Securities and Exchange Commission PHILIPPINES

BAGONG PILIPINAS

FINANCING AND LENDING COMPANIES DIVISION

IN THE MATTER OF: **FinLend Case No. 2024-12**

U-PESO.PH LENDING CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF UPESO, PERA4U, PERALENDING AND LOANMOTO
(SEC Reg. No. CS201814908 and Certificate of Authority No. 2718),
Respondent.
x--x

FOR : REVOCATION OF CERTIFICATE OF INCORPORATION AND CERTIFICATE OF AUTHORITY TO OPERATE A LENDING COMPANY FOR VIOLATION OF SEC MEMORANDUM CIRCULAR NO. 18, SERIES OF 2019, ON THE PROHIBITION OF UNFAIR DEBT COLLECTION PRACTICES OF FINANCING COMPANIES AND LENDING COMPANIES

ORDER

This resolves the administrative proceedings against U-Peso.PH Lending Corporation doing business under the name/s and style/s Upeso, Pera4U, Peralending, and Loanmoto (the "Respondent"), a registered domestic corporation with SEC Reg. No. CS201814908; Certificate of Authority No. 2718, and with a registered address at 12th Floor Aseana Three Bldg., Macapagal Blvd. cor. Aseana Ave., Tambo City of Parañaque, Fourth District, Philippines, and email addresses at admin@upeso.ph; bryan@e-perash.com; kdg@callejalaw.com; callejalaw@callejalaw.com.

STATEMENT OF FACTS

From September 2022 to March 2023, multiple complaints against the Respondent and its Online Lending Platforms ("OLPs") were filed before the Financing and Lending Companies Division ("FinLenD") of the Securities and Exchange Commission ("SEC" or the "Commission"), for alleged violations of SEC Memorandum Circular No. 18, Series of 2019 ("SEC MC 18") otherwise known as the Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies.

Thereafter, Show Cause Letters ("SCLs") dated 28 March 2023[1], 4 April 2023[2], 11 April 2023[3], 17 April 2023[4], and 28 May 2023[5] were sent to the Respondent, followed by email exchanges between the parties.

Hereunder are the complaints details and replies of the Respondent.

1. COMPLAINT OF MS. KRISANTA TABERNILLA (against UPESO)

Ms. Tabernilla alleged, among others, that the Respondent not only threatened her with the life of a family member but that it would also involve other people whose lives would be ruined since they would be posted on Facebook as a consequence of Ms. Tabernilla's non-payment of her loan. To support her claim, Ms. Tabernilla attached screen captures of the alleged messages[6] sent by the Respondent. Some are quoted verbatim below:

> *"WARNING PAYMENT!!*
>
> *Marahil nakakaraming calls at texts na ang COMPANY ngunit wala ka pa ring tugon. Asahan ang aming pag verify sa iyong mga CONTACT REFERENCES at pati sa IYONG*

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[1] In relation to the complaints of Mr. Emmanuel Dela Cruz and Ms. Tamiko Conocono.
[2] In relation to the complaints of Ms. Rose Jane Martinez and Ms. Errolyn Santos Encontro.
[3] In relation to the complaint of Ms. Janice Ilada.
[4] In relation to the complaint of Ms. Michelle Mae Salorico Acop.
[5] In relation to the complaints of Ms. Krisanta Tabernilla and Ms. Noelle Ivy Torcende.
[6] Sent from 0981 003 4182, 0951 288 5521, 0981 571 5630.

DECLARED WORKPLACE O COMPANY. Tandaan na ang hindi pagsunod sa TERMS AND AGREEMENT NG COMPANY ay may kaakibat na obligasyon at penalty. Magsisimula na ngayong oras na ito ang aming pagtawag sa iyong DECLARED CONTACT REFERENCES.

UPESO LENDING"

xxx

"MAGANDANG ARAW! MAKIKISUYO SANA KAY Krisanta Tabernilla (9395166041), NA SAGUTIN ANG AMING MGA TAWAG AT TXT TUNGKOL SA KANYANG LOAN OBLIGATION NGAYONG ARAW NA KANYANG TINAKDA UPANG ITO AY BAYARAN! PAGSAWALANG BAHALA SA KABILA NG AMING MGA PAUNAWA AY MAARING MAGKAROON ITO NG DI KANAIS NAIS NA PROBLEMA NYA SA AMING KUMPANYA AT RECORD NIYA BILANG ISANG LOAN CREDITOR. MAGING KAYO AY MALAGAY SA ALANGANIN DAHIL GINAWA NYA KAYONG CONTACT REFERENCE SA AMIN! AT ISA KAYO SA MGA FB FRIENDS NYA! xxx"

The Respondent refuted Ms. Tabernilla's allegations by claiming that its collection specialists all underwent training and are dutybound to observe the company rules and the relevant and existing laws of the Republic of the Philippines. It alleged that in the "Letter of Acknowledgement" signed by their collection specialists before engagement, a list of acts constituting violations of company rules were explicitly enumerated and that the commission of any of the said acts is a ground for termination of employment of the erring collection specialist. Lastly, the Respondent stated that similar conduct and practice are expected from their Third-Party Service Provider ("TPSP"), Goldendragon Call Center Services ("GCCS"), and attached portions of their service agreement with the latter. The Respondent concluded that it ensures appropriate measures are in place in its transactions and dealings and firmly stated that it did not, does not, and will not sanction or tolerate any act violative of existing rules and regulations, particularly SEC MC 18.

The Respondent further claimed that the mobile numbers provided were neither issued by nor registered under it, and the collection specialists it employs are not issued company phones or sim cards. The Respondent stated that payment reminders and demands are made through system-generated messages under its name as a matter of procedure. It also attached a screenshot of their system-generated messages. The Respondent added that the messages received did not come from it nor its employees, citing the difference in the manner and tenor of its official messages vis-a-vis the screenshots of messages attached in the Complaint. It also stated that perusal of the Respondent's website shows no contact details other than its e-mail address.

Lastly, the Respondent emphasized that misrepresentations and scams are rampant and that it, being always compliant with the law, will not tolerate any damning allegations against its good name.

In its Position Paper, the Respondent alleged, among others, that the screenshots of text messages do not reflect any threats of death or bodily harm.

2. COMPLAINT OF MR. EMMANUEL DELA CRUZ (against LOANMOTO)

Mr. Dela Cruz alleged, among others, that he received various text messages containing harassment and threats to his reputation and family members, specifically, contacting the persons in his contact list if he failed to pay his obligations. Mr. Dela Cruz attached screen captures of the alleged messages to support his claim[7], some of which are quoted below:

[7] Sent from 0926 897 1432, 0981 487 7111, 0951 616 1861.

company ang settlement mo. Kapag wala pa rin kami natatanggap na payment mo at hindi ka nakikipag ugnayan, tatawagan na naming contact persons at co[m]pany mo. At magpoproceed sa collection process bilang legal na aksyon. SETTLE YOUR PAYMENT ASAP."

The Respondent averred the same defenses to Mr Dela Cruz's allegations as Ms Tabernilla's.

On 8 May 2023, Mr. Dela Cruz stated in his email that during the period he received the threats/harassment messages, he had no other loans that were due or overdue except that of Loanmoto VIP; the other companies to which he owed did not message him as the nature of the subject text messages pertains to late payments. Mr. Dela Cruz further stated on the lack of name or identity in the text messages and emails allegedly received from the Respondent that this may be the latter's deliberate action to make it hard for their customers to identify them and even added that the email addresses used were not the Respondent's official email addresses but instead belong to a third-party email service provider. Mr. Dela Cruz said that this creates a situation where the lending companies could deny that they sent any message to Mr. Dela Cruz. He ended his email with a request to close his complaint as he has already closed the loan in full and no longer wishes to pursue it.

3. COMPLAINT OF MS. TAMIKO CONOCONO (against PERA4U)

Ms. Conocono alleged, among others, that the Respondent threatened broadcast to people in the contact list of Ms. Conocono and social media that she failed to pay her loan should she fail to settle the amount due. To support her claim, Ms. Conocono attached screen captures of the alleged messages[8], one of which is quoted verbatim below:

"MAGANDANG ARAW, PERA4U HEAD OFFICE, PAALALA NA ANG LAHAT NG IYONG CONTACS AY MAABALA NGAYONG UMAGA KUNG ANG IYONG ACCOUNT AY PATULOY NA IPAGSASAWALANG BAHALA BAGO MAG 12 NG TANGHALI. SALAMAT"

The Respondent refuted the allegations of Ms. Conocono with the same defense against Ms. Tabernilla, adding that, like the mobile numbers relative to this complaint, the Facebook profiles were neither issued by nor registered under Upeso or PERA4U.

4. COMPLAINT OF MS. NOELLE IVY TORCENDE (against PERALENDING)

Ms. Torcende alleged, among others, that she had been continuously harassed online by two alleged fake and deactivated Facebook accounts under the names Aileen Cruz and Jonalyn Ancheta. She added that the said con artist/s created group chats inviting her friends and that she was humiliated, cyberbullied, and falsely accused. Ms. Torcende further alleged that upon checking the screen captures forwarded by said friends, including her selfie photo and SSS ID, she discovered that the said selfie photo was the one she submitted to UPeso.PH Lending Corporation via Peralending, an OLP. To support her claims, she attached screen captures of the alleged messages[9], one of which is quoted below.

"Gusto moba sa facebook tayo magsinigilan? Kasama ng mga friends mo sa fb at kamag anakang sisingilin ko. Hindi ka sumasagot sa tawag at text. Pwede kag magpartial payment or bayaran mo nalang ang principal amount for possible closure of account. Para matapos na.

Wag mong sirain ang pagkatao mo para sa ilang libo lamang. Please Reply.

-PERALENDNG"

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[8] Sent from 0951 438 0910, 0935 403 1330, 0985 935 8794, 0935 405 1105, 0935 403 1330, 0935 405 1105, 0935 403 1330.
[9] Sent from 0912 481 0225, 0985 258 0957, 0910 145 3818, 0981 499 7448, 0981 341 5581, 0985 248 2546 and from Aileen Cruz, Jonalyn Ancheta, and other unknown Facebook accounts.

On 25 April 2023, the Respondent, using dpo@upeso.ph, requested the contact number Ms. Torcende used in PeraLending and the loan reference number. It stated that it could not find any data belonging to Ms Torcende after searching its system.

In addition to the same defenses averred against Ms. Tabernilla, the Respondent added that Aileen Cruz, Jonalyn Ancheta, and other unknown Facebook accounts complained about are not associated with or employed by Upeso.

On 28 April 2023, Ms. Torcende inquired about the selfie photo and ID that had circulated online, stating, among others, that the selfie photo was submitted to UPeso only, specifically for the Company's Know Your Client (KYC) purposes.

On 4 May 2023, Ms. Torcende inquired for updates, which the Respondent replied to on 11 May 2023 using the email address DPO@upeso.ph. The Respondent stated, that upon checking, Ms. Torcende's account has been fully closed and that the Respondent can issue a certificate to acknowledge her full payment. As for the messages received within the loan period, U-Peso.PH Lending confirmed through its investigation that it was sent by one of their Collection Specialists in Peralending, adding that said agent was already terminated for inappropriate behavior.

5. COMPLAINT OF MS. ROSE JANE MARTINEZ (against PERALENDING)

Ms. Martinez alleged that despite having no loans or receiving any money, she has received messages from her friends and family that she has loans from various companies. She also submitted screen captures of the alleged messages[10] to support her claim, some of which are quoted verbatim below:

> *"AS OF THIS MOMENT, Wala pang REPAYMENT na pumapasok dito sa account mo.*
>
> *Ano hinhintay mo? Na ako pa gumawa ng paraan para mabayaran ito? Wag mon a paabutin sa Gamitin ko itong SELFIE mo ditto para ilimos sa mga KAKILALA, KAPITBAHAY , KAMAG ANAK at KA BARANGGAY mo.*
>
> *KAILANGAN NAMIN NGAYON NG BUONG BAYAD NYO, hihintayin mo pa ban a makasaranas ka ng PUBLIC HUMILIATION?*
>
> *Wag mo na ako SAGARIN at BAYARAN mo na ito*
>
> *PAKI BAYARAN NGAYON!*
>
> *PERA LENDING"*

The Respondent refuted Ms. Martinez's allegations using the same claims in Ms. Tabernilla's Complaint.

6. COMPLAINT OF MS. JANICE ILADA (against PERA4U and LOANMOTO)

Ms. Ilada alleged, among others, that in one of the messages received, she was branded as a thief and a scammer arising from collecting loans from the Respondent's OLPs, Pera4U and Loanmoto. Further, Ms. Ilada added that the Respondent threatened that her name would be included or reported to the Negative File Information System (NFIS) if she failed to pay her obligations. As support for her claim, she attached screen captures of the alleged messages, one of which is quoted verbatim below:

> *"ATTENTION!*

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[10] Sent from 0907 813 8623, a number identified under the name of PeraLending, Jay Tuazon and Pera4u legal dept.

Humiling na kami sa isang Field visit sa inyong tahanan at tranaho at aabisuhan ka sa sandaling opisyal na ibigay ng barangay ang tiyak na petsa na hiniling naming tungkol sa inyong hindi pa naayos na pananagutan. Pinoproseso din naming ang iyong pangalan para sa NFIS (Negative File Information System) being blacklisted. Paumanhin para sa abala dahil ito ay bahagi ng aming proseso"

The Respondent refuted Ms. Ilada's allegations using the same claims in Ms. Tabernilla's Complaint.

7. COMPLAINT OF MS. ERROLYN SANTOS ENCONTRO (against PERA4U and UPESO)

Ms. Encontro, alleged, among others that she was subjected to multiple acts of unfair debt collection practices, enumerated numerous acts such as "malicious disclosure of unsettled loan via email exposing names/email addresses of several customers," "threat and intent to expose personal information in social media," "threat of malicious disclosure of personal information via Upeso/Peralending/Pera4u automated SMS notifications," "unprofessional collection agents calling and sending SMS messages." Ms. Encontro supported her claim by attaching screen captures of the alleged messages[11], one of which is quoted verbatim below:

"WE REGRET TO INFORM YOU THAT WE ARE NOW FILING ESTAFA AGAINST YOU, SEC. 85 ART 315 AS AMENDENDED BY REP ACT #4885 PRESIDENTIAL DEGREE NO 818, IT WILL BE SEND TO YOUR COMPANY & BRGY AND WILL POST YOUR PICTURE IN EVERY MUNICIPALITY TO AWARE OTHERS, SETTLE YOUR DEBT NOW TO AVOID SUCH ACTIONS"

Mr. Encontro's allegations were refuted by stating the same claims in his Answer to Ms. Tabernilla.

8. COMPLAINT OF MS. MICHELLE MAE ACOP (against PERA4U)

Ms. Acop, alleging, among others, that the Respondent threatened to share matters about her unpaid loan to others and that she was called a thief and a scammer, supported her claim by attaching screen captures of the alleged messages,[12] one of which is quoted below in verbatim:

"Mukhang sinasawalang bahala mo na ang obligation mo sa kompanya namin. Lahat ng Documents mo sapag apply pagkuha ng pera ay nasa amin (Id's address, pictures, Company name, FB account) huwag ho kayong magagalit o magrereklamo kung sa ibang tao pa kami lalapit para lang iremind ka sa pagkautang mo dahil sa unang una nasa kasunduan to. Magkaron sana ng kahihiyan dahil kami ay dumirekta na sayo ngunit wala ka pa ding paramdam hanggang ngayon. Salamat"

The Respondent refuted Ms. Acop's claim with the same defenses used against the Complaint of Ms. Tabernilla, adding that the replies from its official email address are not in the same harassing tenor as those in the alleged messages sent by its purported agents.

On 1 May 2023, Ms. Acop replied to the U-Peso.PH Lending's Answer, stating, among others, that in the text messages received from +63 917 712 5187, the Respondent indicated its name, UPESO PHILIPPINES.

PROCEEDINGS BEFORE FINLEND

In a Zoom Conference held last 12 April 2023, the Respondent was represented by its President, Ms. Germaine Hazel M. Bayugo, and counsel, Atty. Katrin Jessica Distor-Guinigundo of Calleja Law Office.

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[11] Sent from 0935 155 5369, 0981 206 0785, 0969 341 0100, 0965 640 7980.
[12] Sent from 0917 712 5187, 0985 367 2719,0931 702 3319, 0970 767 5127, 0910 204 8989, 0917 712 5187, 0917 636 4287, 0917 629 6989, 0910 349 5256, 0985 160 5994, 0905 096 6612, salamanderdelacruz@gmail.com, upeso.lendingcompany@gmail.com.

In a Zoom Conference held last 12 April 2023, the Respondent was represented by its President, Ms. Germaine Hazel M. Bayugo, and counsel, Atty. Katrin Jessica Distor-Guinigundo of Calleja Law Office. The Respondent's collection officers, Mr. Romel Estanco and Mr. John Michael Navarro, were also present.

In the said Conference, the Respondent was informed of the Three Hundred Ninety-Seven (397) Complaints received by FinLenD through email and that eight (8) of these complaints ripened into formal complaints, resulting in the abovementioned SCLs.

Thereafter, on 8 May 2023, all parties were directed to submit their respective *Position Papers.*

On 20 May 2023, the Respondent submitted its Position Paper through email, where it averred the same claims found in the Respondent's Answer to the Complainants

Generally, the Respondent has two (2) defenses against the allegations of the Complainants. First, the Respondent avers that unfair debt collection practices are neither sanctioned nor tolerated by it. In support of its claim, the Respondent attached its Service Agreement with its TPSP, GCCS, to highlight that it expects its TPSP to refrain from engaging in unfair collection practices and that they should resort to reasonable and legally permissible means to collect amounts due. Secondly, the Respondent contended that the mobile numbers and/or online accounts that allegedly sent messages that harassed the complainants were neither issued nor registered under it. Further, it stated that no company phones or sim cards were issued to its employed collection specialists. Respondents attached samples of its system-generated payment reminders and demands and claimed that there is a stark difference in the tenor of the message received by the complainants.

As for its second defense, the Respondent contended that the mobile numbers and/or online accounts that allegedly sent the harassment were neither issued nor registered under it. The Respondent went so far as to state that no company phones or sim cards were issued to its employed collection specialists. It even attached samples of its system-generated payment reminders and demands and claimed a stark difference in the manner and tenor of the messages allegedly received by the complainant-borrowers.

As its closing statement for both pleadings, the Respondent stated that misrepresentations and scams are rampant and that it, being always compliant with the law, will not tolerate any damning allegations against its good name.

On the other hand, Ms. Torcende and Ms. Encontro filed their respective *Position Papers* on 12 May 2023 and 20 May 2023.

In view of the foregoing submissions by the Complainants and Respondents, respectively, FinLend will now resolve the issues in this case based on available records provided to/by the Commission.

SEC ISSUED CEASE AND DESIST ORDER DATED 22 JUNE 2023

On 22 June 2023, the Commission issued a Cease and Desist Order against U-Peso.PH Lending Corporation, after finding a compelling reason to issue a CDO without the necessity of conducting a prior hearing to prevent the Respondent from committing unfair debt collection practices which, if unrestrained, will cause grave or irreparable injury or prejudice to financial consumers.

On 7 July 2023, the Respondent filed to the Office of the General Counsel (OGC) its motion to lift the CDO.

On 21 November 2023, the OGC, through a resolution[13], denied the Respondent's Motion to Lift the

[13] SEC En Banc Case No. 07-23-003 (FLCD CDO Case No. 28, series of 2023).

ISSUES

Whether the Respondent committed Unfair Debt Collection Practices in violation of SEC Memorandum No. 18, series of 2019, and should be held administratively liable

HELD

We rule in the affirmative.

Respondent committed unfair debt collection practices in violation of SEC MC 18, Series of 2019.

a. **The complainant-borrowers were able to prove their allegations against the Respondent substantially.**

Section 1 of SEC MC 18 mandates financing companies, lending companies, and their third-party service providers to observe good faith and reasonable conduct and refrain from engaging in unscrupulous and untoward acts in their resort to reasonable and legally permissible means of collecting the amount due them under the loan agreement. While the said section listed acts constituting unfair collection practices, the list is not exclusive, to wit:

"SECTION 1. Unfair Collection Practices. xxx Without limiting the general application of the foregoing, the following conduct shall constitute unfair collection practices, which shall be subject to the penalties provided herein:

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 amounts 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."

After carefully evaluating the attached screen captures in all eight (8) formal complaints and the arguments raised by the Respondent and the complainant-borrowers, FinLend finds substantial evidence[14] to support their Complaints, as discussed below:

On the Complaints of Ms. Tarbernilla and Ms. Conocono

The Respondent violated Section 1 (a), (b), and (h) of SEC MC 18.

In addition to using threats of bodily harm, Ms. Tabernilla's contact reference was threatened. Moreover, the tenor of the message indicates that the Respondent knows the contact reference as one of Ms. Tabernilla's Facebook friends. This implies the threat was made based on Ms. Tabernilla's existing loan with the Respondent. Lastly, in the same conversation thread, the sender (+639512885521) identified himself as someone from "UPESO PHILIPPINES."

In one of the text messages received by Ms. Conocono, the message explicitly stated the phrase "PERA4U HEAD OFFICE" and reminded her that her contacts would experience a disturbance that morning if she ignored her loan account before noon.

On the Complaint of Mr. Dela Cruz

While Mr. Dela Cruz requested the closing of his complaint against the Respondent in his email of May 2023, the withdrawal of his Complaint did not automatically result in the outright dismissal of the investigation nor discharged the Respondent from a possible imposition of any administrative sanction under Rule II, Section 2-5[15] of Part II of the 2016 SEC Rules of Procedure.

After evaluation, FinLenD found the need to decide on the merits of his Complaint despite the withdrawal.

The text message received from the mobile number 0981 487 7111 introduced the sender to be from Loan Moto and threatened Mr. Dela Cruz that his contact person would be called if the Respondent failed to receive payment from him or no communication was made to it in violation of Section 1 (a), (b), and (e) of SEC MC 18.

On the Complaint of Ms. Torcende

Based on the messages sent to Ms. Torcende, the sender identified himself as from PERALENDING and threatened to use social media to collect Ms. Torcende's account, not only from her but also from her Facebook friends and relatives. A Facebook group chat was even set up specifically to shame Ms. Torcende for her non-payment of her loan, and threats to disclose her loan information were also made.

Moreover, using its email address, DPO@upeso.ph, the Respondent confirmed via an email dated 11 May 2023 that Ms. Torcende's harassment resulted from one of the Respondent's Collection Specialists.

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[14] xxx the quantum of evidence required in an administrative case is less than that required in a criminal case. Criminal and administrative proceedings may involve similar operative facts; but each requires a different quantum of evidence. Administrative cases require only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *(Montero v. Office of the Ombudsman, G.R. No. 239827, 27 July 2022)*

[15] SEC. 2-5. Effects of Withdrawal of a Complaint. - Withdrawal of a complaint under Part II does not automatically result in the outright dismissal of the investigation, nor discharge the person subject of the investigation from a possible imposition of any administrative sanction or penalty when there is merit to the charges, or where there is documentary evidence which would tend to establish a prima facie case warranting the continuation of the investigation.

The Respondent also informed Ms. Torcende of the termination of the erring collection specialist. The Respondent now cannot deny liability.

Section 1 (a), (b), (d), and (h) of SEC MC 18 were violated.

On the Complaint of Ms. Martinez and Ms. Encontro

The Respondent violated Section 1 (a), (b), (d), (e), and (h) of SEC MC 18.

A perusal of one of the messages shows that one Jay Tuazon threatened multiple recipients, including Ms. Martinez, with public humiliation. The end of the email likewise identified "PERA LENDING" as the sender.

One of the conversation threads from "PeraLend" repeatedly identifies the sender as being from "Pera4u" and "UPESO." The conversation thread also showed multiple statements of taking relevant measures, including a background check on Ms. Encontro's work and life because of her overdue loan. In this thread, U.Peso.PH Lending also sent a system-generated promo at one point.

Lastly, based on the thread, Ms. Encontro was called a scammer, threatening her that a picture of her face would be posted in their barangay hall and her workplace and that a demand letter would be sent to their barangay, her company, and a picture of her ID and selfie will be posted to social media, among others.

In a conversation thread with +63935155369, the sender identified itself as from peralending. Ms. Encontro was threatened that her company and barangay would be informed of the estafa case filed against her with her picture posted in every municipality.

On the Complaint of Ms. Ilada

In the messages sent to Ms. Ilada, abusive collection practices are apparent from the threat of doing field visits in her home and work and blocklisting her name in the Negative File Information System, in addition to calling her a thief and a scammer. The previous message from the conversation thread from 0905 914 8758 also identified the sender as "PERA4U," one of the Respondent's OLP. The Respondent violated Section 1 (a), (b), (c), (d), (e), and (h) of SEC MC 18.

On the Complaint of Ms. Acop

Based on the conversation thread of Ms. Acop with the mobile number +639177125187, the sender identified itself as being from "UPESO PHILIPPINES" and sent a templated promo message to the former. The same conversation thread shows that the Respondent warned Ms. Acop not to be surprised when the former would approach other people to remind her of her loan. The Respondent also implied in the same message that it may do something about Ms. Acop's information based on her documents submitted to the former, i.e., ID, address, pictures, company name, and Facebook account. These acts were clear violations of Section 1 (a), (b), (e), and (h) of SEC MC 18.

b. The Respondent failed to specifically deny the allegations of its complainant-borrowers.

Suppletory application[16] of Rule 8, Section 11[17] of the 2019 Rules Of Court ("2019 ROC") provides that the material allegations in pleadings asserting claims, when not specifically denied, shall be deemed

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[16] Rule 1, SEC.1-6. Suppletory Application of the Rules of Court. - The pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.
[17] Section 11. Allegations not specifically denied deemed admitted. - Material averments in a pleading asserting a claim or claims, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied.

admitted. In the case of Republic of the Philippines vs. Sandiganbayan[18], the Court ruled that "in this jurisdiction, only a specific denial shall be sufficient to place into contention an alleged fact" and also enumerated the three ways of making specific denials[19] under the Rules of Court.

In both of its Answers, the Respondent only pleaded that it does not sanction or tolerate unfair collection practices. Such a contention fails to deny the allegations of the Complainants specifically. Moreover, submitting its Service Agreement with its TPSP does not ensure that the Respondent and all its collection agents comply with the law, particularly that of SEC MC 18. Further, the "Letter of Acknowledgement" signed by their collection specialists before engagement pertains only to a document that the collection specialist acknowledges the acts constituting a violation of company rules and the consequent termination of employment if the same are violated. The presentation of these documents is nothing but a mere assurance on the part of the Respondent of its attempt to include reasonable collection practices. It, however, cannot support the conclusion that the Respondent has always been compliant with SEC MC 18 and has never subjected the Complainants to said harassment for this matter. This also does not negate the capability of its collection agents or employees who handled the complainant-borrowers' loan accounts from employing abusive collection practices.

Further, its bare attachment of samples of its system-generated payment reminders and demands to show the difference in the tenor and nature of the messages submitted by the Complainants likewise failed to support its defense that the mobile numbers and/or online accounts that allegedly sent the messages were neither issued nor registered under it and hence, the Respondent and its collection specialists did not employ the abusive collection practices. Again, no conclusion can be made from the system-generated messages alone. Moreover, while the Respondent stated that the numbers used to send the harassment messages were neither issued nor registered under it, the Respondent has not submitted any document to support this.

All the complainant-borrowers, except Ms. Martinez, alleged having loan accounts with the Respondent. Although the Respondent admitted the allegations of existing loan accounts for all the complainant-borrowers and provided the loan contract reference number for the loans of Ms. Tabernilla, Mr. Dela Cruz, Ms. Conocono, and Ms. Acop. It failed to give the loan contract reference number of Ms. Martinez, and thus, no specific denial as to her allegation of the non-existence of a loan account with the Respondent was made. Applying the ruling in Salcedo v. R.S. Carson General Construction Corp.[20] that "under the rules of evidence, if an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted;" then, the allegations of Ms. Martinez as to the non-existence of a loan account with the Respondent is deemed admitted. As for the claims of Ms. Encontro, Ms. Ilada, Ms. Martinez, and Ms. Torcendo regarding the existence of their loan accounts with the Respondent, these were expressly admitted by the Respondent.

Moreover, in the Respondent's denial of relation to any of the numbers or the accounts alleged to have sent the messages violative of SEC MC 18 to the complainant-borrowers, it only denied the said relation, but it did not deny the complainant-borrowers' experience of abusive collection practices. Non-denial of this part of the complainant-borrowers' allegations deems the same admitted.

The Respondent's non-denial of the allegations from the different complainant-borrowers is likewise admitted.

1. Ms. Torcende's allegation that her selfie photo circulating online is the same selfie photo

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[18] Republic of the Philippines vs. Sandiganbayan, G.R. Nos. 166859, 169203, and 180702, 12 April 2011.
[19] xxx a specific denial of an allegation of the complaint may be made in any of three ways, namely: (a) a defendant specifies each material allegation of fact the truth of which he does not admit and, whenever practicable, sets forth the substance of the matters upon which he relies to support his denial; (b) a defendant who desires to deny only a part of an averment specifies so much of it as is true and material and denies only the remainder; and (c) a defendant who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint states so, which has the effect of a denial. xxx
[20] G.R. No. 252712 (Notice), 31 August 2022.

she submitted to U-Peso.PH Lending Corporation was undenied and ultimately left unaddressed by the Respondent.

Despite alleging the same in her Complaint, the Respondent's answer failed to acknowledge the same as being among the allegations made. The screenshots attached by Ms. Torcende successfully showed the subject's selfie photo circulating in various Facebook group messages, but the Respondent failed to state otherwise. Thus, this allegation by Ms. Torcende is deemed admitted.

2. The allegation made by Ms. Encontro as to Respondent's malicious disclosure of her unsettled loan through email, particularly exposing the names/email addresses of several customers, was supported by a screenshot of the email thread. The same screenshot substantiated the allegation that Respondent threatened Ms. Encontro with the exposure of her personal information on social media.

   The Respondent's general denial of Ms. Encontro's allegations deemed the above-stated allegations admitted.

To reiterate, a faithful and fair reading of the Answers and Position Paper clearly shows that Respondent merely hypothesized that if the complainant-borrowers are proven to have been subjected to unfair debt collection practices, then it would still not be liable because it neither sanctions nor tolerates any act violative of SEC MC 18, S. 2019, employ abusive practices in dealing with their clients and enforcing payments of their loans, or issue or register the mobile numbers and online accounts that allegedly sent the harassment to the complainant-borrowers. Clearly, this means that the Respondent, having made neither admission nor denial that the complainant-borrowers suffered harassment, deems the same admitted.

c. The Respondent cannot deny liability over the acts of its Third-Party Service Providers.

In item 50 of its Position Paper, the Respondent argued that the collection agents of GCCS are not under their direct employment, control, and supervision and that it has never been remiss in ensuring that its TPSP is in observance of lawful debt collection practices. The Respondent further cited the case of Metro Manila Transit Corporation v. Court of Appeals and Nenita Custodia[21], which discussed the degree of diligence required of employers to formulate suitable rules and regulations for the guidance of employees under the Civil Code. Finally, the Respondent stated that it had satisfactorily complied with the due diligence required of it under the law when it cited pertinent company rules and regulations and demonstrated how compliance therewith is ensured.

Although FinLenD agrees with the Respondent that the collection agents of GCCS are not under their direct employment, control, and supervision, the provision on the degree of diligence required of employers is not applicable when it comes to unfair debt collection practices committed by the third-party service provider and their employees with the issuance of SEC MC 18.

Noteworthy is the fact that the Lending Company Regulation Act of 2007 (LCRA) is a special law that governs the establishment, operation, and regulation of lending companies. This special law granted the Commission its regulatory and supervisory authority over lending companies, and from the exercise thereof, SEC MC 18 was issued. Between the provisions under the LCRA and the Civil Code, as amended, which is a general law, the former necessarily prevails. In the case of Republic v. Philippine Airlines, Inc.[22], the Supreme Court has held that "this is in accordance with the rule that on a specific matter, the special law shall prevail over the general law, which shall be resorted only to supply deficiencies in the former."

[21] G.R. No. 104408, 21 June 1993.
[22] Resolution, G.R. Nos. 209353-54 & 211733-34, 6 July 2015.

Moreover, a reading of the prefatory statements of SEC MC 18 also stated that its issuance was anchored on the LCRA, that its application should not in any way limit the general application of the LCRA, and that the New Civil Code may still be applied, to wit:

> *"WHEREAS, the Commission exercises regulatory and supervisory authority over FCs and LCs by virtue of Republic Act No. 8556, or the Financing Company Act of 1998, as amended, and Republic Act No. 9474 or the Lending Company Regulation Act of 2007.*
>
> *IN VIEW OF THE FOREGOING, without limiting the general application of the foregoing and without prejudice to the application of the New Civil Code, Revised Penal Code, Revised Corporation Code of the Philippines, Data Privacy Act, and other applicable laws and regulations, the Commission hereby issues this Memorandum Circular."*

Moreover, Section 3[23] of SEC MC 18 provides that despite outsourcing the debt collection, the lending or financing company is still responsible for collecting and complying with the said memorandum circular. In that case, the defense and contention of the Respondent is untenable.

d. The Respondent waived its right to raise objections to the documents attached in the multiple complaints.

Moreover, the Show Cause Letters with the attached Complaints and supporting documents issued to the Respondent dated 28 May, 4 April, 11 April, and 17 April were only answered on 27 April 2023, past the ten-day period to file the Answers. The Respondent only filed its Answer to the SCLs as a result of the Conference held on 12 April 2023. Without the directive during the Conference, the Respondent would not be compelled to file its Answers. Moreover, in all the Answers it submitted, it failed to raise any objections to the documents attached to the multiple complaints. When the Respondent failed to raise any objection to the then pieces of evidence, it lost its right to raise the same in its Position Paper. In the case of Catuira vs. Court of Appeals,[24] the Supreme Court has held that the right to object to the admissibility of evidence is a mere privilege that can be waived. The Supreme Court added that "necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections." Having made no objections to the attachments of the complaints, the Respondent failed to raise any objections at the earliest opportunity and, consequently, waived its right to assail the pieces of evidence present in this case.

Ultimately, FinLenD found the complaints to be supported by substantial evidence to prove the Respondent's guilt.

Revocation of the Respondent's Certificate of Incorporation and Authority to Operate as a Lending Company is warranted.

The Commission *En Banc* Resolution dated 15 February 2022 grants the authority to suspend or revoke the primary and secondary registration to the CGFD, which was later transferred to FinLenD as it assumed the functions of the CGFD in regulating Financing and Lending Corporations.

In fact, on 20 April 2023 and 18 July 2023, the Commission *En Banc* approved and confirmed the authority of FinLenD to suspend or revoke the primary registration and secondary license of erring LCs and FCs.

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[23] SECTION 3. Outsourcing of Collection. FCs and LCs may outsource the conduct of collection to a TPSP which shall be regarded as agent of the FCs and LCs. The ultimate responsibility for collection practice and compliance with this Circular remain with the FCs and LCs.

[24] G.R. No. 105813, 12 September 1994.

In relation, Section 5 of SEC MC 18 provides that the penalties imposed on erring entities shall be without prejudice to any other penalties that may be imposed by the Commission, to wit:

	LCs	*FCs*
First Offense	*P25,000.00*	*P50,000.00*
Second Offense	*P50,000.00*	*P100,000.00*
Third Offense	*Subject to the facts, circumstances, and gravity of the offense, the Commission, at its discretion, may impose a Fine of not less than twice the fine for the second offense but not more than P1 Million (P1,000,000). Persons; or Suspension of lending and financing activities for a period of sixty (60) days; or Revocation of Certificate of Authority to operate as a Financing or Lending Company, as appropriate for each circumstance. xxx*	

***With respect to Section 1, the number of violations shall be determined on a per loan transaction per complainant basis.** Hence, individual circumstances of unfair collection shall not be counted separately against the FC/LC if the same pertain to the same loan of the same complainant with the same FC/LC.*

The foregoing penalties shall be without prejudice to any other penalties that may be imposed by the Commission under Presidential Decree No. 902-A, Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, and all other relevant laws, rules and regulations being implemented by the Commission, which may include the suspension or revocation of the FC/LC's primary license and/or disqualification of its directors and officers; and further, to the penalties that may be imposed by the courts or other government agencies in the exercise of their respective mandates." [Emphasis supplied]

Since the Respondent entered into eight (8) separate loan contracts with the eight (8) complainants, the Respondent is deemed to have committed eight (8) counts of violations of SEC MC 18. FinLend holds that the number, nature, and gravity of Respondent's violations warrant the revocation of its Certificates of Registration and Authority to operate as a lending company.

WHEREFORE, in view of the foregoing, the **Primary Registration (SEC REG. No. CS201814908) AND Certificate of Authority to Operate as a Lending Company (CA No. 2718) and Authority to Operate its Online Lending Platforms (i.e., UPESO, PERA4U, PERALENDING and LOANMOTO)** of Respondent U-Peso.PH Lending Corporation is hereby **REVOKED.**

Let a copy of this Order be furnished to the Company Registration and Monitoring Department and the Information and Communications Technology Department for their information and appropriate action.

SO ORDERED.

24 June 2024. Makati City, Philippines.

Kenneth Joy A. Quimio
ATTY. KENNETH JOY A. QUIMIO
Assistant Director

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