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

In the Matter of:	**SEC En Banc Case No. 07-23-003 (FLCD CDO Case No. 28, s. 2023)**
U-PESO.PH LENDING CORPORATION WITH ONLINE LENDING PLATFORMS OPERATING UNDER THE NAME OF UPESO, PERA4U, PERALENDING, AND LOANMOTO	For: Violation of SEC MC No. 18, s. 2019, Financial Products and Services Consumer Protection Act and its Implementing Rules and Regulations. **Promulgated**: 21 November 2023

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RESOLUTION

This resolves the Motion to Lift Cease and Desist Order dated 03 July 2023 (the "Motion to Lift") filed of even date by U-PESO.PH Lending Corporation (U-PESO Lending)[1], praying that the Commission lifts the Cease and Desist Order dated 22 June 2023 (the "Assailed CDO") issued by the Commission's Financing and Lending Companies Division (FLCD), the dispositive portion of which reads:

> "**WHEREFORE**, U-PESO.PH 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."

U-PESO.PH is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with Company Registration Number CS201814908 on 24 July 2019. It is authorized under its Articles of Incorporation to engage in and carry out a lending business under Certificate of Authority (CA) Number 2718, and maintains the online lending platforms (OLPs) (a) UPESO, (b) PERA4U, (c) PERALENDING, and (d) LOANMOTO. Its principal office address is at

[1] Received on 03 July 2023 via email by the Office of the General Counsel.

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the 11th Floor Trade Ave., Coherco Financial Tower Ayala Alabang, Muntinlupa City.

On 22 June 2023, the FLCD issued the Assailed CDO directing U-PESO 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 No. 18). Specifically, the FLCD found that during the period from September 2022 to March 2023, numerous complaints were filed against U-PESO Lending and its third-party service provider for abusive collection and debt recovery practices.

On 03 July 2023, U-PESO Lending filed the Motion to Lift, praying that the Assailed CDO be reconsidered and lifted on the following grounds: (a) it was denied due process since it did not receive any notice, subpoena, or other correspondence with respect to the criminal complaint purportedly filed with the Department of Justice (DOJ) and the Warrant to Search, Seize and Examine Computer Data (the "Warrant")[2] which were used as the basis for its issuance;[3] (b) the Warrant was not implemented in its Pasig offices and no proof was adduced in the Assailed CDO regarding the evidence obtained during its implementation;[4] (c) there were only seven (7) complaints were lodged before the FLCD and the concerned client-debtors were all afforded due process in ventilating their claims;[5] and (d) the claims cannot be said to cause "*grave and irreparable injury or prejudice*" to financial consumers in their entirety[6].

In its Comment/Opposition[7], the FLCD prayed for the denial of the Motion to Lift on the ground that: (a) it was able to prove by substantial evidence that U-PESO Lending violated the FCPA and MC No. 18;[8] (b) U-PESO Lending is solidarily liable with its third-party service providers i.e. FESL BPO and Realm Shifters which has been shown to have employed abusive collection and debt recovery practices;[9] (c) the number of the pending complaints lodged with FLCD show that they are likely to cause grave and irreparable injury or prejudice to financial consumers, as the concept is defined by jurisprudence.[10]

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[2] No. 2023-028-PSG issued by Hon. Elma M. Rafallo-Lingan of the Regional Trial Court Branch 159, Pasig City.
[3] *Motion to Lift*. Pars. 4, 6, 7, 8 and 14
[4] *Ibid*, Par. 9.
[5] *Ibid*. Par. 12
[6] *Ibid*, Par. 12 and 13.
[7] Dated 20 July 2023.
[8] Comment/Opposition dated 20 July 2023. Pars. 4, 5, 7(c) (d) (e), and 8
[9] *Ibid*. Pars. 2 and 5
[10] *Id*. Par. 7

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In compliance with the Order issued on 02 August 2023, the parties filed their respective Position Papers which essentially reiterated their earlier allegations and arguments.

As for U-PESO Lending, it further maintained that its third-party service providers are only GCCS and Upright; and it did not not engage the services of Realm Shifters contrary to the allegation of FLCD.[11] Moreover, the fact that there is no employer-employee relationship between U-PESO Lending and its third-party service providers negates any liability on the part of the former considering that it has no direct control and supervision over the latter's agents.[12] It also averred that all its collection agents, as well as its third-party service providers[13], undergo formal training consistent with its policies which are strictly implemented, and are made aware that any violation is meted with the appropriate sanction.[14]

After a meticulous consideration of the arguments and evidence presented by the parties, the Commission *En Banc* resolves to deny the Motion to Lift for want of merit and basis.

The Commission is mandated under Section 2 of R.A. No. 9474 or the *Lending Company Regulation Act*, to exercise regulatory and supervisory authority over financing companies (FCs) and lending companies (LCs) with the objective, among others, of effectively preventing and addressing practices/transactions that are prejudicial to public interest pursuant, to wit:

> "Sec. 2. Declaration of Policy. – It is the policy of the State to ensure that appropriate mechanisms are in place to protect the interest of consumers of financial products and services under the conditions of transparency, fair and sound market conduct, and fair, reasonable, and effective handling of financial consumer disputes, which are aligned with global best practices. These mechanisms reinforce their confidence in the financial market and foster the stability of the Philippine financial system."

In implementing the *Lending Company Regulation Act,* MC No. 18 was issued to effectively address and put a stop to the abusive, unethical, and unfair collection practices of lending and/or financing companies which have become notoriously pervasive, including and especially those

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[11] *Position Paper* 22 June 2023. Pars. 10, 18 and 28
[12] *Ibid.* Par. 22
[13] *Ibid.* Pars. 19, 20, 21 (see Annex "1")
[14] *Ibid.* Pars. 13 to 17

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who engage the services of third-party service providers who are known to be equally employing unfair collection practices to avoid liability for client harassment.[15] The issuance and implementation of MC 18 was made pursuant to a valid exercise of the regulatory and supervisory power of the Commission over lending and financing companies, to carry out its mandate, among others, of placing their operations on a sound, competitive, stable and efficient basis, and in preventing acts or practices prejudicial to the public interest.[16]

There is nothing in MC 18 which prevents LCs or FCs from enforcing, even by implication, a contractual obligation against its borrowers for debts lawfully made. MC 18 recognizes and implements the rule established both in law and jurisprudence[17] that a loan obligation should be paid. This is consistent with the State's policy which recognizes the critical role of lending and financing companies in providing medium and long-term credit for investments, and as an additional source of credit.[18] This notwithstanding, it should be emphasized that MC 18 is in place to ensure that the collection of loans by lending and/or financing companies is made within the bounds of law, and does not violate the privacy, dignity, and well-being of borrowers.

The Assailed CDO was issued on the basis of the finding by the FLCD that U-PESO Lending (a) employed abusive collection and debt recovery practices in violation of Sec. 1 (B) and (H) of MC 18 in relation to Sec. 4.4. (B) and (H), Rule 8 of the SEC FCPA-IIR, and (b) engaged the services of Realm Shifters which equally employed abusive collection and debt recovery practices, thus resulting in its being solidarily liable for such violation under Sec. 13 of the FCPA.

In the instant case, U-PESO Lending essentially maintains that the Assailed CDO should be lifted (a) as the same was issued in violation of its right to due process, (b) the FLCD failed to prove that it violated the FCPA and MC No. 18; and (c) it cannot be held solidarily liable for the violations made by Realm Shifters as the same is not its third-party service provider.

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[15] See First and Second WHEREAS Clauses of the MC No. 18

[16] See Section 2 of Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998" and Section 2 of Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007"

[17] "Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.**" (*Bognot vs RRI Lending Corporation*. G.R. No. 180144, September 24, 2014)

[18] Ibid

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We do not agree with U-PESO Lending as the evidence on record shows otherwise.

U-PESO Lending was not denied due process.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.[19] So sacred in the right to due process that a finding of violation thereof justifies the voiding or nullification of a decision or resolution for lack of jurisdiction.[20]

In administrative proceedings such as the instant case, procedural due process, however, simply means the opportunity to be heard, either through oral arguments or pleadings, or to seek a reconsideration of the action or ruling complained of. If the record shows that the relevant parties were accorded such opportunity, the allegation that there was a denial of procedural due process will cease to have a legal basis. This rule was affirmed by the Supreme Court in *Magcamit v. Internal Affairs Service-Philippine Drug Enforcement Agency*[21], thus:

> "Due process in administrative cases, in essence, is simply an opportunity to explain one's side or to seek a reconsideration of the action or ruling. For as long as the parties were given fair and reasonable opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met."

In the case of *Primanila Plans, Inc. v. Securities and Exchange Commission,*[22] the Supreme Court applied the principle that a party litigant cannot claim to have been denied of due process if it is able to seek a reconsideration of the action or ruling which is being assailed, thus:

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[19] *Macabingkil v. Yatco,* (G.R. No. L-23174, September 18, 1967)

[20] "Time and again, the Court has held that where there is an apparent denial of the fundamental right to due process, a decision that is issued in disregard of that right is void for lack of jurisdiction, in view of the cardinal precept that in cases of a violation of basic constitutional rights, courts are ousted from their jurisdiction. This violation raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Thus, it is well settled that a judgment or decision rendered without due process is void *ab initio* and may be attacked at any time directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked for such judgment or decision is regarded as a "lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head." (*Orlina vs Ventura.* G.R. No. 227033; December 3, 2018)

[21] G.R. No. 198140, [January 25, 2016]

[22] G.R. No. 193791, August 6, 2014, 732 SCRA 264.

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> "**The SEC was not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance**. Given the circumstances, it was sufficient for the satisfaction of the demands of due process that the company was **amply apprised of the results of the SEC investigation, and then given the reasonable opportunity to present its defense. Primanila was able to do this via its motion to reconsider and lift the cease and desist order**. After the CED filed its comment on the motion, Primanila was further given the chance to explain its side to the SEC through the filing of its reply. "Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position." (Emphasis supplied)

In the instant case, the records show that U-PESO Lending was accorded every opportunity to be heard and explain its side. In fact, it filed the instant Motion to Lift, and its Position Paper which contain an exhaustive presentation of its defenses, as well as the evidence in support of the same. Granting, *ex gratia argumenti*, that U-PESO Lending was not furnished with the processes issued by the City Prosecutor of Pasig City, the same will not result in its deprivation of the right to due process since the instant administrative case is distinct from the criminal complaint. What is important for the purpose of the instant case is that U-PESO Lending was furnished with a copy of the Assailed CDO and was able to seek reconsideration therefrom. These factual circumstances negate the Appellants' claim that they were denied due process.

The FLCD was able to prove by substantial evidence that U-PESO Lending violated the FCPA and MC No. 18.

U-PESO Lending vigorously insists that the issuance of the Assailed CDO was baseless since it does not employ abusive collection practices, the complaints presented by the FLCD failed to establish the alleged violation, and did not engage the services of Realm Shifters.

We are not persuaded.

The screenshots which were submitted in evidence to support the numerous complaints received by the FLCD make specific mention, and show that collections were being carried out for and on behalf of U-PESO x---x

Lending and/or its OLPs. The sheer number of complaints i.e. 271 complaints during the period of September 2022 to March 2023 and another 307 complaints during the period of April to June 2023, disclose the extent, seriousness, and gravity of the violation. Unfortunately for U-PESO Lending, these messages show and affirm that it was employing abusive collection practices.[23] In this regard, it is interesting to note that no less than U-PESO Lending itself admitted that its employees/agents who failed to comply with its policies, rules, and regulations were investigated which resulted in the resignation of some of them, thus:

> "Collection Agents who were involved or mentioned were being tracked by the Company already. During the ongoing investigation, some of them already resigned. Such investigation conducted by U-Peso.PH serves as evidence that U-Peso.PH does not support or tolerate unfair collection practices."[24] (Emphasis supplied)

Another message that was captured and submitted in evidence shows an agent/representative of U-PESO Lending apologizing for the sad experience of its client, to wit:

> "First and foremost, on behalf of Upeso, I would like to personally apologize for what you've experience. We accept full responsibility for the mistake and I assure you we are taking the necessary step to prevent it from happening in the future. xxx" (Emphasis supplied)

The afore-quoted statements are judicial admissions[25] which are binding upon U-PESO Lending. Moreover, considering the fact that what U-PESO Lending has violated is a special law, it is sufficient that the act(s) proscribed were shown to have been committed to be punishable, being *mala prohibita*[26]. It is therefore inconsequential that U-PESO Lending has a policy against abusive collection practices which is embodied in its Service Agreements.

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[23] *Comment/Opposition* dated 20 July 2023. See Annex "A"
[24] *Position Paper* dated 14 August 2023. Par. 25
[25] "A judicial admission is a formal statement, either by party or his or her attorney, in course of judicial proceeding which removes an admitted fact from field of controversy. It is a voluntary concession of fact by a party or a party's attorney during judicial proceedings." (*Agbayani vs Lupa Realty Holding Corporation.*, G.R. No. 201193, June 10, 2019)
[26] "The law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se*, the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial." (Tan vs Ballena et. al., G.R. No. 168111, July 4, 2008)

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Moreover, We equally hold that the Collection Guidelines[27], the Service Agreements[28], Acknowledgement Letters[29], 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 U-PESO Lending employed abusive collection and debt recovery practices. If at all, these documents and circumstances constitute an implied admission of its violation of the FCPA and MC. No. 18. In *Metro Manila Transit Corporation v. Court of Appeals*,[30] 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 warrant stern sanctions from the Court." (Emphasis supplied)

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 U-PESO.PH is hereby **DENIED** for lack of merit. The **CEASE AND DESIST ORDER** dated 22 June 2023 issued against U-PESO.PH 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 furnished

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[27] *Position Paper* dated14 August 2023, Annex "3."
[28] *Ibid.* Annex "1"
[29] *Ibid,* Annex "4-Series."
[30] G.R. No. 104408 (1993)

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