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

In the Matter of:	**SEC En Banc Case No. 07-23-002 (FLCD CDO Case No. 24, s. 2023)**
SURITY CASH LENDING INVESTORS CORP. WITH ONLINE LENDING PLATFORMS OPERATING UNDER THE NAME OF SURITY CASH	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 Cease and Desist Order* (the "Motion to Lift") filed on 04 July 2023 by Surity Cash Lending Investors Corp., doing business under the name *"SurityCash"* (Surety Cash 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**, Surity Cash Lending Investors Corp. 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."

Surity Cash Lending is a corporation organized and existing under Philippine laws, having been issued a Certificate of Incorporation with Company Registration No. CS201910185. Its principal office address is at the 11th floor of trade Ave Coherco Financial Tower, Ayala Alabang Muntinlupa City. It operates its lending business through the platform *"SurityCash"* which is available/accessible on Google Playstore.

On 26 June 2023, the FLCD issued the *Assailed CDO* directing Surity Cash Lending to immediately cease and desist from engaging in, 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, Surity Cash Lending employed abusive collection or debt recovery practices as shown by the numerous complaints received by it.

On 04 July 2023, Surity filed the *Motion to Lift* praying that the Assailed CDO be reconsidered and lifted based on the following grounds: (a) the claims against it only involve five (5) cases whereby the client-debtors were afforded due process in ventilating their claims; (b) these claims cannot be said to cause grave and irreparable injury or prejudice to financial consumers in their entirety; and (c) there is no substantial evidence shown in the *Assailed CDO* which would establish the commission of illegal and unfair debt collection practices by Surity Cash Lending.[1]

On 17 July 2023, the FLCD filed its *Comment/Opposition*, praying for the denial of the Motion to Lift on the ground that the same is bereft of merit and basis. The FLCD contended that the continuous receipt of complaints[2] against Surity Cash Lending shows that the latter is actively employing abusive collection or debt recovery practices; and the same suffices to cause grave and irreparable injury or prejudice to the borrowers under existing jurisprudence.[3] The FLCD also argued that the number of complaints constitutes substantial evidence showing that Surity Cash Lending has violated FCPA and MC 18, a fact that it impliedly admitted.[4]

On 01 and 08 August 2023, Surity Cash Landing and FLCD filed their respective Position Papers, essentially reiterating their previous arguments.

On the basis of the foregoing factual backdrop, as well as the evidence presented by the parties in support of their respective positions, this Commission finds the *Motion to Lift* bereft of merit and basis.

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[1] Motion to Lift, Par. 4.
[2] 190 complaints received covering the period September 2022 to March 2023
[3] *Comment/Opposition*. Par. 4 (a) and (b)
[4] *Ibid.* Pars. 5 and 6.

The *Assailed CDO* was issued on the basis of the following evidence which showed that Surity Cash Lending is employing unfair collection and debt recovery practices in violation of the FCPA and MC 18: (1) copies of the numerous complaints received which claimed that Surity Cash Lending imposed and charged high processing fees and interest rates, implemented unreasonable terms and conditions, used foul and offensive language which demeaned and threaten borrowers, and violated the right to privacy of its debtors; (2) Copies of Show cause Orders issued by the CGFD against Surity Cash Lending; and (3) Certification issued by the Data Privacy Officer of Surity Cash Lending stating the names of the collection specialists who handled the accounts of the complainants which have either resigned, was terminated or currently under investigation.

Relative to the foregoing, We specifically note of the one hundred ninety (190) complaints that were filed with the FLCD against Surety Cash Lending between September 2022 and March 2023, and seventeen (17) complaints between April and June 2023. While it might be true that only five (5) claims have, as of this moment, ripened into formal complaints, the totality of the complaints discloses the seriousness and gravity of the violation which Surity Cash Lending is continuously carrying out with impunity.

Rule 8 Section 4.4 of the SEC FCPA IRR provides:

> **"Sec. 8. *Duties and Responsibilities of Financial Service Providers.* -**
> xxx
> (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.
h. 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.[5]

The complaints which the FLCD submitted in evidence will readily disclose that Surity Cash Lending actually violated Section 8 of the FCPA and Section 1 of MC 18 when it threatened, disclosed personal information, violated the pricy of, insulted, and harassed its borrowers.[6] These complaints constitute substantial evidence which jurisprudence considers as sufficient to support the conclusion/finding made by the FLCD.[7] 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.[8] There is nothing in the records of the case which controverted the evidence presented by the FLCD.

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[5] *Id.*, §1.
[6] *Comment/Opposition*. See Annexes "E" to "F"
[7] "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. 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)
[8] Diaz v. Ombudsman, G.R. No. 203217

Interestingly, what the records show is an implied admission made by Surity Cash Lending that it employed abusive collection and debt recovery practices. However, Surity Cash Lending maintains that the issuance of the Assailed CDO against it is unwarranted because it afforded its clients due process and is already addressing the same, thus:

> "These claims only total to five (5) cases, whereby the **client-debtors** were afforded due process in ventilating their claims. SURITY has also been diligently following up each complaint and has been exerting its best and utmost efforts to coordinate with the complainants; xxx" (Emphasis supplied)

The allegation made by Surity Cash Lending that it afforded its clients due process, and is taking proactive steps to address their complaints does not negate the fact that it had already violated the FCPA and MC 18.

Moreover, We also find the Certification issued by its Data Privacy Officer, Precious Danel De Asis, to constitute another admission that Surity Cash Lending, through its employees, has employed abusive collection and debt recovery practices. Its statement therein that the collection specialists who dealt with and handled the accounts of the complainants have either resigned, terminated, or are currently under investigation is an admission that its agents have violated the FCPA and MC 18. Considering that such employees acted for, and in representation of Surity Cash Lending, the latter is bound by such actions.[9] Under this perspective, the Collection Guidelines and the Service Agreement which Surity Cash Lending submitted in evidence will not operate to negate the fact that its employees, who are its agents and representatives, have employed abusive collection and debt recovery practices.

The foregoing finds support in *Metro Manila Transit Corporation v. Court of Appeals*,[10] where 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:

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[9] "The Court has held that "one who clothes another with apparent authority as his agent and holds him out to the public as such cannot be permitted to deny the authority of such person to act as his agent, to the prejudice of innocent third parties dealing with such person in good faith and in the honest belief that he is what he appears to be." In an agency by estoppel, "the principal is bound by the acts of his agent with the apparent authority which he knowingly permits the agent to assume, or which he holds the agent out to the public as possessing." (San Miguel Corporation vs Leonara Vda De Trinidad; see Concurring Opinion of J. Caguioa. G.R. No. 237506, July 28, 2020)

[10] G.R. No. 104408 (1993)

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

Finally, 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.[11] Considering that the fact of violation by the employees and agents of the FCPA and MC 18 has already been established, Surety Cash Lending's argument that it cannot be held responsible/liable for such violation because it already addressed the complaints of its clients, 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.

WHEREFORE, premises considered, the Motion to Lift the Cease and Desist Order filed by Respondent Surity Cash Lending Investors, Corp. is hereby **DENIED** for lack of merit. The **CEASE AND DESIST ORDER** dated 26 June 2023 issued against Surity Cash Lending Investors, Corp. is hereby made **PERMANENT**.

Let a copy of this Resolution be posted on the Commission's website, published in a national newspaper of general circulation, and

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[11] **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.

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