

2. The undersigned, Orlando García-Valverde, in his capacity as Official Translator by the
3 Ministry of Foreign and Religious Affairs of the Republic of Costa Rica, appointed pursuant
4 to Executive Decree NO. 377-90-DAJ, hereby certifies that the document in Spanish he has
5 had before him in facsimile form, which consists of an application for final acquittal in the
6 Powers – C&M case, translated into English reads as follows: -----

7 Application for final acquittal. Case: 07-001578-283-PE. Versus: Phillip Richard Powers.
8 Crime: fraudulent management. Plaintiff: C and M Investment Group Limitada. Messrs.:
9 Pavas Criminal Court. Third Judicial Circuit. The undersigned, Marco Pochet-Meléndez,
10 in my capacity as Pavas Co-ordinating Prosecutor, standing before your authority in obser-
11 vance of the pertinent time and form provisions, as per article 311 of the Criminal Proce-
12 dural Code, hereby request a final acquittal decision in the within case, in consideration of
13 the reasons and arguments set forth below in favour of the accused, to wit: -----

14 I. Identification data of the accused: Phillip Richard Powers, of legal age, married, an inde-
15 pendent businessperson and a real estate agent, a citizen of the United States of America, a
16 resident of Santa Ana, the holder of residence card number 003-143-175-01-0002663. II.

17 Narration of the facts: based on the allegations filed by the plaintiff, C and M Investment
18 Group Limitada, the following facts of importance have been acknowledged: a. On a date
19 not precisely established but in 1999 doctor Gary Karlin Michelson, who is a citizen of the
20 United States of America and a resident of that country, met the accused Richard Powers, in
21 the city of Los Angeles, California, United States of America, whereupon the latter intro-
22 duced himself as an expert in the cultivation of teak, with vast experience in the purchase
23 and sale of property for the development of this type of plantations. In like manner the ac-
24 cused Powers informed doctor Michelson that since many years before, the price of teak
25 had been showing an annual increase of 15%, whereby if doctor Michelson decided to de-
26 velop the teak planting business he could obtain a similar rate of return, to which effect he
27 offered him his services, indicating to him that he could find adequate tracts of land in
28 Costa Rica and negotiate fair market prices with the sellers. Together with this, the accused
29 Powers expressed to doctor Michelson that he could also take charge of the management,
30 cultivation and care of the land, and that he could, to such effect, engage the collaboration

2 of Mr. Walter Suárez-Villalobos, who, according to what Powers expressed, was also an
3 expert in teak plantations. b. In effect, during that year 1999, Mr. Michelson became inter-
4 ested in the business and decided to hire the accused Powers to take charge of the purchase
5 of land for the cultivation of teak in Costa Rica, as well as to see to the maintenance and
6 care thereof. c. After Powers convinced mister Michelson about his capabilities for the cul-
7 tivation of teak, both arrived at an oral agreement at a time not yet determined, whereby
8 Powers would receive the moneys that Michelson would send to proceed with the purchase
9 of property for the development of teak plantations, and to manage and care for the planta-
10 tions referred to after the purchase. d. In order to perform such duties, Powers and Ms. Vir-
11 ginia Maura-Powers set up the C and M Investment Group, Limitada company (hereinafter
12 C/M for the purposes of this application), on which occasion Messrs. Neil David Campbell,
13 Gary Karlin Michelson, and Phillip Richard Powers were appointed managers, such com-
14 pany being established for purposes of registering under its name all land to be purchased in
15 the future. e. On the eighteenth of January of the year 2001 the articles of incorporation of
16 C&M were amended, and clause six, among others, was changed, in order for the company
17 to be managed thereafter by a Manager and an Deputy Manager, the Manager being en-
18 trusted with the representation of the company for legal and non-legal purposes with full
19 powers of attorney without limitation as to amount, and the Deputy Manager having full
20 powers of attorney without limitation as to amount, but limited to ten thousand dollars;
21 Gary Michelson was appointed on that occasion as Manager, and Neil Campbell as Deputy
22 Manager of the company. f. That, without a determination of the exact date, but approxi-
23 mately since the month of June 2000 and up to the end of 2006, the accused Powers looked
24 for properties for the development of teak, negotiating a purchase price with the owners
25 thereof, supposedly a fair market price, having purchased for C&M a total of 147 properties
26 amounting to over 9,300 hectares of land. g. That initially the mechanics for the purchase
27 of many of the properties referred to was the following: the accused Powers found a piece
28 of property deemed appropriate for the planting of teak, and once he negotiated a price that
29 he deemed and recommended as fair he transmitted it to mister Michelson, the legal repre-
30 sentative with powers of attorney without limitation as to amount of C&M, an offer that was

2 made via fax to the United States of America, whereby he was informed about the price of
3 the property, which included a 6% commission for the accused Powers, as well as the cost
4 of expenses to close the deal; finally, once mister Michelson approved the purchase, he was
5 informed about the account to which the transfer of funds had to be made. h. On several
6 occasions the accused Powers confirmed in writing to Mr. Michelson that the land recom-
7 mended was appropriate for the development of teak of the best quality, and that some of
8 the tracts recommended had teak plantations and that they had been negotiated at fair prices.
9 i. In conformity with the complaint it is assumed that all fax offer messages for the pur-
10 chase of property were sent from the locality of Santa Ana by Powers, in representation of
11 Powers Investments & Management Co. j. That mister Michelson, having believed the as-
12 sertions made by the accused Powers during the period mentioned, from the year 2000 to
13 the year 2006, sent him an approximate amount of \$25,000,000 (twenty-five million dol-
14 lars), such money having been sent exclusively for the purchase of land in the terms indi-
15 cated, and such money having been transferred on several occasions to some companies
16 managed by the accused Powers, specifically to the accounts of Powers Investments &
17 Management, Inc., S.A., Protección Forestal de Teca S.A., and to Guanana Gris S.A. k.
18 That under the mechanism used initially to transfer the properties to C&M the accused
19 Powers enjoyed the collaboration of mister Walter Suárez, whereby the property was first
20 transferred to Walsu S.A., represented precisely by mister Suárez, or to some company
21 managed by the accused to transfer them in a second instance to Walsu S.A.; otherwise
22 Powers' other companies transferred them to C&M, in most cases with an indication, in this
23 second transfer, of the amount that C&M had actually paid for the property. l. Specifically
24 on October 3 of the year 2003 Mr. Michelson and the accused Powers decided to formalise
25 the relationship for services that were being rendered through the accused's companies,
26 several aspects of relevance having been specified; among them, the following: (i) that
27 Powers Investment would be responsible for the purchase of new reforested pieces of prop-
28 erty for C&M; (ii) Powers would be the person responsible for planting and maintaining the
29 teak plantations in the property purchased by C&M in Costa Rica; (iii) That in exchange for
30 the planting and maintenance service Powers would receive two dollars for each new tree

2 planted, among other obligations. II. That there being a contract itemised verbally, which
3 was, in the year 2003, defined in writing by the parties, in which the most relevant obliga-
4 tions among the parties were set forth, in the year 2006 mister Michelson learned that the
5 assertions about the quality of the land purchased for the cultivation of teak were false,
6 since approximately 70% of the total area of all the land was useless for the development of
7 teak plantations, and since many of the lots had wooded areas, in addition to the fact that
8 there arose the suspicion that Powers' assertions on the fair price in the purchase of the
9 land were not true either, in view of the fact that, according to certain interviews conducted
10 by the plaintiff with the original owners, they became aware that in some cases the accused
11 Powers exaggerated the sale prices of the lots to the detriment of C&M, two of the follow-
12 ing cases having been specifically mentioned in the complaint: a. Property recorded under
13 number 5-51781-000 in the real estate register as per the title granted on August 26 of the
14 year 2002; regardless of the fact that it is established that mister Servillano Zeledón-
15 Villalobos did sell for the amount of three million colons to Walsu S.A., Zeledón's son in-
16 formed the plaintiffs that his father received five hundred and fifty thousand colons per hec-
17 tare for the sale of that land. The preceding means, according to the complaint, that Mr. Ze-
18 ledón-Villalobos received, for the sale of 147.90 hectares which is the surface area of the
19 property in question, eighty-one million three hundred forty-five thousand colons, whose
20 equivalent in dollars on the date of the purchase would be \$223,009.65 dollars. Once the
21 sale became finally registered in the Public Real Estate Register on September 02 of the
22 year 2002, on September 04 of that same year the accused Powers sent a fax message to
23 Michelson offering the property, and asking him to send the money to purchase that prop-
24 erty, where he indicated that the sale price of the property was \$374,000 dollars, and re-
25 questing also the remittance of \$6,000 dollars for expenses, when in reality he could not
26 include a commission that would exceed a 6% commission, whereby Powers deliberately
27 and fraudulently exaggerated the price of property 5-51781-000 by approximately
28 \$137,609.78 dollars. b. Property recorded under number 5-8412-000 in the real estate regis-
29 ter, where, regardless of proof that, pursuant to the title granted on August 27 of the year
30 2002, Ms. María Catalina Carrillo-Carrillo did sell for the sum of nine hundred thousand

2 colons to Walsu S.A., Carrillo's son-in-law informed the plaintiffs that his mother-in-law
3 received two hundred and fifty thousand colons per hectare from Walter Suárez in the sale
4 of that property. The preceding means, according to the complaint, that in return for the
5 sale of 51.25 hectares which is the surface area of the property in question, Ms. Carrillo-
6 Carrillo received the amount of twelve million eight hundred twelve thousand and five hun-
7 dred colons, an amount that corresponds to the approximate sum of \$35,108.51 dollars on
8 the date of the purchase. Once this sale became finally recorded in the public Real Estate
9 Register, on October 01 of the year 2002 the accused Powers sent a fax message to Michel-
10 son offering the property, and asking him to send the money to purchase that property,
11 where he indicated that the sale price of the property was \$130,000 dollars, and requesting
12 also the remittance of \$3,000 dollars for expenses, when in reality he could not include a
13 commission that would exceed a 6% commission, whereby Powers deliberately and fraudu-
14 lently exaggerated the price of property 5-51781-000 (*Translator's note: this property number*
15 *differs from the number that appears at the beginning of paragraph b. which refers to the property sold*
16 *by Ms. Carrillo-Carrillo*). That by means of an extension of the complaint filed by the Special
17 Legal Representative, Rocío Amador-Hasbrun, Esq., new facts were added indicating
18 mainly the following: m. That the accused Powers obtained the excedent in price referred to
19 by means of a scheme that deceived doctor Michelson, whereby he was assured that the
20 amounts that were being charged to him for the land were the same that he had paid to the
21 sellers, plus the commission to which he was entitled, which could not exceed a commission
22 of six per cent of the total paid for the purchase of the property. III. On the essence. Basis
23 for the application. The entirety of the evidence gathered during this stage of the investiga-
24 tion having been analysed, the conclusion is reached that there is no sufficient basis in the
25 complaint so as to substantiate charges against the accused, Phillip Richard Powers, and to
26 require on well-founded basis the opening of a trial in this case. After having analysed the
27 different pieces of evidence on record, this representation believes that what is most perti-
28 nent and consistent with the law is to request the Pavas Criminal Court to rule Final Acquit-
29 tal in this case in favour of the accused, on the basis of the considerations that are described
30 below: From the analysis of these proceedings the conclusion is reached that the Defence

2 of the accused is correct, as it explained it in its requirement for Final Acquittal visible on
3 folios 81 (*third figure or symbol illegible*) and following folios of Volume IV of the record, its
4 request being applicable. In truth, as indicated by the Defence of the accused, this represen-
5 tation arrives at the conclusion that the «representation» attributed to the accused in the
6 complaint, and that the accused supposedly undertook in the C/M Investment Group Lim-
7 ited company, cannot be regarded as such as it was alleged, specifically to substantiate the
8 crime of fraudulent management, as a constituting element of this crime. Such as has be-
9 come established in the investigation, the accused acquired only one of the two pieces of
10 property reported as summarised in the report of the facts, specifically the property recorded
11 in the real estate register with the number 5-5178-000, which was done in «representation
12 solely for this action» as per the powers of attorney submitted, that is, not done in his capac-
13 ity as partner, stockholder or representative of the company itself in the strict sense, but on
14 behalf of someone else, since the manager of the company was not present in the country.
15 While it is true that the accused acted as founder of the C/M company according to the cer-
16 tification from the register submitted, the truth of the matter is that he was so only for ap-
17 proximately six months, during which term, as has been proven, he did not acquire the
18 property reported, since the latter was acquired in the year 2002, and the accused was re-
19 moved from his position in the company in the year 2001; to such effect, the documenta-
20 tion of the public registration bureau should be examined, and especially about changes in
21 the board of the C/M company; this is why special powers of attorney had to be granted to
22 the accused for acquiring only the property in question, to wit, the property bearing number
23 51781-000 of the real estate register, since the second property reported, whose number is
24 8412-000 was acquired by a person other than the accused who is not reported in this pro-
25 ceeding. It is likewise clear for this prosecutorial agency not only that the accused did ac-
26 quire with powers of attorney for this single action, but that he did so in his capacity as real
27 estate agent, there being, therefore, objectively no grounds to allege the crime investigated.
28 This type of representation does not generate the relationships required to configure the ob-
29 jective elements of the criminal figure of fraudulent management, since, had such assump-
30 tion been valid, all persons who on a given occasion acquired property on behalf of, and in

2 representation for such action, for C/M should have been likewise reported, such as in the
3 case shown in the record, of the special legal representative of the complaining company,
4 that is, mister José Antonio Muñoz-Fonseca, for instance in a title granted in San Jose on
5 May 22, 2002, which has been added to the record, it being possible to conclude validly that
6 the accused acquired pieces of property for the plaintiff pursuant to a mandate, and not as
7 part of his duties in the company. It is also possible to gather from the evidence included
8 into the record, that the accused was a free-lance consultant, as per the testimony of Messrs.
9 Marianne Lierow and Walter Suárez, but also with the documentary evidence gathered, to
10 wit, the contracts entered into by the parties, the different deeds where the accused appears,
11 it not being possible to conclude validly from the analysis of such evidentiary elements, that
12 the accused Richard Powers worked for the complaining organisation as it has been re-
13 ported, since what resulted from the only contract submitted by the complaining party be-
14 tween the accused and C/M was a contractual relationship whereby the accused had to give
15 maintenance to the pieces of property acquired, as well as look for pieces of property for the
16 plaintiff, without specification of any consideration and without establishment of a percent-
17 age of benefit for the sale thereof either. Take notice of how, in the contract dated October
18 3, 2003, visible on folios 383 and following folios, there is indication that the parties were
19 free-lance contractors, nothing relative to commissions for the purchase or sale of property
20 having been established, and that as mentioned in the complaint and by Gary Michelson
21 himself, that the issue was a 6% agreed to, which was not specified in those agreements of
22 wills, no other documentation with respect thereto having been furnished, as assured by
23 Michelson during his appearance at this prosecutorial agency, that is, that his lawyers had
24 documents that proved so; however, to this day, and since the time of such assertion, the
25 evidence was not added to the record, which generates doubts about its very existence; but
26 in any event, such circumstance is not ascertained in this investigation. Much to the con-
27 trary, this representation feels that with the evidence gathered it is concluded that such per-
28 centage or commission was never agreed to, since what it may sustain is that it appears that
29 the accused was merely a real estate agent who invested his money or that of third parties,
30 such as Walter Suárez, thus being able to purchase property that he would later offer to the

2. complaining organisation, or to any other third party having an interest. Thus, it is there-
3 fore not logical that the accused would have appeared together with another company
4 known as Walsu and its representative in the original contract dated February 11, 2003,
5 submitted by the defence, as a real estate agent if he were an employee or a representative
6 of the complaining company itself, since it would have not been necessary to give such ti-
7 tles to the persons who appeared as parties in the legal transaction, let alone identify them
8 for purposes of the contract as «agents,» which shows clearly that they were individuals or
9 organisations involved in a commercial relationship of purchase and sale of land in an inde-
10 pendent fashion. In respect thereof we may conclude then that the accused did not have the
11 responsibility to represent the complaining organisation, nor, it appears, can we assert be-
12 yond the shadow of a doubt whether the accused was entrusted with the handling or man-
13 agement of moneys from that organisation that contends to be affected. It has not been pos-
14 sible to ascertain in any manner that the accused managed moneys from the complaining
15 organisation, which came from transfers made to accounts of Richard Powers or of the
16 companies represented by him, and furthermore this representation believes that the ac-
17 counting evidence requested at some point during the proceeding is not pertinent to prove a
18 possible management of assets or moneys, since what could be obtained from such proof
19 would be the evidence of money transfers, never of the use thereof, which must be proven
20 by means of other documents or witnesses required and that the complaining organisation
21 has not provided, since the accounting evidence could determine a total amount of money
22 sent from one place to another, or from one person to another, but we cannot know in this
23 way about the destination thereof with respect to the use thereof. Together with the preced-
24 ing, taking into consideration what the accused has expressed in relationship to the fact that
25 he himself has admitted to having received the amount of money that has been reported as
26 sent, it is felt that an accounting study is not of major relevance, since this has been estab-
27 lished by the admission of the accused himself; however, it appears as to use or destination,
28 that the money was used exclusively for the purchase of land. We similarly hold as docu-
29 mentary evidence the sworn translation of a fax message that the accused Powers sent to
30 mister Michelson offering him pieces of property for C/M, in which he indicated that he

2 never received the balance pending for the properties, and that pursuant to the commercial
3 relationship that they maintained among themselves, he was offering him a purchase option
4 on those properties at the original price thereof. It may then be concluded from such asser-
5 tions that if the complaining organisation did not show any interest in purchasing such
6 pieces of property, and the funds were not received in the Protección Forestal de Teca ac-
7 count by that date, the assumption would be made that C&M was not interested in purchas-
8 ing such properties. Based on the element of proof indicated we may conclude that it ap-
9 pears that there was no management of moneys for the purchase of property, since what was
10 being made was a sale offer; it is likewise obvious that the parties had independence to en-
11 ter into contracts and that the accused was not a part of any relationship that would tie him
12 to the above-mentioned company or to the representatives thereof. Thus, if the person in-
13 vestigated had been an employee or a representative of C/M, his granting a term to C/M's
14 manager to express his interest in purchasing certain properties that the company Powers
15 Investments would otherwise offer to third parties would not be understandable. Another
16 aspect examined by this representation was the matter relative to the percentage of teak cul-
17 tivation in the lands sold by the accused and purchased by C/M, which is reported in the
18 sense that, upon having met Gary Michelson, the accused alleged to be an expert in teak
19 cultivation, and that motivated Michelson to invest in Costa Rica on properties appropriate
20 for that purpose; however, this is not clear since, in the document submitted, where the
21 civil complaint filed by Gary Michelson against Richard Powers in the United States of
22 America is translated, this is not reported or alleged in this manner, since there is no men-
23 tion that the accused introduced himself as an expert in teak cultivation but only in real es-
24 tate, which generates an important contradiction taken into consideration for this request of
25 the prosecution, given the fact that, if this is true, it should not be omitted in the case of a
26 suit involving millions. Together with the preceding, the accused has offered also as proof
27 the sworn translation of a document that proves that mister Gary Michelson knew that the
28 percentage of teak cultivation was low, and that the number of trees planted was small, all
29 of which he expressed in the year 2003, long before continuing with his commercial land
30 purchase operation up to the year 2006; to this effect see the document attached to the

2 record dated February 4, 2003, translated by a sworn translator, the case being that his as-
3 sertion that it was not until the year 2006 that he learned about the low percentage planted
4 in the properties is not credible, since, in spite of the fact that he knew about such a situation
5 since the year 2003, he purchased a large number of properties thereafter. In like manner
6 this representation feels that the public defender of the accused is correct in her/his request
7 visible on folios 817 and following folios of Volume IV of the record, concerning the al-
8 leged surcharge charged by the accused to the C/M company as a product of property sales,
9 where it is asserted by the plaintiff that the accused Powers had the obligation to sell the
10 properties that he would find at the same price that the original sellers charged for them and
11 that he could earn only 6% commission for each purchase of new properties. Concerning
12 this fact reported, there is no objective evidence that proves that such maximum percentage
13 of 6% was a reality, and it is even less evident that Powers had the obligation to sell the
14 properties at the same price that he had paid to purchase them, since solely the assertion of
15 the plaintiff is known in this respect, which is all the more evident when he affirmed in his
16 ratification of his complaint in Costa Rica, on April 8 last, that he arrived at an agreement in
17 that sense by means of a telephone conversation with mister Powers, there being no witness
18 or documentary proof that would be a reference in this sense; instead, and in this same re-
19 spect, which is of great importance in this investigation, there is proof confirmed by the ac-
20 cused's own defence when he asserted that he had no obligation to sell for the same price,
21 and even less of an obligation to charge only 6% commission, a situation that was corrobo-
22 rated by the witness Marianne Lerow. Also of importance is the contract signed among the
23 parties in the year 200(*fourth figure illegible*); while it is true that the form in which the ac-
24 cused and the company represented by the latter were to be remunerated is established in it
25 concerning the care and planting of trees, the matter of searching for properties and offering
26 them for sale to C & M is totally omitted in this respect in the body of that contract, which
27 naturally causes this representation to harbour doubts about the existence of such obligation,
28 since it is absolutely logical to think that an obligation of such importance, and under the
29 assumption that it would be real, would have not been omitted in the contract. This prose-
30 cutorial agency even finds of great interest the fact that mister Michelson would have

2 wanted to diminish the importance of the contract executed by the parties when he referred
3 to it in his deposition here in Costa Rica, and would have, even this being the case, filed a
4 civil complaint in the United States of America, the basic document for such a complaint
5 being precisely the referenced contract, which, together with the sworn translation thereof
6 has been added to the record as evidence provided by the accused's expert defence. In this
7 context, be it noticed that there is no mention at all in the first complaint filed by the Special
8 Legal Representative that the accused had to sell the properties to C & M at the same price
9 that he had paid to purchase them from the original sellers, and instead the complaint refers
10 to the fact that Powers' obligation was limited only to obtaining and negotiating fair market
11 prices; thus, this obligation to sell for the same price as that of the original sellers appeared
12 as a new fact when an addition was made to the record by the other Special Legal Represen-
13 tative of C & M, Rocío Amador, Esq. who, in the act of extending the complaint, introduced
14 this new element that was totally omitted in the first complaint, something that generates
15 doubt as to truthfulness of such assertion. The fact that real estate agents work subject to
16 commission of 5 or 6% of profit for each sale accomplished under this intermediary role is
17 known by all; however, pieces of evidence of great importance which support the accused's
18 own defence have been added to the record with reference to the fact that his work exceeded
19 that of a plain real estate agent, in that, in addition to finding the properties and before trans-
20 ferring them to C & M, he necessarily had to clear the title thereto, given the fact that
21 among the many properties offered to said company some were affected by a number of
22 liens or encumbrances that had to be eliminated, whereby they had to be placed in a clear
23 condition for registry purposes in order for the complaining company to pay the rest of the
24 price, and that in some cases such clearance work took a considerable length of time, this
25 being an assertion that was supported in every respect by the witness Lierow, who pointed
26 out before this prosecutorial agency that it was the accused who purchased the property pay-
27 ing 100% of the money to the seller, out of his own pocket, and who in addition took charge
28 of the clearing of the property, it being understood as freeing it from liens and encum-
29 brances, and cancelling the commissions of all real estate agents; that in most cases new
30 drawings were made; he had, also, to cancel fees for the transfer of each property, and in

2 some cases, approximately in twenty such cases, ownership information requirements had
3 to be met which took as much as three years, there being even cases involving succession,
4 and all payments having been made by mister Powers. Similarly, the witness Walter Suárez
5 himself pointed out that the accused Richard Phillip Powers was the person who paid an ad-
6 vance to secure the agreement and who later cleared the property in the event there was a
7 problem with it. Even the legal representative of the complaining company, mister Michel-
8 son, admitted that Powers performed all those taks, for which reason it is of vital impor-
9 tance to mention and reiterate the Private Contract among the parties C and M Investment
10 Group, Phillip Richard Powers, Walter Suárez-Villalobos, Walsu Sociedad Anónima, the
11 latter identified in this contract as the agents; however, what is of greater relevance in this
12 contract is that truly C & M and the agents had agreed that the sale and transfer of the prop-
13 erties mentioned in the contract in favour of the former would take place provided the
14 agents would see to the termination of all lease contracts that were affecting the properties,
15 as well as to the payment of the respective charges thereon at the Public Registration Bu-
16 reau; however, C & M has accepted to buy those properties subject to the commitment that
17 the agents comply with such obligations, to the point where the right of C & M to request
18 the revocation of the purchase and sale contract, as well as to demand from the seller the
19 return of the total sale price paid by C & M is imposed as guarantee to ensure that they shall
20 comply with such obligations, all costs relative to transfer taxes, tax stamps, and profes-
21 sional fees generated by such contractual revocation being charged to the seller, and even
22 committing the agents unconditionally to pay to C & M any amount that the latter would
23 have to pay in judicial or administrative departments; the agents even committed to pay to
24 C & M for damages in respect of actions, claims and/or complaints brought by the State,
25 and/or lessees of the land, among an additional number of commitments of importance. It is
26 precisely such series of contractual commitments what motivates this prosecutorial agency
27 to arrive at the conclusion that it is neither logical nor proportionate to accept as probable
28 that the accused Powers and the companies that he represented would commit themselves to
29 such an extent in return for a 6%, which is the regular commission paid to an agent merely
30 for bringing a purchaser and a ready seller into agreement, it being very much more logical

2 to accept that such commitments arose from the possibilities that Powers and the companies
3 that he represented had to offer to sell to C & M at the price they deemed appropriate after
4 adding all costs and commissions for clearance of the properties, to the point that he became
5 a guarantor of such purchases by C & M. On the other hand, in his addition of elements to
6 the investigation the accused provided the sworn translation of a document with which the
7 special legal representative of C/M, mister José Antonio Muñoz sent a document to William
8 Capps with a copy to attorney Rodrigo Cordero, on the subject of C/M, where they are ad-
9 vised that all the properties purchased by Walsú S.A. were purchased at thirds of the price
10 of sale offered to the complaining company, whereby it becomes clear that, thanks to the
11 legal assistance that such complaining organisation and its representatives had, the amount
12 paid for the properties by the accused and the companies that he represented, or those that
13 his partner (*word illegible*) Walter Suárez, was always known; therefore, the prosecutorial
14 agency considers that the surcharge as a reason for a complaint is not acceptable, given the
15 fact that such situation was known since many years ago by the General Legal Representa-
16 tive of C & M himself. In addition to the preceding it has not been possible to ascertain
17 damage against the complaining organisation, which in this case would be of a financial na-
18 ture, since we can clearly notice that property retention, or loss in sales or in the manage-
19 ment of assets are not reported, and far from submitting evidence of any damage, the com-
20 plaint deals with the subject in relationship to an excessive charge for commission on the
21 part of the accused, but, as indicated before, this may not be ascertained; therefore, it is not
22 possible to allege a damage that is not proven in a case lasting several years, a time suffi-
23 cient to gather and provide the corresponding evidence, it, instead, being strange that the
24 accused himself offered to repurchase the properties for almost double the price paid by the
25 complaining company, and the latter did not respond in any manner through its representa-
26 tives, but that in any event they don't prove in all certainty during the investigation the
27 damage against the company required to constitute the possible crimes relative to property
28 reported. In like manner this prosecutorial agency dismisses entirely the existence of the
29 crime of fraud, since the objective elements that constitute this type of crime as such were
30 not proven; deception by the accused was not proven; no proof is provided to calculate

2 financial damages. IV. In consequence thereof: In conformity with the provisions of article
3 311 of the Criminal Procedural Code, I hereby reiterate my application in order for a deci-
4 sion of final acquittal to be entered in this case brought against Richard Phillip Powers for
5 the crime of fraudulent management to the detriment of C and M Investment Group Lim-
6 ited. V. Notices: For purposes of acknowledging receipt of notices I submit the Pavas
7 Prosecutorial Agency, or otherwise fax number 2296-8526. Pavas, June 2, 2010. Marco
8 Pochet-Meléndez, Prosecutor for Pavas. (*Ink stamp: «Republic of Costa Rica. Judicial*
9 *Branch. Prosecutorial Agency. Prosecutor for Pavas»*). -----

10 ----- LAST LINE -----

11 IN WITNESS WHEREOF I hereby set my hand and stamp on this Official Translation
12 which consists of seven folios, in San Jose, on this nineteenth day of June, 2010, the statu-
13 tory stamps having been affixed hereto and duly invalidated. Orlando García-Valverde.

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