Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

In the Matter of: **POPULUS LENDING CORPORATION WITH ONLINE LENDING PLATFORMS OPERATING UNDER THE NAME OF PESOPOP, PESOCOW, NEWCASH, and LUCKYLOAN**	**SEC En Banc Case No. 07-23-006 (FLCD CDO Case No. 25, s. 2023)** For: Violation of SEC MC No. 18, s. 2019, Financial Products and Services Consumer Protection Act and its Implementing Rules and Regulations, Lending Company Regulation Act of 2007, and SEC MC No. 19, s. 2019 **Promulgated**: 16 November 2023

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RESOLUTION

This resolves the *Motion to Lift the Cease and Desist Order* (the "Motion to Lift") filed on 21 July 2023 by Populus Lending Corporation, doing business under the names *"Pesopop", "PesoCow", "NewCash",* and *"Lucky Loan"* (Populus Lending), praying that the Cease and Desist Order dated 26 June 2023 (the "Assailed CDO") issued by the Commission's Financing and Lending Companies Division (FLCD) be lifted, the dispositive portion of which reads:

> "WHEREFORE, **Populus Lending Corporation** including its branches, extension, satellite offices, units, and online lending platforms, together with its owners, operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby ORDERED to immediately **CEASE AND DESIST** from engaging in, carrying out, any unfair debt collection practices in connection to any lending activity/ transaction."

Populus is a domestic corporation organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing Company Registration No. CS201914390. Its principal office address is at 19/F Marco Polo Ortigas Manila, Sapphire Road, Ortigas Center 1600 Pasig City. It operates its online lending through the platforms *"PesoPop", "PesoCow", "NewCash",* and *"Lucky Loan"* which is available/accessible on Google Playstore.

On 14 July 2023, the FLCD issued the Assailed CDO directing Populus Lending to immediately cease and desist from engaging in, or carrying out, any unfair debt collection practices in connection to any lending activity/ transaction, on the basis of a finding that it violated R.A. No. 11765 otherwise known as the Financial Products and Service Consumer Protection Act (FCPA) and Memorandum Circular No. 18, series of 2019 (MC 18). Specifically, the FLCD found that within the period covering September 2022 to March 2023, Populus Lending employed abusive collection or debt recovery practices as shown by the numerous complaints received by it.

On the same date, the FLCD issued an Order revoking the Certificate of Authority (CA) to Operate as a Lending Company of Populus (the "Order of Revocation") based on the latter's violations of MC No. 18, as well as Memorandum Circular No. 19, series of 2019 and Memorandum Circular No. 10, series of 2021 (collectively referred to as the "Circulars").

On 21 July 2023, Populus filed the instant *Motion to Lift* seeking the reconsideration and lifting of the Assailed CDO on account of the alleged absence of the grounds that justify its issuance.[1] In support thereof, Populus Lending averred that: (a) it is implementing the 2021 Debt Collection Manual (the "Manual") which proscribes unlawful collection methods;[2] (b) it investigates violations committed by employees[3]; imposes the appropriate penalties, including termination, upon finding that an employee/agent is guilty of unfair debt collection practice proscribed under the Manual[4]; and collaborates with complainants to ascertain the veracity of their allegations[5]; (c) it cannot be faulted for the actions of its employees who violate the Circulars or its Manual since it has made its instructions and policies against unfair debt collection clear;[6] (d) it only communicates through authorized channels and denies any involvement on the use of unknown mobile numbers to threaten, insult or harass borrowers. Populus Lending maintains that it uses only the approved template messages which merely remind clients who are unable to pay that such failure will affect their future credit score;[7] and (e) the allegations in the complaints filed against Populus Lending are not

[1] *Motion to Lift*. Par. 6
[2] *Ibid.* Pars. 12 to 15
[3] *Ibid.* Par. 16
[4] *Ibid.* Pars. 20 and 21
[5] *Ibid.* Par. 17
[6] *Ibid.* Par. 21.4
[7] *Ibid.* Pars. 22 and 27

supported by evidence and are speculative; they do not support the issuance of the Assailed CDO.[8]

On 01 August 2023, the Order of Revocation[9] issued by the FLCD became final and executory as no appeal or motion for reconsideration was filed within the fifteen (15) day reglementary period.

On 04 August 2023, the FLCD filed its *Comment/Opposition*, praying for the denial of the *Motion to Lift* on the following grounds: (a) the Motion to Lift was filed beyond the reglementary period;[10] (b) the violation of FCPA and the Circulars were established by substantial evidence which Populus Lending failed to controvert;[11] and (c) the finality of the Order of Revocation has rendered the Motion to Lift moot and academic.[12]

On 11 August 2023, FLCD filed its Position Paper, essentially reiterating its arguments in its *Comment/Opposition*. The FLCD further averred that digital forensic evidence containing messages that violated MC 18, obtained during the implementation of the Warrant to Search and Examine Computer Data (WSSECD)[13], were traced to the OLPs of Populus Lending namely *Pesopop, Pesocow, and Newcash*.

Populus has not filed its Position Paper.

We deny the *Motion to Lift* for lack of merit and on the ground of mootness.

Populus Lending posits that the FLCD failed to substantiate the allegations that it employed abusive collection and debt recovery practices in violation of the FCPA and the Circulars. It argued that the messages cited in the complaints are speculative and did not establish the identities of their sender. They cannot thus be used to hold Populus Lending accountable/liable.

The Commission does not agree.

Rule 8 Section 4.4 of the SEC FCPA IRR provides:

"Sec. 8. *Duties and Responsibilities of Financial Service Providers.* -
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[8] *Ibid.* Pars. 32 to 36, and 38
[9] Recorded in the Book of Entries of Judgment on 01 August 2023
[10] *Comment/Opposition.*, Par. 3(a).
[11] *Ibid.* Par. 3(b), (c) and (d)
[12] *Ibid.* Par. 4
[13] No. 2022-194-PSG to 2022-196-PSG issued by the Regional Trial Court, Branch 159, Pasig

(d) xxx Financial service providers are prohibited from employing abusive collection or debt recovery practices against their financial consumers."

Section 1 of MC 18 enumerates the unfair collection practices which are prohibited and penalized:

a. The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;
b. The use of threats to take any action that cannot legally be taken;
c. The use of obscenities, insults, or profane language the natural consequence of which is to abuse the borrower and/or which amount to a criminal act or offense under applicable laws:
d. Disclosure or publication of the names and other personal information of borrowers who allegedly refuse to pay debts, except as may be allowed under Section 2 hereof;
e. Communicating or threatening to communicate to any person loan information which is known or which should be known to be false, including the failure to communicate that the debt is being disputed, except as may be allowed under Section 2 hereof;
f. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a borrower; and
g. Making contact at unreasonable/inconvenient times or hours, which shall be defined as contact before 6:00 A.M. or after 10:00 P.M., unless the account is past due for more than fifteen (15) days, or the borrower has given express consent that the said times are the only reasonable or convenient opportunities for contact.
Such consent which shall be evidenced by written, electronic, or recorded means, may be given prior to, during, or after the execution of the loan agreement.

Notwithstanding the borrower's consent, contacting the persons in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice.[14]

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14 *Id.*, §1.

The pieces of evidence submitted by the FLCD sufficiently established that a large number of client-borrowers of Populus Lending have been harassed, insulted, threatened, and their right to privacy violated. The complaints of [redacted], to name a few, who have all narrated their horrible experiences and positively identified and pointed to the employees, agents and/or OLPs of Populus Lending as the perpetrators of the abusive collection practices, constitute substantial evidence sufficient to support the finding of violation made by the FLCD.[15] The requirement of substantial evidence is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.[16] There is nothing in the records of the case which controverted the evidence presented by the FLCD.

We equally find the defense of Populus Lending that some of the complaints have already withdrawn their complaints to be unavailing as the same does not controvert nor negate the fact established by substantial evidence, that it employed abusive collection and debt recovery practices. If at all, the said withdrawal only proved that the case(s) were settled, and that its clients were satisfied by how Populus Lending handled their concerns and delt with erring employees, to wit:

> "I do appreciate your assistance in the complaint and your representative who contacted me to have a settlement. With that we discussed by email and sms I [redacted] would like to cancel my complaint to your company immediately. <u>I do appreciate doing your disciplinary action on your agent and giving his/her sanction that is equal to his/her manner</u>, and in addition, <u>we agreed with you company that my account will be closed</u>."[17] (Emphasis supplied)

> "The management has directly reached out to me on March 30, 2023 to provide a detailed account of their investigation,

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[15] "<u>The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion</u>. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based." (NBI vs Najera. G.R. No. 237522. June 30, 2020)
[16] Diaz v. Ombudsman, G.R. No. 203217
[17] *Motion to Lift*. Par. 17.2.1

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> their findings, and the resolution they decided to extend to address the specific concerns I stated in my complaint pertaining to improper customer handling that resulted to harassment.
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> NEWCASH also provided a letter of apology on 30 March 2023, which I also gladly accepted, and provided an assurance that it will never happen."[18] (Emphasis supplied)
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> "While I have appreciated on your fast compliance with my complaint, I [redacted], I would like to withdraw my complaint to your company immediately. I have already talked to one of your representatives over the phone about what happened in my account. Me and the company have agreed that they help me fix this matter."[19] (Emphasis supplied)

Moreover, We equally hold that the implementation of the Manual, the conduct of investigation, as well as the imposition of the appropriate sanctions against its erring employees/agents, do not, and will not operate to negate the fact that Populus Lending employed abusive collection and debt recovery practices. If at all, these circumstances constitute an implied admission of its violation of the FCPA and the Circulars. In *Metro Manila Transit Corporation v. Court of Appeals*,[20] the Supreme Court ruled that in the interest of protecting the general public, the fact that policies and guidelines on the conduct of business are in place does not automatically exempt employers from the wrongdoing of their employees, thus:

> "We emphatically reiterate our holding, as a warning to all employers, that "(t)he mere formulation of various company policies on safety without showing that they were being complied with is not sufficient to exempt petitioner from liability arising from negligence of its employees. It is incumbent upon petitioner to show that in recruiting and employing the erring driver the recruitment procedures and company policies on efficiency and safety were followed." Paying lip-service to these injunctions or merely going through the motions of compliance therewith will

[18] *Id.* Par. 17.2.2
[19] *Ibid.* Par. 17.2.3
[20] G.R. No. 104408 (1993)

warrant stern sanctions from the Court." (Emphasis supplied)

This Commission is cognizant of the provision in the FCPA which expressly makes Financial Services Provider solidarily liable for the acts or omissions of their employees, agents, and service providers.[21] Considering that the fact of violation by the employees and agents of the FCPA and MC 18 has already been established, Populus Lending's argument that it cannot be held responsible/liable for such violation because it is implementing the Manual and that some of the complaints were already withdrawn, is clearly without basis.

On account thereof, this Commission finds no compelling reason to lift the Assailed CDO. On the contrary, after a thorough and scrupulous review of the evidence on record, this Commission is convinced that the Assailed CDO should be made permanent to ensure that the consuming public is protected in a manner that is envisioned under the FCPA and MC 18.

Finally, We agree with the FLCD that the Motion to Lift has become moot and academic after the Order of Revocation has attained finality.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition.[22] Hence, cases that have been mooted are, as a general rule, dismissed considering that the judgment will no longer serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[23]

In the instant case, the finality of the Order of Revocation of Populus' CA is a supervening event that renders the instant *Motion to Lift* moot or of no practical value since it had the effect of removing any authority to continue conducting or carrying out a lending business.

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[21] **Section 13.** *Liability of a Financial Service Provider on the Acts or Omission of its Authorized Representatives.*- The financial service provider shall be responsible for the acts or omissions of its directors, trustees, officers, employees, or agents in marketing and transacting with financial consumers for its financial products or services. The financial service provider shall be solidarily liable with accredited third-party service providers for their acts or omissions in marketing and transacting, which may include, but not limited to, debt collection, with financial consumers for its financial products and services.

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Perforce, any adjudication on the Motion to Lift will no longer have any practical value because Populus Lending will no longer benefit therefrom.

WHEREFORE, premises considered, the Motion to Lift the Cease and Desist Order filed by Respondent Populus Lending, Corporation is hereby **DENIED** for being moot and academic, for being filed out of time, and for lack of merit. The Cease and Desist Order dated 26 June 2023 is hereby made **PERMANENT**.

Let a copy of this **RESOLUTION** be posted in the Commission's website and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO*
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Official Business