Pichay also wrote the Office of the President requesting for approval of the acquisition.<sup>38</sup> Then Executive Secretary Eduardo Ermita replied that the OP interposes no objections and grants LWUA the authority to the said acquisition.<sup>39</sup>

<sup>33</sup> Annex QQ of the FIO Complaint-Affidavit.

<sup>34</sup> Annex RR of the FIO Complaint-Affidavit.

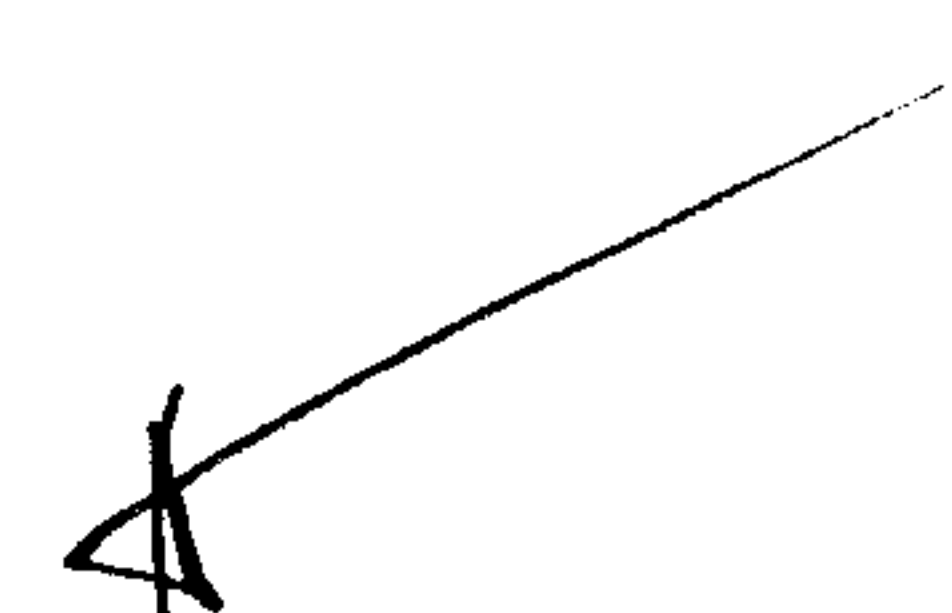
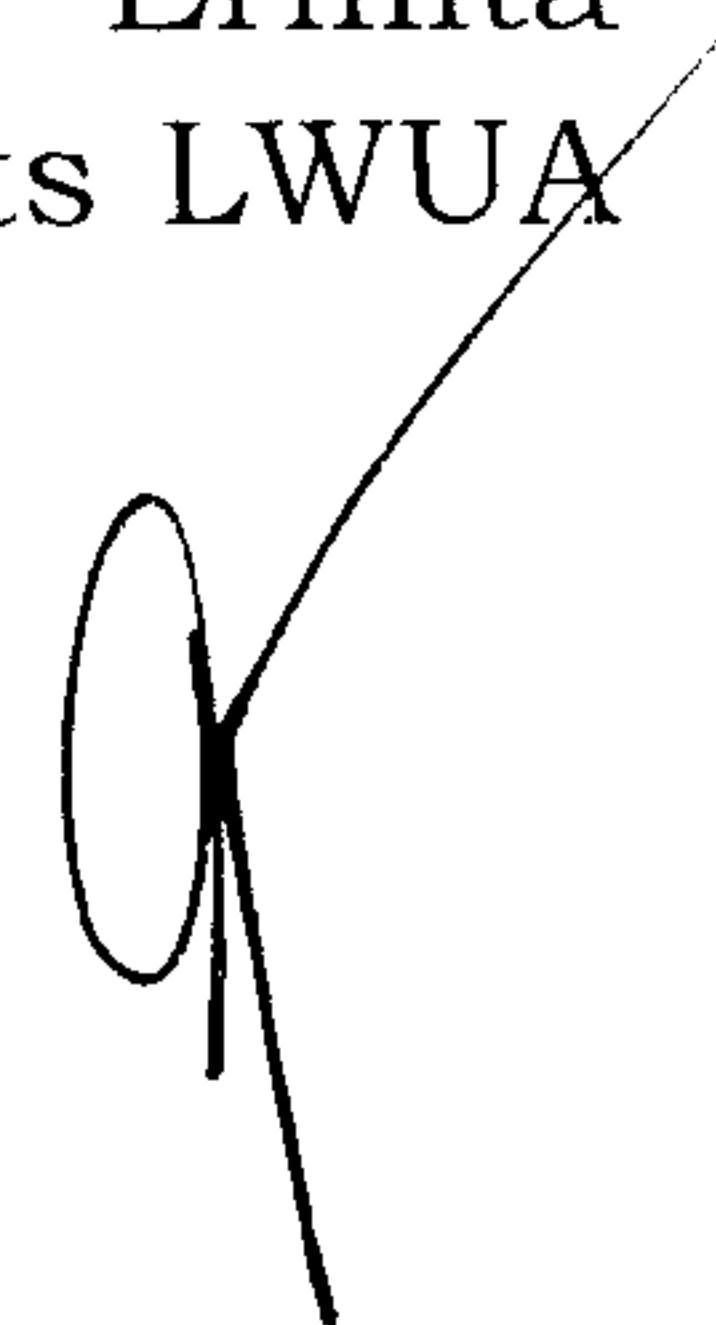
<sup>35</sup> Annex TT of the FIO Complaint-Affidavit.

<sup>36</sup> Annex WW of the FIO Complaint-Affidavit.

<sup>37</sup> Annexes CCC and DDD of the FIO Complaint-Affidavit.

<sup>38</sup> Annex EEE of the FIO Complaint-Affidavit.

<sup>39</sup> Annex GGG of the FIO Complaint-Affidavit.





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The BSP asked the DOF for its comments regarding the acquisition. DOF Undersecretary Jeremias N. Paul, Jr. replied that the acquisition is not consistent with the rationalization of financing policy in the water and sewerage sector. He also said that the financial health of the thrift bank to be acquired must be closely examined. He said that LWUA's proposed investment is inconsistent with the thrusts and policies of the Government.<sup>40</sup>

It is important to note that in its acceptance of government deposits, ESBI failed to obtain an authority from the Monetary Board (MB). Thus in its Resolution No. 605, the Monetary Board of the *Bangko Sentral ng Pilipinas* denied the request of the ESBI to transfer its shares of stock to LWUA which was equivalent to 60% of the total voting equity of the bank. It ordered the ESBI to negotiate with another investor qualified to infuse additional capital to fully address its capital deficiency. It also mentioned that ESBI repeatedly defied BSP directives relative to its acceptance of government deposits. Thus, the Monetary Board approved the issuance of a Cease and Desist Order in connection with its acceptance of government deposits without authority from the MB.<sup>41</sup>

These cases were then filed against the different accused for violation of Section 3(e), R.A. No. 3019, Malversation and Violation of the Manual of Regulation of Banks (MORB) in relation to R.A. No. 7653 (Bangko Sentral Act).

### **Discussion on the Charges**

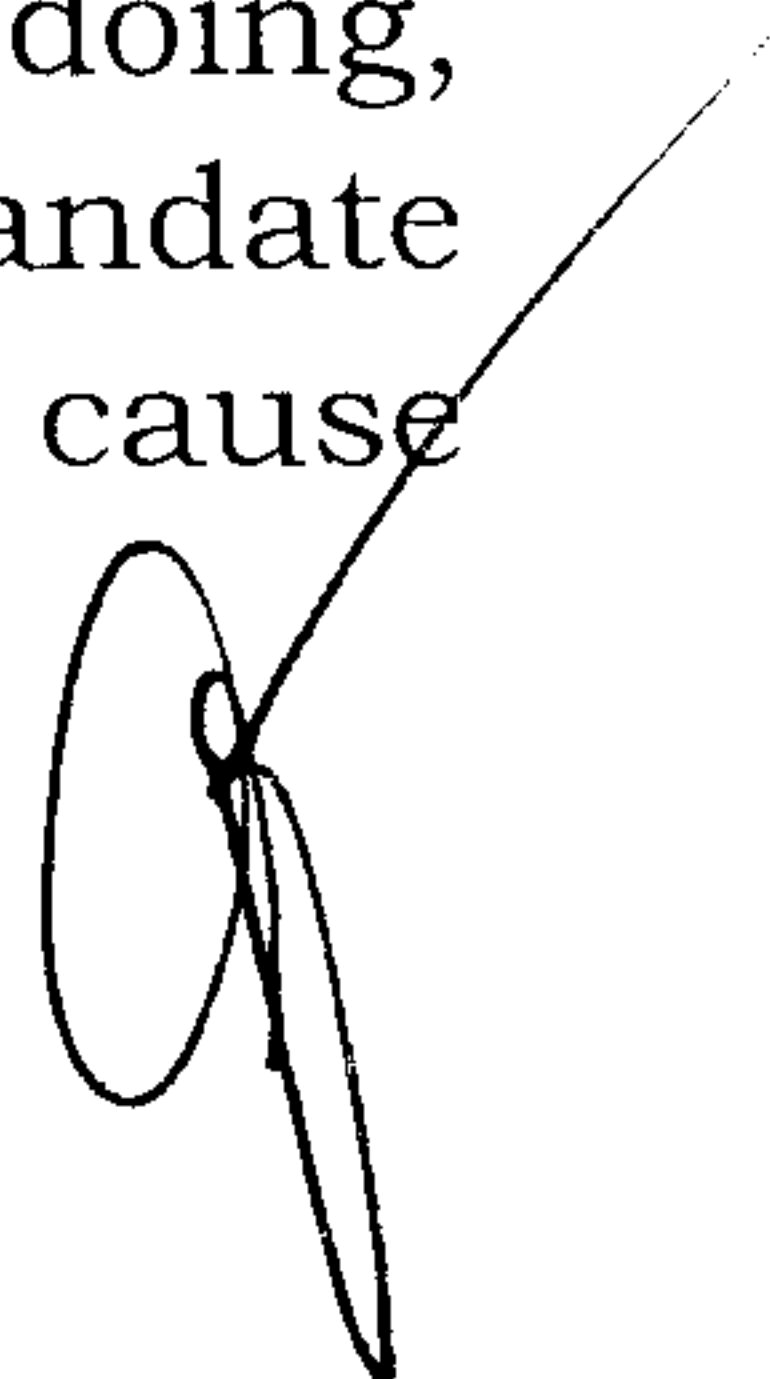
In these cases, this Court is called upon to make a determination of probable cause and such determination needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused.<sup>42</sup> In so doing, the Court is simply abiding with the "constitutional mandate of personally determining the existence of probable cause before issuing a warrant of arrest".<sup>43</sup>

<sup>40</sup> Annex HHH of the FIO Complaint-Affidavit.

<sup>41</sup> Annex JJJ of the FIO Complaint-Affidavit.

<sup>42</sup> Ganaden v. Ombudsman, G.R. Nos. 169359-61, June 1, 2011, 665 Phil 224-233.

<sup>43</sup> Cojuangco, Jr. v. Sandiganbayan, G.R. No. 134307, December 21, 1998, 360 Phil 559-600.




On the Three (3) Charges of  
Malversation of Public Funds  
under the Revised Penal Code

There are three (3) charges for Malversation of Public Funds under Article 217 of the Revised Penal Code.

The first charge (SB-16-CRM-0428) is against the LWUA officials namely: accused Pichay, Bangayan, Puentevella, Montilla III, Feleo, Jr. and Landingin, and the FPI/WGI officials namely: Weslie and William Gatchalian, Dela Cruz, Dee Hua Gatchalian, Ponsaran, Velasco, Jr., Salud, Garcia, Mercado, Jr., Dela Rosa, Obieta, Ting, Kenneth and Sherwin Gatchalian, for consenting or allowing the amount of Php80,003,070.51, for which they were accountable, to be taken by the ESBI shareholders, FPI/WGI officers who are charged, for the purchase of 60% of the ownership of ESBI without the required consent or approval from various government agencies, such as the Monetary Board and/or the Bangko Sentral ng Pilipinas.

In the second malversation case (SB-16-CRM-0429), the accused LWUA officials Pichay, Bangayan, Puentevella, Montilla III, Feleo, Jr. and Landingin are accused as public officials, in conspiracy with the Board of Directors of ESBI namely: Chua, Ipong, Billena, Bueno and Tulagan, for consenting to the taking by the stockholders of ESBI of the amount of Php300,000,000.00 which was deposited at ESBI as a savings deposit even if the transfer of the ownership of the bank was not authorized by the Monetary Board, among other reasons.

In the third malversation case (SB-16-CRM-0430), the accused LWUA officials, conspiring with the Board of Directors of ESBI, are again charged to have consented to the taking by ESBI of the amount of Php400,000,000.00, as advance payment for stock subscription of ESBI, despite the lack of authority from the Monetary Board to transfer the ownership of 60% of the ESBI.

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The elements of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code are as follows:

- a. That the offender be a public officer;
- b. That he had the custody or control of funds or property by reason of the duties of his office;
- c. That those funds or property were public funds or property for which he was accountable;
- d. And, that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.<sup>44</sup>

The prosecution believes that the LWUA officials charged are “accountable public officers” or that they are public officials who are accountable for the public funds that were under their custody and control.

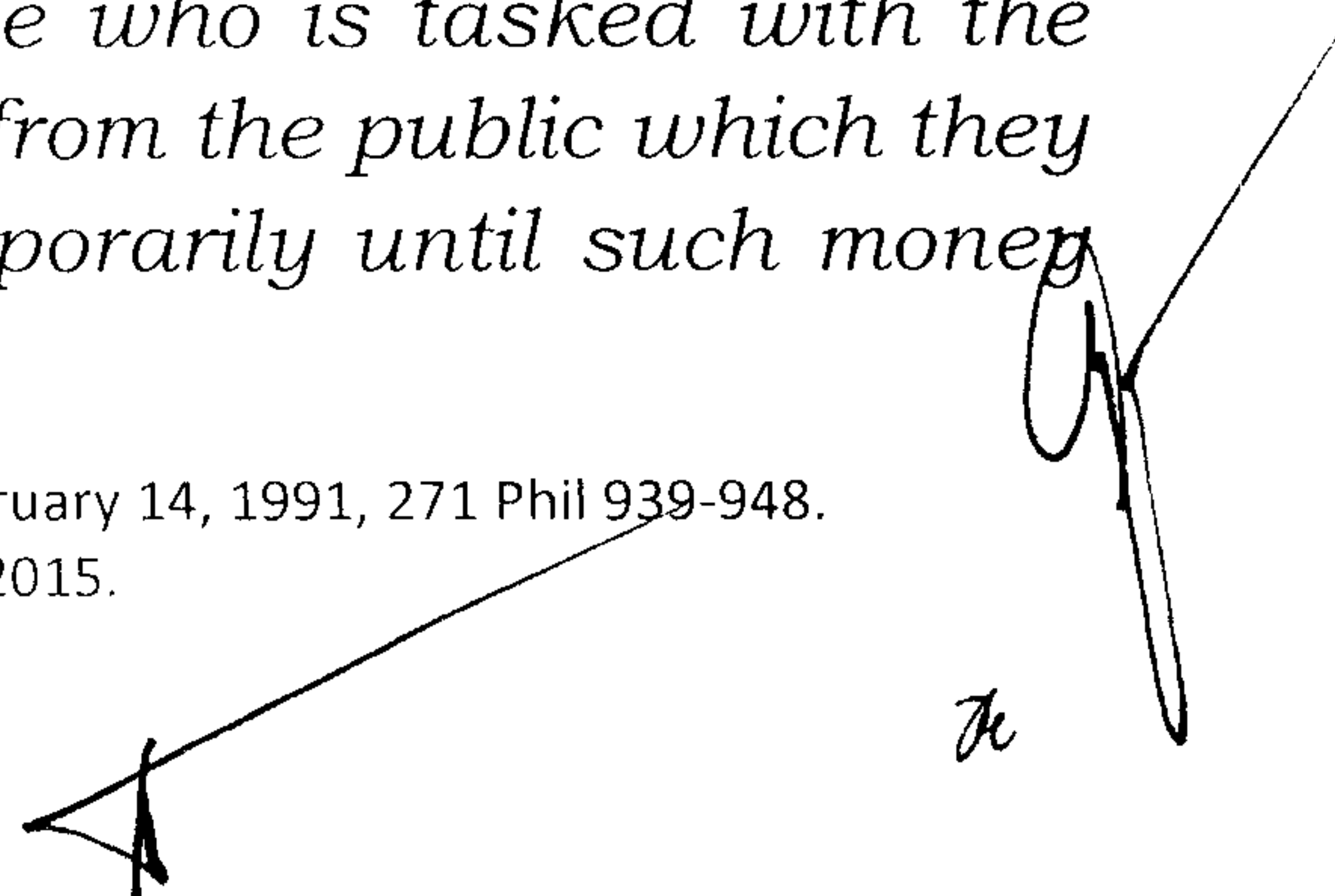
While it is correctly held by the prosecution, in this case, the Office of the Ombudsman, that the Board of Trustees of the LWUA namely: Pichay, Bangayan, Puentevella and Montilla III, are public officials as well as Feleo, Jr. and Landingin who are part of LWUA Management, being the Acting Deputy Administrator of Investments and Financial Services and Acting Administrator respectively, they could not be considered as “accountable officers” who have the custody or control of the funds or property by reason of the duties of their office.

In *Panganiban vs. People*<sup>45</sup>, the Supreme Court defined who is an accountable officer who could be guilty of committing the crime of Malversation. It said:

*To have custody or control of the funds or property by reason of the duties of his office, a public officer must be a cashier, treasurer, collector, property officer or any other officer or employee who is tasked with the taking of money or property from the public which they are duty-bound to keep temporarily until such money*

<sup>44</sup> Cimafranca, Jr. v. Sandiganbayan, G.R. No. 94408, February 14, 1991, 271 Phil 939-948.

<sup>45</sup> Panganiban v. People, G.R. No. 211543, December 9, 2015.

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*or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices. Petitioner was not shown to have been such public officer, even temporarily, in addition to his main duties as mayor. Needless to say, he was not accountable for any public funds or property simply because it never became his duty to collect money or property from the public. Therefore, petitioner could not have appropriated, taken, misappropriated or consented, or, through abandonment or negligence, permitted another person to take them.*

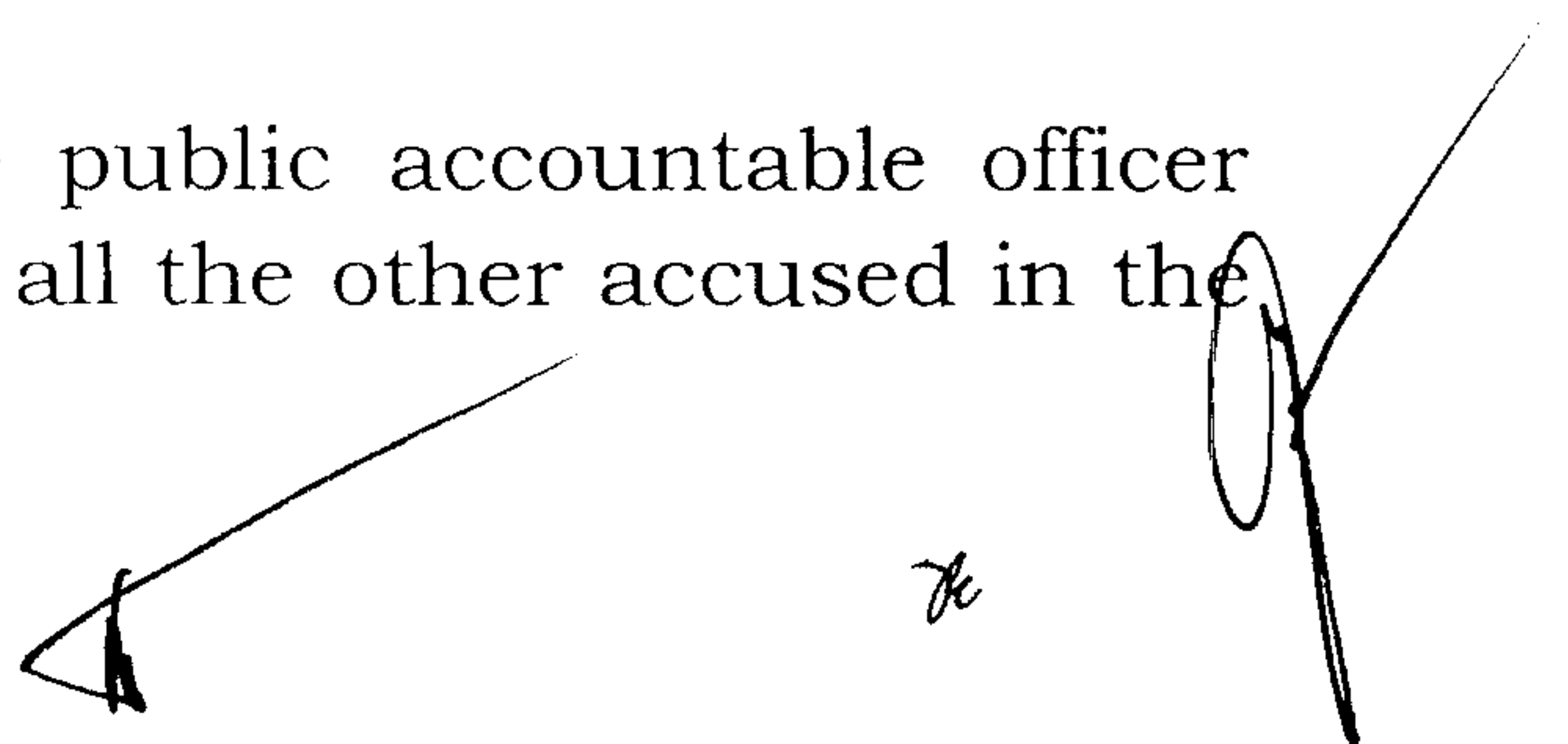
The power of the LWUA Board of Trustees under the law creating it, P.D. No. 198, as amended, is limited to the establishment of policy directions for the administration with a clear directive not to engage in the detailed management of the Administration. It is not the duty of the LWUA Board of Trustees to collect, hold or keep publicly-owned money or property as their task is limited to policy-making only.

Section 54 of the LWUA law is instructive, to wit:

*Powers. All of the business and affairs of the Administration shall be carried on and its powers shall be exercised by and through the Board of Trustees. The function of the Trustees, however, shall be to establish policy, not to engage in the detailed management of the Administration. (As amended by the Section 25, P.D. No. 768)*

Corollary to this, all the accused who are sued in their private capacities, particularly the WGI and FPI officials could not be held liable for malversation since there is no accountable officer with whom they conspired with to take the amount of Php80,003,070.51 in the first malversation charge. In the same vein, the Board of Directors of ESBI could also not be held liable for malversation.

The absence of at least one public accountable officer who is charged in conspiracy with all the other accused in the

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three (3) cases of malversation is fatal. Its necessary effect leads to the conclusion that there is insufficient evidence to support a finding of probable cause in the three (3) cases of alleged malversation.

In other words, the absence of an essential element of the crime being imputed against the accused in the three (3) malversation charges cannot sustain a finding of probable caused against any of the accused. Thus, this Court has no other option left but to abstain from allowing all the accused to undergo the rigors of trial when it will not lead to any fruition.

Dismissing the case against these accused for palpable want of probable cause not only spares the accused from the expense, rigors and embarrassment of trial, but also prevents needless waste of the Court's time and saves the precious resources of the government<sup>46</sup>, including that of the Office of the Ombudsman.

On the Charge of Violation of  
Sections 19 and 66, R.A. No.  
8791 in relation to Section 36  
R.A. No. 7653

In SB-16-CRM-0431, accused Pichay, Montilla III, Feleo Jr. and Espinas, while being high-ranking officials of LWUA, served as bank officers of EBSI as Chair, Vice-Chair, Treasurer and Assistant Corporate Secretary of ESBI, a private bank.

Section 19 of the General Banking Act (R.A. No. 8791) prohibits all appointive and elective officials from being private bank officials, while Section 66, the penal clause of this law, provides that the violation would be subject to Sections 34, 35, 36 and 37 of R.A. No. 7653.

Section 19 of R.A. No. 8791 provides:

*Section 19. Prohibition on Public Officials. — Except as otherwise provided in the Rural Banks Act, no appointive or elective public official, whether full-time*

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<sup>46</sup> Catindig v. People, G.R. No. 183141, September 18, 2009, 616 Phil 718-739.

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*or part-time shall at the same time serve as officer of any private bank, save in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank or unless otherwise provided under existing laws.*

A scrutiny of the Information charging the four accused, Pichay, Montilla III, Feleo Jr. and Espinas would show that the elements of Section 19, R.A. No. 8791 are appropriately included in the charge sheet or Information. The dicta in Section 19, R.A. No. 8791 is clear, unequivocal and does not need further interpretation.

In testing the elements of the offense against the Information charged, the only determination that the Court is confronted with in this case is clear—i.e., whether or not ESBI is a private bank, as alleged by the Office of the Ombudsman in the Information, or a government-owned and controlled corporation, LWUA having acquired 60% of its outstanding shares as pointed out by the accused.

It should be noted that the determination of whether ESBI is a private bank or a government-owned and controlled corporation is not a factual issue but purely a legal issue considering that both prosecution and accused are all in agreement that 60% of the shares of ESBI were acquired by LWUA, a government-owned and controlled corporation. What it entails is the application of all existing laws, regulations and jurisprudence in order for the Court to make the determination on the merits on the character of ESBI.

Pursuant to Section 3 paragraph (b) of P.D. No. 2029 defining a government-owned and controlled corporation (GOCC), a subsidiary corporation is one created pursuant to law where at least a majority of the outstanding capital stock or outstanding voting capital stock is owned by parent government corporations and/or other government-owned subsidiaries. Even Section 3, paragraph (o) of Republic Act No. 10149, a law passed after the acts alleged in this case were committed, defines a government-owned or controlled corporation as any agency organized as a stock or non-stock corporation, vested with functions relating to public needs

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whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: Provided, however, That for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein. Thus, whether it is in the new law or the old law, when LWUA acquired the shares of ESBI, it became a GOCC subsidiary corporation. This being the case, the argument raised by accused Espinas is correct. ESBI is, at least, a subsidiary corporation of a GOCC (LWUA, in this case) and could not be considered a private bank. Thus, the accused public officers sitting in the Board of Directors of ESBI, after LWUA acquired 60% of the stocks, could not be said to have violated Sections 19 and 66 of R.A. No. 8791.

For the reasons cited above, this Court does not find probable cause for the issuance of a warrant of arrest against these Accused.

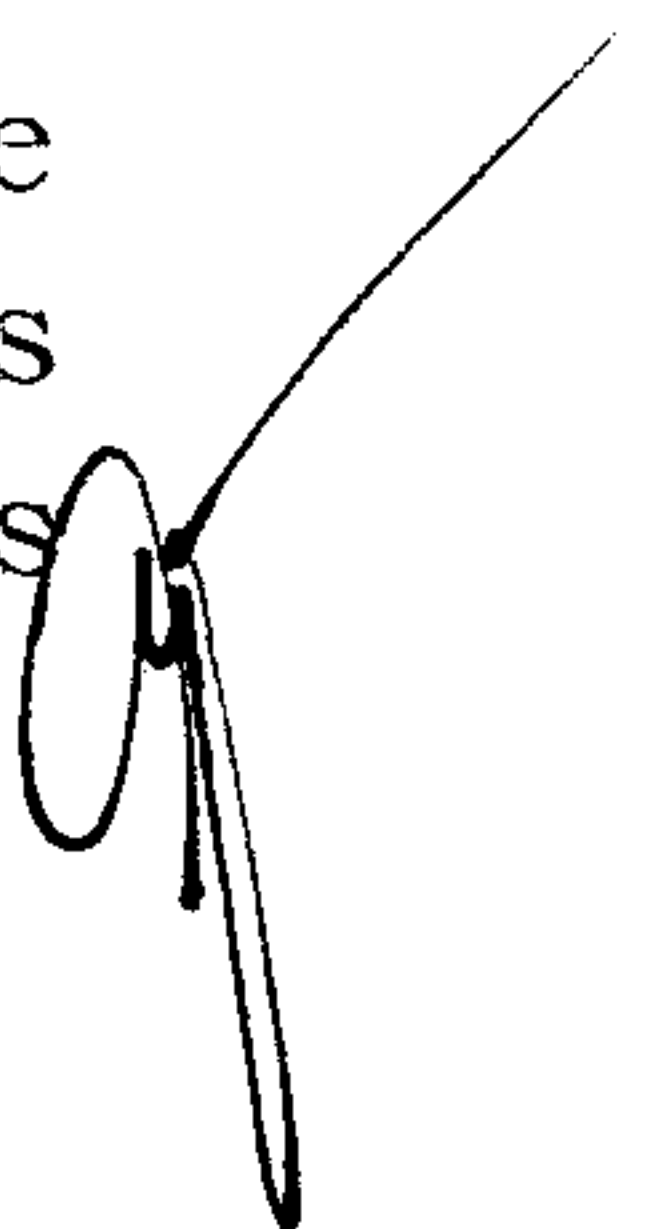
On the Charge of Violation of  
Section X126.2 (c)(2) of the  
Manual of Regulation for Banks  
(MORB) in relation to Sections 36  
and 37 of R.A. No. 7653

The Office of the Ombudsman charged accused LWUA officials Pichay, Bangayan, Puentevella, Montilla III, Feleo Jr., and Landingin together with persons sued in their private capacities namely: Weslie and William Gachalian, Dela Cruz, Dee Hua Gachalian, Ponsaran, Velasco, Jr., Salud, Garcia, Mercado, Jr., Dela Rosa, Obieta, Ting, Kenneth and Sherwin Gachalian, for acting in conspiracy with the public officials in violating the Manual of Regulations for Banks (MORB) in causing the transfer of the 445,377 shares of stocks of ESBI to LWUA amounting to Php80,003,070.51 without prior approval of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP).

After a closer scrutiny of the Information, the offense charged and all the affidavits and counter-affidavits as well as all the attachments, this Court is of the belief that there exists

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probable cause for the issuance of a warrant of arrest against the accused LWUA officials, and that the instant Information cannot be quashed or dismissed, except for LWUA Board of Directors Bangayan and Puentevella. The explanation for the exception is found in the subsequent paragraphs. The discussion on who among the private individuals sued should be included will also be discussed in the subsequent paragraphs.

It is obvious from all the documents submitted by both prosecution and accused that there is indeed probable cause shown when 60% of shares of ESBI was transferred from the FPI, WGI and other individuals sued in their private capacities to LWUA, a government-owned and controlled corporation, without the required prior approval by the Monetary Board of the Bangko Sentral ng Pilipinas. Under the applicable regulations at the time of the transaction, it is not clear as to who bears the obligation to secure the prior approval—LWUA management, the transferor or transferee of the shares of the bank or both. The persons who are liable for the violation of the Manual for Regulation of Banks and the participation of the persons charged can only be determined after trial on the merits. This is what the prosecution must prove in trial and for the accused to refute. In other words, the matters raised by the accused are evidentiary in nature and can appropriately be threshed out in a trial.

It is a different matter, however, for the Board of Trustees of LWUA.

As already cited above, but for purposes of emphasis, it is pointed out again that the task or function of the office of each of the trustees is policy setting. They cannot be actively engaged in the management and day-to-day operations of LWUA. Section 54 of the LWUA law is again reproduced:

*Section 54. Power. All of the business and affairs of the Administration shall be carried on and its powers shall be exercised by and through the Board of Trustees. The function of the Trustees, however, shall be to established policy, not to engage in the detailed management of the Administration. (As amended by the Sec. 25, PD 768) (emphasis supplied)*



Clearly then, the role of the trustees of LWUA is to set the policy, in these cases, of creating or purchasing a bank. The obligation of securing all the requirements from the various government offices such as the Monetary Board of the Bangko Sentral ng Pilipinas falls upon the LWUA Management. Considering that the function of the LWUA Board is purely policy determination and that they could not engage in the detailed management of the administration of the LWUA, it follows then that they could not perform the acts necessary to secure the permits from the Monetary Board. If they do so, such acts will be considered *ultra vires* and beyond their duly mandated functions, and thus, they become liable for them.

As gleaned from the records of these cases, particularly the attachments to the different pleadings, motions and the investigation report of the Office of the Ombudsman, it is clear that the LWUA Management submitted memoranda or reports on the matters that were taken up in the Board meeting of the Trustees, particularly on the acquisition of the Bank and ESBI. It is on that basis and together with the discussions during the meetings of the Board of Trustees where it came up with board resolutions setting the policy for LWUA's acquisition of ESBI.

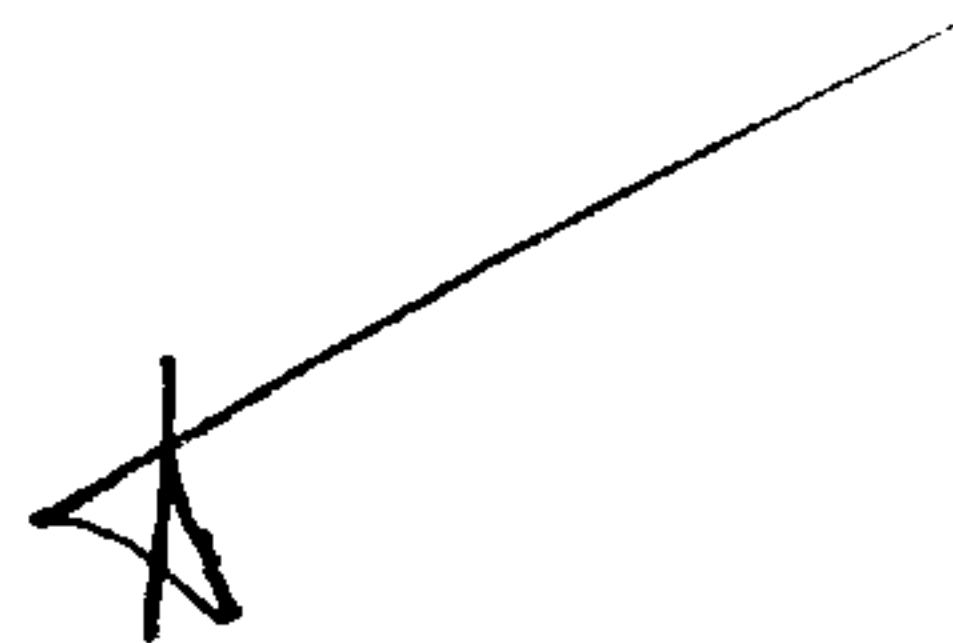
Thus, on September 22, 2008, the LWUA Administrator submitted for consideration of the Board of Trustees the approval in principle of the creation of a LWUA Bank. The course of action which the LWUA management recommended was for them (LWUA Management) to "work out the details for the creation and operation of the LWUA Bank, as well as securing the necessary approval of the Bangko Sentral ng Pilipinas (BSP)".<sup>47</sup> In the Minutes of the September 23, 2008 meeting, accused Bangayan pointed out to the other trustees that after the board passed a resolution for the creation of the LWUA Bank, "the other legal and financial requirements could be worked out".<sup>48</sup> It also bears stressing that under LWUA's charter, it is tasked to extend loans to the different local water districts.

Further, prosecution records show that the trustees in its resolution<sup>49</sup> on May 19, 2009, approved the acquisition of the

<sup>47</sup> Annex J of the FIO Complaint-Affidavit.

<sup>48</sup> Annex 8, p. 10 of the Motion of Accused Bangayan filed on July 19, 2016.

<sup>49</sup> Annex W of the FIO Complaint-Affidavit.



outstanding shares of ESBI, subject to price negotiation, because of the consideration found in the “whereas clauses”, to wit: a.) encouragement of BSP Deputy Governor Espenilla in the 17 April 2009 letter that LWUA may be allowed to own up to 60% of a domestic bank; b.) advise of Deputy Governor Espenilla to scout around for banks desirous of additional capital infusion and desirous to divest their stockholdings; c.) recommendation to the board of the due diligence report to approve the acquisition of 60% in compliance with the BSP regulation per advise of BSP.

On the May 26, 2009 board meeting, the trustees were once again informed by LWUA management through accused Feleo, Jr. that it was able to reduce ESBI’s offered price of Php100million to Php80million, a price within the range recommended in the due diligence report, which LWUA commissioned.<sup>50</sup>

The Minutes of the August 4, 2009 meeting of the Board of Trustees of LWUA further show that accused Montilla III, ESBI’s Vice-Chairperson, informed accused Bangayan that “ESBI is waiting for the Monetary Board’s approval of the change of name of the Bank” and that “LWUA may start to deposit funds in EBSI after the Monetary Board issues its approval”.<sup>51</sup> Thus, Resolution No. 303 was passed making ESBI a depository bank of LWUA.

Even the 17 August 2009 Resolution No. 336 of the Board of LWUA<sup>52</sup> authorizing the advance payment of the capitalization of ESBI amounting to Php400 million was premised on the need to increase the capital because of the “need to meet the requirements imposed by the Bangko Sentral ng Pilipinas, as part of EBSI’s rehabilitation program (second “whereas” clause) and the increase in capital stock is “subject to the approval by the Bangko Sentral ng Pilipinas and the registration with the Securities and Exchange Commission (third “whereas” clause).

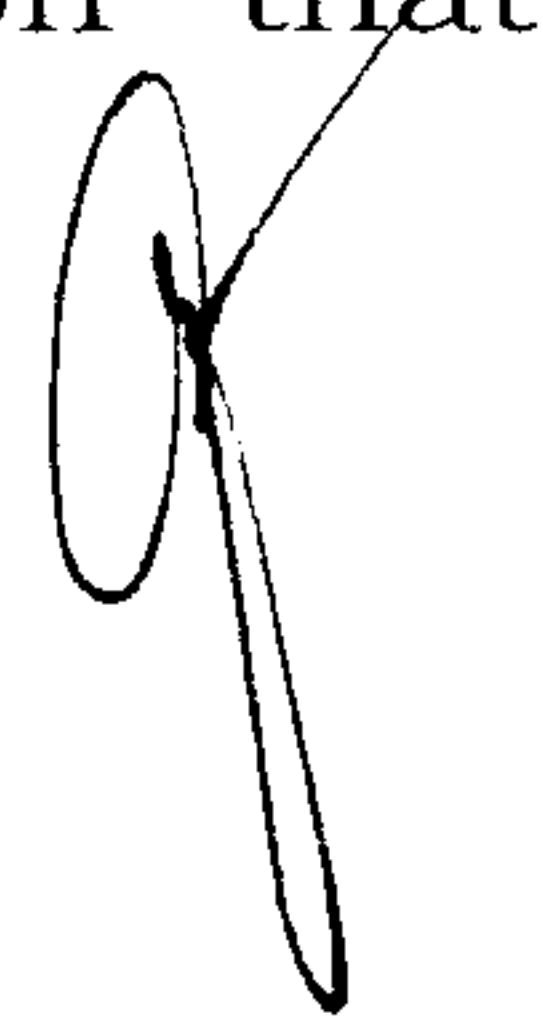
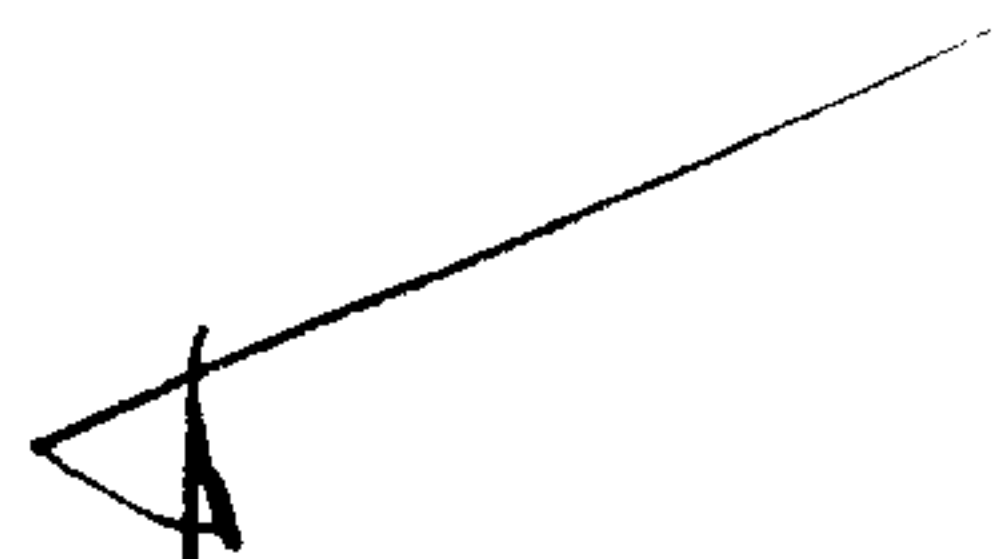
In other words, the members of the Board, specifically Bangayan and Puentevella listened to the inputs and recommendations of the LWUA management and on that

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<sup>50</sup> Annex 16, p. 16 of the Motion of Accused Bangayan.

<sup>51</sup> Annex 18, p. 46 of the Motion of Accused Bangayan.

<sup>52</sup> Annex WW of the FIO Complaint-Affidavit; Annex 19-A of the Motion of Accused Bangayan.





basis, passed resolutions to set the policy for LWUA's guidance.

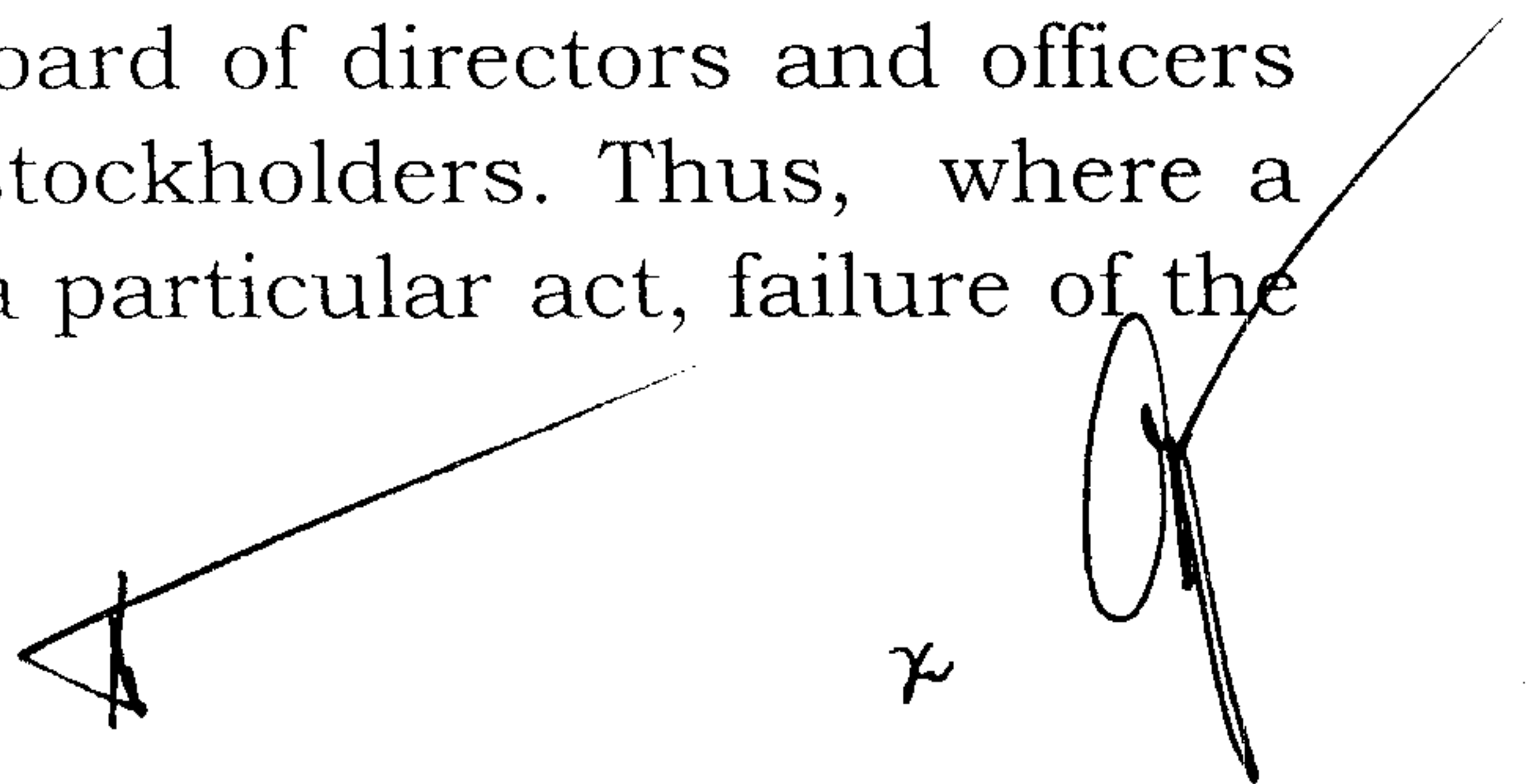
But, this could not be said of the Chair of the Board of Trustees, accused Pichay and Montilla III.

Accused Pichay was the signatory in all communications of LWUA to the various offices, such as the Office of the Government Corporate Counsel, the Office of the President, the Department of Finance and the Bangko Sentral ng Pilipinas. All communications were also addressed to him. And he, together with the LWUA management, specifically the LWUA Administrator and the Deputy Administrator, explained to the trustees the matter of the acquisition of ESBI. The LWUA management assured the trustees that the necessary Monetary Board and SEC approval would be secured as they are working on it. Accused Pichay also served as the Chair of the Board of Directors of ESBI. This means that he knew, or is at least expected to know that the approval of the Monetary Board was not yet secured.

Accused Montilla III, although also a trustee of LWUA, served as the Vice-Chairperson of the Board of ESBI. As a matter of fact, he even explained and justified to the LWUA Board that the increase in capitalization of ESBI was made in order to meet the requirements imposed by the Bangko Sentral ng Pilipinas, as part of its rehabilitation program. This, of course, creates an impression that he has dipped himself into the day-to-day management affairs of LWUA in ESBI and did not limit himself to the task of policy and guidance of a trustee.

Earlier, it was pointed out that this Court shall make a determination during the trial as to who is liable for the failure of securing prior approval from the Monetary Board of the BSP—i.e., LWUA management, the transferor or transferee of ESBI shares or both. The determination of probable cause insofar as the private individuals who are indicted is now in order.

It should be stressed that ESBI is a juridical entity with a distinct personality from that of its shareholders. As a corporation, it acts through its board of directors and officers and not through the individual stockholders. Thus, where a law requires a corporation to do a particular act, failure of the



corporate officer or the Board of Directors to do what is required by law or regulation constitutes an offense and the responsible officer is criminally liable for it. The reason is that a corporation can only act through its officers and agents and where the business itself involves a violation of law, all who participate in it are liable and be sent to prison.<sup>53</sup>

Thus, it is the duty of the Bank to secure prior approval from the Monetary Board for the transfer of its shares to LWUA. Then, it should be the members of the board of directors of ESBI and/or its officers and not the individual shareholders, or the Board of Directors of its corporate shareholders who should be sued or be indicted for failure to secure prior approval from the Monetary Board of the transfer of the shares of stock or equity.

Based on its General Information Sheet for 2008, at that time when 60% of its shares was acquired by LWUA, ESBI's Board of Directors and officers were the following:

Elvira Ting	-Chairperson
Ferlan Balbido	-President
Arthur Ponsaran	-Corporate Secretary
Dee Hua Gatchalian	-Director
Lamberto Mercado	-Director
Yolanda dela Cruz	-Director
Kenneth Gatchalian	-Treasurer/Director
Rogelio Garcia	-Director
Gladys Galang-Nocom	-Director
Kristine Dy	-Director. <sup>54</sup>

Ferlan Balbido, Gladys Galang-Nocom and Kristine Dy are not charged or impleaded by the prosecution. On the other hand, Elvira Ting, Arthur Ponsaran, Dee Hua Gatchalian, Lamberto Mercado, Yolanda dela Cruz, Kenneth Gatchalian, and Rogelio Garcia are sued, not as Directors of ESBI but as Directors of FPI and/or WGI, corporate shareholders of ESBI. It should be stressed that it is not the actions of FPI or WGI that are being questioned in this case.

<sup>53</sup> People v. Tan Boon Kong, G.R. No. 32652, March 15, 1930, 54 Phil 607-609.

<sup>54</sup> Annex G of the Complaint-Affidavit.



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An Information of a case is an accusation in writing, charging a person with an offense, subscribed by the prosecutor and filed with the court.<sup>55</sup> This is part of the right of the accused to be informed of the charges and the evidence that the prosecution will present against him during trial in order for him to prepare for his defense. During trial, what will be presented would be limited to the participation of the accused private individuals to FPI and/or WGI but not their acts as officers or directors of ESBI. This would simply lead to futility in prosecution because this is not the issue in the charge of violation of the MORB.

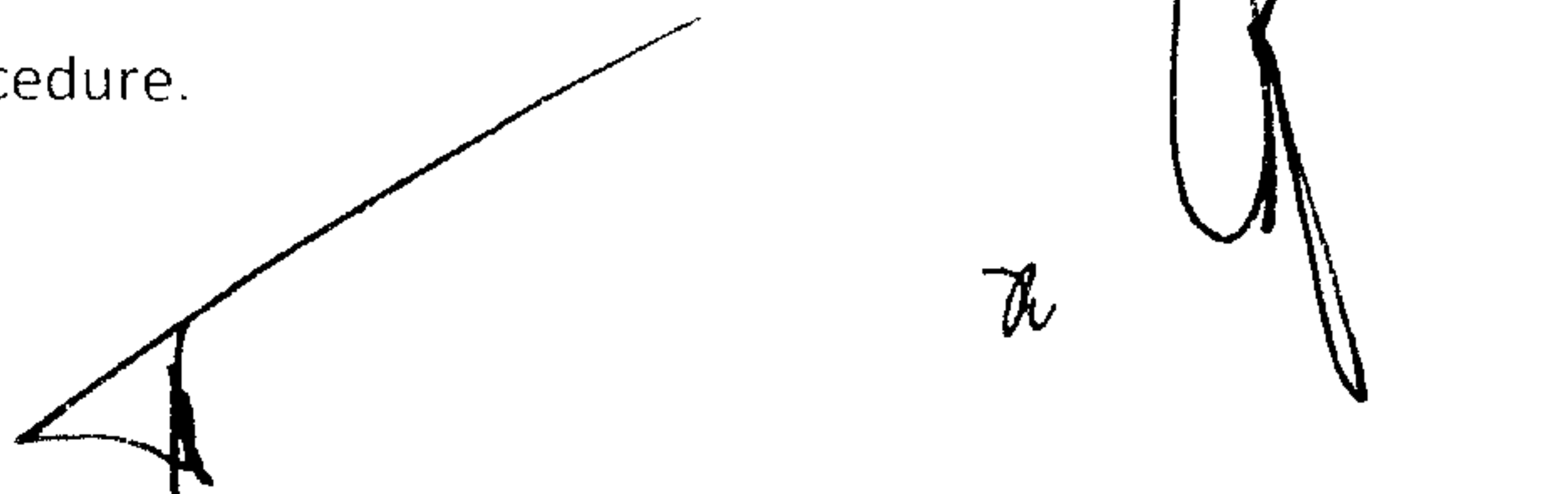
Of course, the prosecution, in its discretion, may institute a separate case against the board of directors of ESBI, that could include some of the accused charged here who are charged in their capacity as directors/officers of the shareholder corporations WGI and FPI. But, this is another matter that maybe dealt with when this Court or any of its Division is confronted with this issue.

Thus, there is simply no probable cause found against the private individuals sued for violation of the the Manual of Regulation for Banks (MORB) in relation to the BSP law.

On the Charges of Violation of  
Section 3(e), R.A. No. 3019

The prosecution charged the then LWUA Board Chair Pichay, trustees Bangayan, Montilla III, Puentevella and LWUA Management, Feleo, Jr. and Landingin for violation of Section 3(e) of R.A. No. 3019 for acting with evident bad faith, manifest partiality and/or gross inexcusable negligence together and in conspiracy with individuals in their private capacities, namely: Weslie, William, Dee Hua, Kenneth, Sherwin, all surnamed Gatchalian, Yolanda Dela Cruz, Arthur Ponsaran, Geronimo Velasco, Jr., Peter Salud, Rogelio Garcia, Lamberto Mercado Jr., Evelyn Dela Rosa, Joaquin Obieta, and Elvira Ting by giving unwarranted benefits, advantage or preference to the owners of ESBI and/or corporate stockholders in the amount of Php80,003,070.51, representing more than 60% of its

<sup>55</sup> Section 4, Rule 110, Revised Rules on Criminal Procedure.

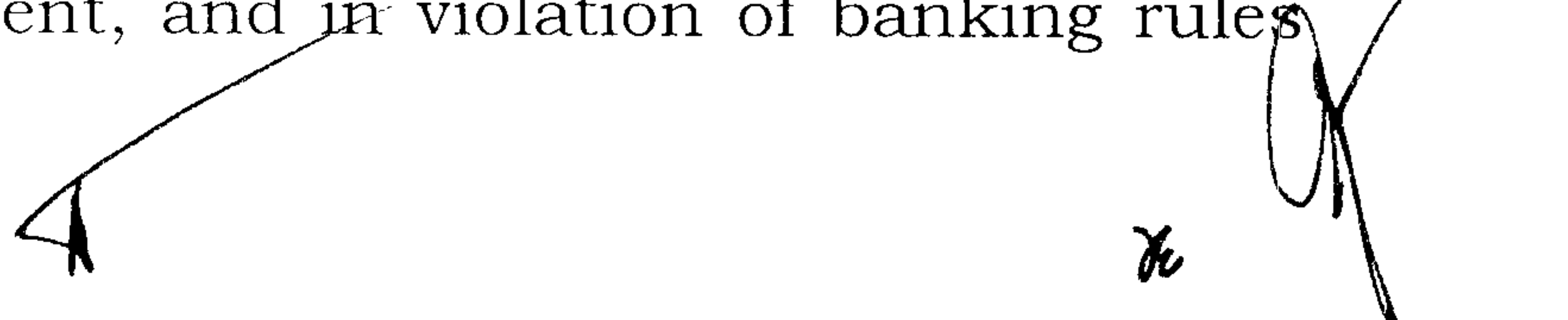
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outstanding common shares, despite the illegality of the transaction and irregularities attendant to it, such as 1) purchasing the shares without the approval of the Office of the President, Department of Finance, the Monetary Board and Bangko Sentral ng Pilipinas, and in violation of banking rules and regulations, 2) purchasing the shares despite ESBI being an insolvent bank and despite the negative or unfavorable findings made in the due diligence audit conducted by Jose U. Pontiveros and Associates (JPA) of ESBI, and 3) absorbing the debts incurred by the bank.

In the second charge for violation of Section 3(e), R.A. No. 3019, accused then LWUA Board of Trustees Chair Pichay, then trustees Bangayan, Montilla III and Puntevella together with LWUA management Feleo Jr. and Landingin are charged with violation of Section 3(e), R.A. No. 3019, because in the discharge of their duties, they acted with evident bad faith, manifest partiality and or gross inexcusable negligence, and conspired with individuals acting in their private capacities, namely: accused Sia Chua, Ipong, Billena, Bueno and Tulagan, who are members of the Board of Directors of ESBI and LWUA's nominees to the ESBI Board, by giving them unwarranted benefits, advantage or preference when LWUA deposited Php300million as a savings deposit of LWUA, which was an illegal transaction because the transfer of the ownership was not approved by the Monetary Board, among others.

The third charge for violation of Section 3 (e), R.A. No. 3019 filed is likewise against the accused LWUA Board of Trustees and LWUA Management, Feleo, Jr. and Landingin for giving unwarranted benefits, advantage or preference to ESBI, its stockholders, board of directors and officers, and in conspiracy with them, namely: George Sia Chua, Gregorio Tompoc Ipong, Wilfred Billena, Edita Bueno and Generoso Tulagan, by causing LWUA to pay and/or disburse Four Hundred Million Pesos (Php400,000,000.00) of its funds to ESBI, as advance payment for stock subscription, per Development Bank of the Philippines manager's check, despite the illegality of the transaction and irregularities attendant thereto which are not limited to the following: 1) the transaction was without prior approval from the Monetary Board, Bangko Sentral ng Pilipinas, Department of Finance and Office of the President, and in violation of banking rules





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and regulations; 2) despite ESBI being an insolvent bank as its total liabilities exceeded its total assets, among others.

It was already discussed above that pursuant to Section 54 of the LWUA law as amended by Section 25, P.D. No. 768, the trustees of the LWUA are mandated by law to set the Administration's policies and guidelines and not to interfere with the detailed management. It is very evident in all the affidavits and supporting annexes that the trustees, except for accused Pichay who actively participated in the detailed management actions pertaining to the transaction of ESBI as can be shown in his various communications to the different government offices and trustee Montilla III who served as Vice-Chairman of the Board of ESBI, the two other trustees, namely: Bangayan and Puentevella did not actively participate in the management and execution of the actions approved by the Board of Trustees.

Moreover, various minutes of the board meeting show that the trustees were minded to comply with existing rules and regulations including those set by the BSP. As a matter of fact, part of the matters that were taken up were the compliance of the Bangko Sentral ng Pilipinas and SEC requirements that were to be complied with by LWUA and that the management was already in the process of securing the same.

Below are examples to show that the Board has directed compliance with BSP and SEC regulations or were informed that the BSP's approval and SEC registration are being processed by LWUA management.

In the September 22, 2008 Memorandum of the Administrator addressed to the Board, the Course of Action is as follows:

“LWUA management shall work out the details for the creation and operation of the LWUA Bank as well as securing the necessary approval of the Bangko Sentral ng Pilipinas (BSP)”<sup>56</sup> (underscoring provided)

The Board resolution dated September 23, 2008 likewise said “xxx resolved, to approve the establishment of a Water development Bank which shall be a wholly owned subsidiary

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<sup>56</sup> Annex J of the Complaint-Affidavit.

of the Local Water Utilities Administration, subject to compliance with all the laws and regulations for the establishment thereof<sup>57</sup>. (underscoring provided)

Board Resolution No. 56, Series of 2009 dated March 24, 2009, amended the earlier resolution creating a new bank but instead, for LWUA to acquire an existing savings or thrift bank. This resolution even cited the 22 January 2009 letter of the Bangko Sentral ng Pilipinas where the latter stated that “perhaps LWUA would instead consider acquiring an existing financing company (FC), which for the purpose of addressing LWUA’s requirements, may thereafter apply for a quasi-banking authority with BSP”.<sup>58</sup>

Board Resolution No. 120, Series of 2009 dated May 19, 2009<sup>59</sup> which was adopted by the Board of Trustees provided the authority for LWUA to acquire 60% of the ESBI, provided that the LWUA management “shall negotiate the Bank’s offered price of P100 Million to the range of P70 Million to P85 Million, as well as negotiate for favorable terms and conditions, as mentioned in the Due Diligence Report”. (underscoring supplied)

In the 4 August 2009 minutes of the meeting of the LWUA Board of Trustees, accused Bangayan requested LWUA “management to submit a report on the status of ESBI after LWUA’s acquisition of 60% of its shares”. Accused Feleo, Jr. replied that the management will submit a complete status report in the next board meeting but accused Montilla III informed them that:

*ESBI is waiting for the Monetary Board’s approval of the change of name of the bank. LWUA may start to deposit funds in the ESBI after the Monetary Board issues its approval that the ESBI is ready to receive deposits.* (underscoring supplied)

Finally, in the 17 August 2009 minutes of the LWUA board meeting<sup>60</sup>, accused Feleo, Jr.:

*informed the Board that the BSP has agreed to the infusion of additional capital in Express Savings Bank*

<sup>57</sup> *Ibid.*

<sup>58</sup> Annex 11, p. 14 of the Motion of Accused Bangayan.

<sup>59</sup> Annex W of of the Complaint-Affidavit.

<sup>60</sup> Annex 19-A, p. 51 of the Motion of Accused Bangayan.



*from P100 Million to P2.0 Billion. As such, he recommended the approval of the infusion of P400 Million. (underscoring supplied)*

Given this factual milieu, indicting them and making them stand trial for the charges of violation of Section 3(e) of R.A. No. 3019 mentioned above would certainly waste the resources not only of the prosecutorial arm of government but also of this Court apart from the expense, rigors and embarrassment of trial on the part of the trustees since clearly, none is needed. Accused Bangayan and Puentevella should certainly be dropped from the Information in the three cases for violation of Section 3(e) of R.A. No. 3019 for lack of probable cause.

Moreover, we proceed in the examination of probable cause against the individuals impleaded in their private capacities in conspiracy with LWUA officials. After going through the arguments raised by the prosecution and accused private individuals, the arguments raised by the latter are clearly evidentiary in nature and would be best threshed out in a trial.

*On the Claim of Inordinate Delay*

Accused Pichay maintains that, even if there is probable cause found by this Court and the case/s against him not be dismissed, all the cases against him should still be dismissed on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their constitutional rights to due process of law and to a speedy disposition of the cases.

These cases against accused were lodged at the Office of the Ombudsman on September 9, 2010 when a Complaint was filed by Tutol, Estrada and Amores, employees of LWUA, against accused Pichay, Landingin, Feleo, Jr., Espinas and the Board of Directors of ESBI only. A fact-finding investigation at the Office of the Ombudsman then ensued. Meanwhile, on January 10, 2012, the Department of Justice (DOJ) submitted to the Office of the Ombudsman for review their findings to charge accused Pichay and Landingin based upon the complaint lodged by then Finance Secretary Cesar Purisima. It was only on July 30, 2013 that a complaint-affidavit was filed

by the FIO-OMB and consolidated the complaints (Tutol and Purisima).

After the complaint of FIO-OMB was lodged and a preliminary investigation was conducted, it took some considerable time for the different respondents (now Accused) to submit their separate counter-affidavits. Considering that the accused contributed to the delay in the resolution of the cases against them, they could not claim at this stage that their rights are violated because of delay. In other words, the delay at this stage could not be solely attributed to the Office of the Ombudsman.

Just to point out the considerable length of time for the respondents (accused) to respond to the accusation of the FIO-OMB, it was only on November 21, 2014 or more than one year after the FIO-OMB complaint was lodged, that one of the accused, Sherwin Gatchalian, was able to file his Counter-Affidavit. In contrast, it took the Special Panel only four months, specifically on March 16, 2015, from the submission of the last counter-affidavit to come up with their Joint Resolution finding probable cause.

When the different accused filed their separate motions for reconsideration to the resolution of the Special Panel, there was again another considerable lapse of time not attributable to the prosecution but to the different accused. It should be noted that the latest submission was made by accused de la Cruz on December 8, 2015 when he filed an Addendum to the Motion for Reconsideration before the matter was submitted for resolution. From that date, the Special Panel was able to resolve the different motions for reconsideration within four months or on April 4, 2016.

On May 26, 2016, accused Pichay received a copy of the Resolution denying his Motion for Reconsideration and on July 12, 2016, eight (8) separate Informations were filed before the Sandiganbayan against the Accused.

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The Supreme Court in *Almeda v. Office of the Ombudsman (Mindanao)*<sup>61</sup> declared:

*Section 16, Article III of the 1987 Constitution guarantees that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right applies to all cases pending before all judicial, quasi-judicial or administrative bodies; it is "not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action to [sic] all officials who are tasked with the administration of justice." It "includes within its contemplation the periods before, during and after trial," such as preliminary investigations and fact-finding investigations conducted by the Office of the Ombudsman.*

In *People v. Sandiganbayan (Fifth Division)*<sup>62</sup>, Mr. Justice Diosdado Peralta discussed the rationale of the right of the accused to the disposition of cases against him. He said:

*The right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest, as well as the tactical disadvantages carried by the passage of time, should be weighed against the State and in favor of the individual. In the context*

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<sup>61</sup> G.R. No. 204267, July 25, 2016.

<sup>62</sup> G.R. Nos. 199151-56, July 25, 2016.

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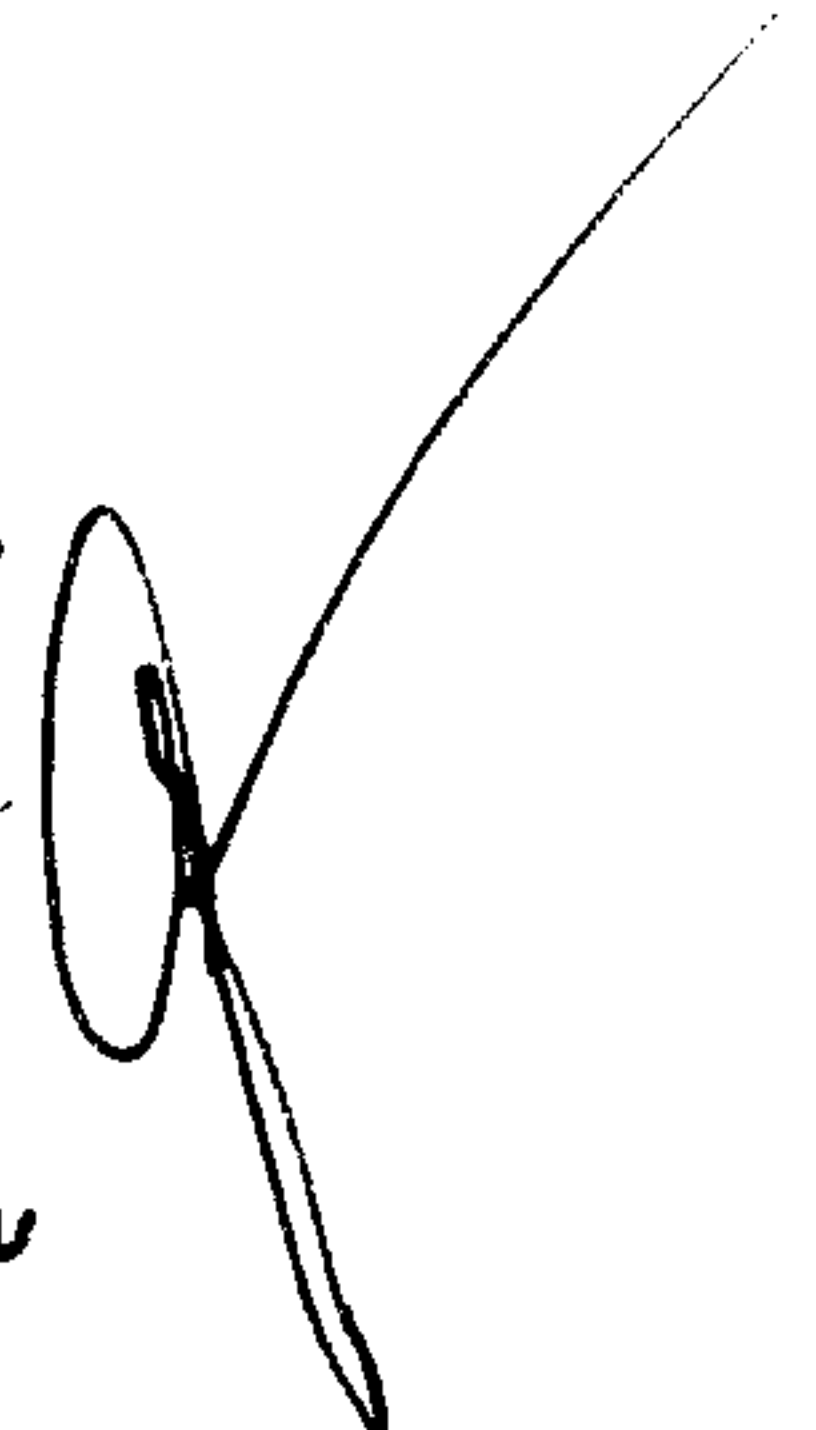
*of the right to a speedy trial, the Court in Corpuz v. Sandiganbayan stated:*

*A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.*

*. . . Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.*

*xxx As held in Williams v. United States, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.*

*Closely related to the length of delay is the reason or justification of the State for such*





*delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State.*

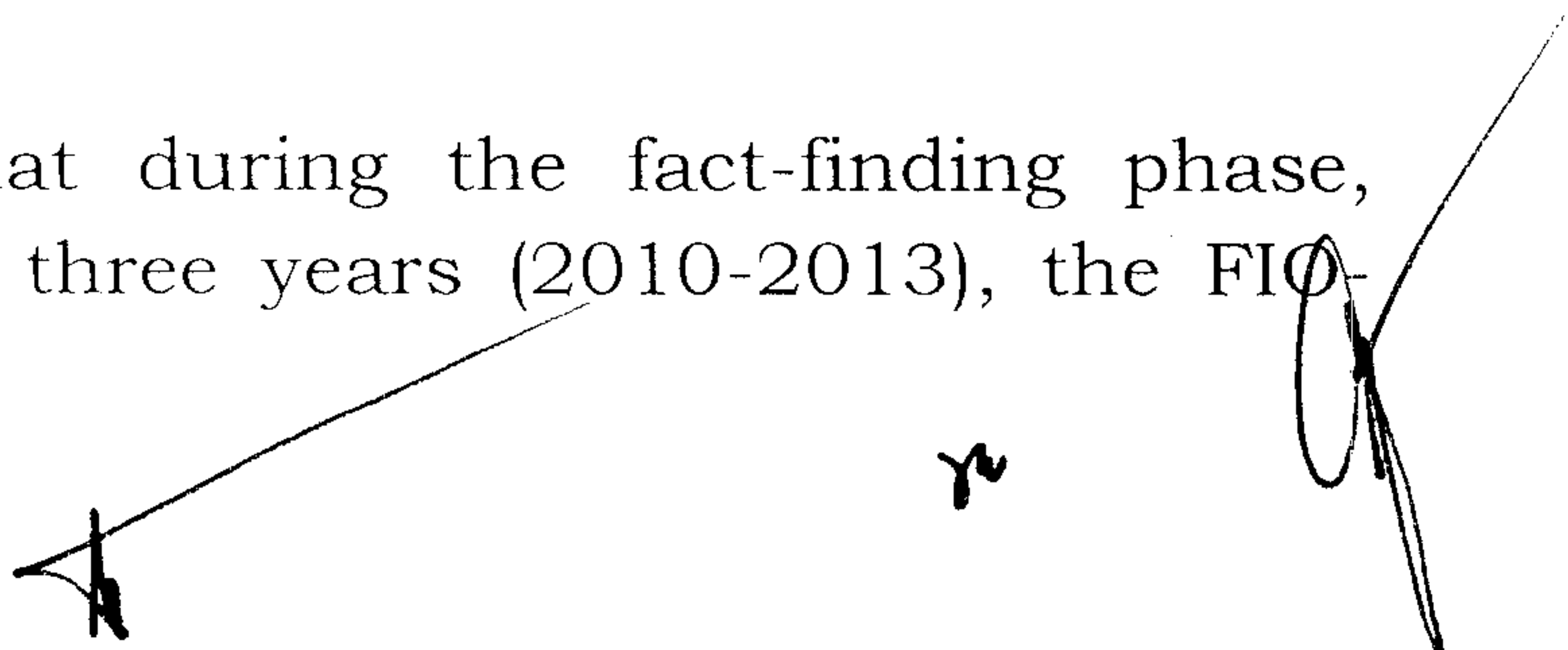
Mr. Justice Mariano Del Castillo in the above-cited case, *Almeda vs. Ombudsman*, aptly declared:

*The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case." For this reason, "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis."*

Stated otherwise, the determination of whether or not there exists inordinate delay amounting to a violation of the right of the accused to the speedy disposition of his cases will depend on the factual circumstances and other issues affecting the case itself.

In applying the test or guidelines set by the Supreme Court in the above-cited cases, this Court believes that the period of six years for the Office of the Ombudsman to complete the fact-finding and preliminary investigation does not constitute inordinate delay since it should not be just the period or length of time that should be considered in making such a determination.

This Court notes that during the fact-finding phase, which took approximately three years (2010-2013), the FIO-

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OMB had to consolidate the two cases filed against accused (Tutol and Purisima complaints), especially because the Purisima complaint was filed with the Department of Justice which endorsed it to the Ombudsman. The preliminary investigation phase also took another three years to complete (2013-2016). But an analysis of the time elapsed, the delay was brought about by the submission of the counter-affidavit of the numerous respondents who were included in the charge and in the period for the accused to file their motion for reconsideration. Thus, the state could not be said to have caused inordinate delay that would amount to a violation of the accused's right to the speedy disposition of their cases.

On the Notice of Death of Accused  
Landingin

Lastly, filed with this Court was a notice of death with an attached Death Certificate of accused Landingin praying for the dismissal of all the cases against him. The Court agrees that, indeed, the dismissal of the cases against Landingin is in order pursuant to Article 89 of the Revised Penal Code (RPC) that death is one of the modes that extinguish criminal liability.

**WHEREFORE**, in sum and in view of the foregoing discussion, this Court:

- a. finds NO PROBABLE CAUSE for the issuance of warrants of arrest against ALL accused LWUA officials and the individuals sued in their private capacities in criminal cases SB-16-CRM-0428, SB-16-CRM-0429 and SB-16-0430, all for Malversation, and DISMISSES the instant cases;
- b. finds NO PROBABLE CAUSE for the issuance of warrants of arrest against ALL accused LWUA officials in criminal case SB-16-CRM-0431 for Violation of Sections 19 and 66 of R.A. No. 8791 in relation to Section 36 of R.A. No. 7653 and DISMISSES the instant case;



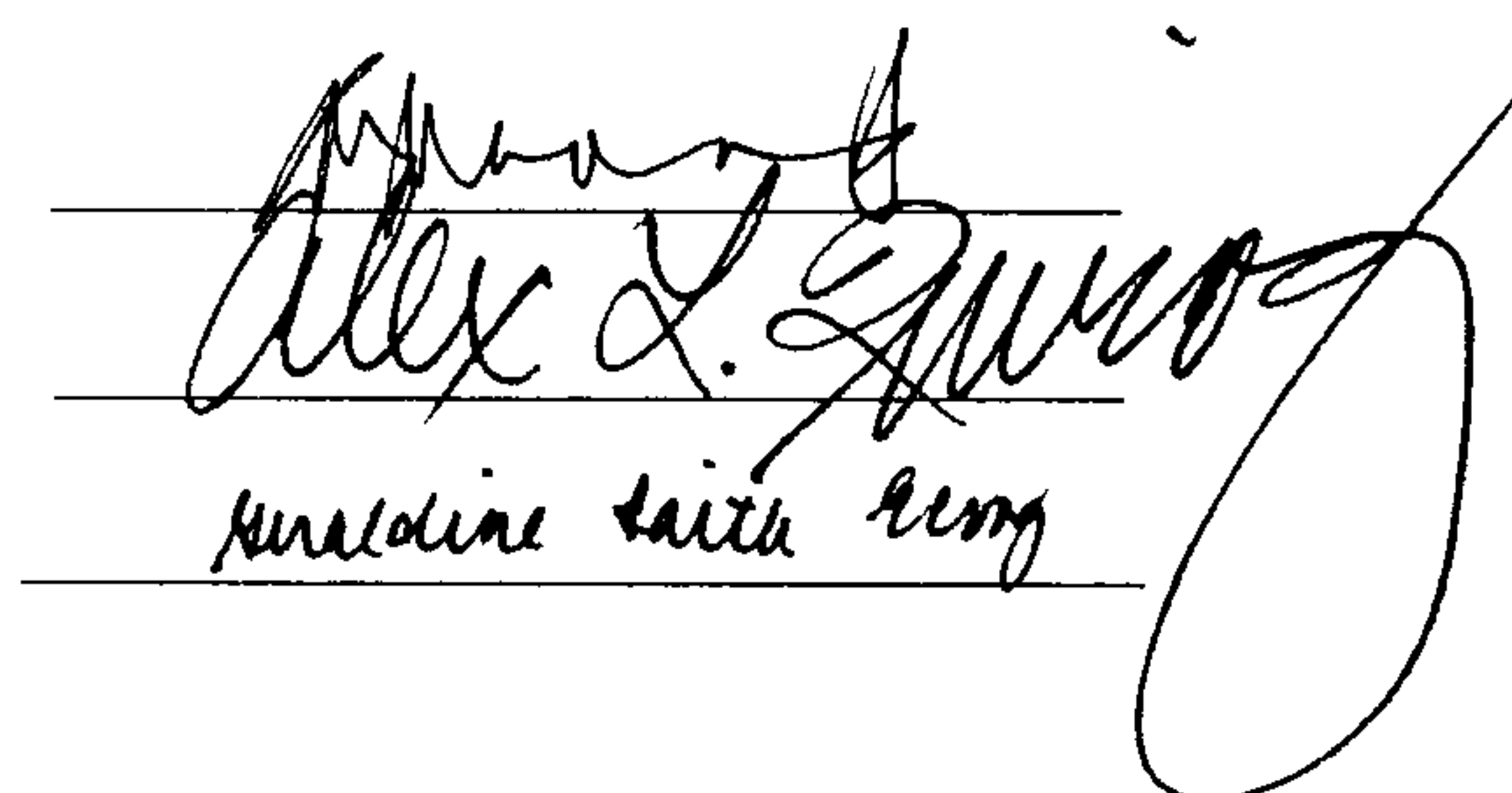
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- c. finds PROBABLE CAUSE against accused Pichay, Feleo, Jr. and Montilla III for violation of Section X126.2 (c)(2) of the Manual of Regulation for Banks (MORB) in relation to Sections 36 and 37 of R.A. No. 7653, and DISMISSES the case against all the other accused in SB-16-CRM-0432;
- d. finds PROBABLE CAUSE against accused Pichay, Feleo, Jr. and Montilla III, Weslie Gatchalian, William Gatchalian, Yolanda dela Cruz, Dee Hua Gatchalian, Arthur Ponsaran, Geronimo Velasco, Jr., Peter Salud, Rogelio Garcia, Lamberto Mercado, Jr., Evelyn dela Rosa, Joaquin Obieta, Elvira Ting, Kenneth Gatchalian, and DISMISSES the case against all the other accused in SB-16-CRM-0425;
- e. finds PROBABLE CAUSE against accused Pichay, Feleo, Jr. and Montilla III, George Sia Chua, Gregorio Ipong, Wilfred D. Billena, Edita Bueno, and Generoso D. Tulagan, and DISMISSES the case against accused Bangayan and Puentevella in SB-16-CRM-0426;
- f. finds PROBABLE CAUSE against accused Pichay, Feleo, Jr. and Montilla III, George Sia Chua, Gregorio Ipong, Wilfred D. Billena, Edita Bueno, and Generoso D. Tulagan, and DISMISSES the case against accused Bangayan and Puentevella in SB-16-CRM-0427.

SO ORDERED.

*Approved:*

HERNANDEZ, J., Chairperson  
QUIROZ, J.  
ECONG, J.

  
Alex Q. Quiroz  
Heredine Saich Romo