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

IN THE MATTER OF:

PESOKWENTO;
PONDO CASH;
TBAG;
CASH SKY;
LOAN CASH; and
EAST CASH

SEC CDO Case No. 03-22-084

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the ***Motion for Issuance of a Cease and Desist Order*** (the "Motion") filed by the Enforcement and Investor Protection Department (EIPD) on 08 March 2022 praying that a Cease and Desist Order ("CDO") be issued against the operators and owners of the following online lending applications: **PESOKWENTO, PONDO CASH, TBAG, CASH SKY, LOAN CASH,** and **EAST CASH** (collectively referred to as the *("Online Lending Operators"),* including their agents, representatives and promoters, as well as the owners of the hosting sites of the Online Lending Operators, and any and all persons or entities involved, directly or indirectly, in their operations, and directing them to immediately cease and desist from (a) operating, engaging in, carrying out, abetting and/or promoting lending/financing business and related activities without the requisite license from the Commission, and (b) offering and/or advertising their lending business and related activities through the internet and any other media, and to delete or remove from the internet and social media platforms the promotional materials used to advertise their products and services.

RELEVANT FACTS

The filing of the instant Motion was triggered by the complaints of Ms. Julie Ann Coralde[1] and others borrowers[2] filed against the Online

[1] Annex "A" of the Motion dated 08 March 2022.
[2] *Ibid,* Annexes "D-1," "D-2," "D-3."

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Lending Operators with the Corporate Governance and Finance Department (the "CGFD") alleging that the Online Lending Operators are using unfair collection practices and carried out acts of harassment which were made in the form of threats to ruin their reputation, as well as physical harm their persons and their families.

Acting on the said complaints, the CGFD endorsed the matter to the EIPD for investigation and appropriate action, with the view of determining if there is a violation of the relevant laws, rules or regulations administered and implemented by the Commission.[3]

On the basis thereof, the EIPD proceeded to conduct a formal investigation for possible violation of Republic Act No. 9474 or the Lending Company Regulation Act of 2007 which the Commission is mandated to administer and implement. For this purpose, the EIPD looked into the website of the Online Lending Operators and the social media platforms used by the latter in carrying out their online lending activities, and was able to confirm that the Online Lending Operators were indeed actually operating and maintaining an online lending business.[4] However, as regards Cash Sky, the EIPD was able to confirm that at the time of the filing of the Motion, the same has already ceased its internet presence and deleted its website, and relevant posts that will show its online lending operations.

The foregoing was confirmed and attested to by the EIPD investigators who executed and issued a joint affidavit which was submitted in evidence.[5]

Moreover, in support of its allegation that the Online Lending Operators are engaged in unfair collection practices, the EIPD submitted evidence showing the comments, reviews and complaints of a considerable number of individuals who availed of the services of the Online Lending Operators, and who alleged and narrated their experiences of being harassed, the alleged unlawful imposition of exorbitant charges and/or deductions from the loan amount which were made under the guise of service fees, and the onerous and unreasonable terms and conditions that were imposed by the Online Lending Operators. The evidence showed that the foregoing acts/practices were apparently resorted to by the Online Lending Operators to ensure efficient and effective collection of the loan amounts notwithstanding the fact that the same already violated the right to privacy of the borrowers. The evidence submitted by the EIPD also showed that the Online Lending

[3] Par. 3 of the Motion
[4] See Annexes "C" to "C-4" of the Motion
[5] Annex "B" of the Motion

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Operators misrepresented to the public that they were not collecting charges and fees.[6]

Finally, the investigation conducted by the EIPD revealed that the Online Lending Operators are not registered with the Commission as corporations,[7] and they do not have the Certificate of Authority, both of which are required by Republic Act No. 9474 or the Lending Company Regulation Act of 2007 of all entities that are engaged in lending business/activities. This finding was confirmed by the CGFD and the CRMD through the Certifications that they issued, which were submitted in evidence by the EIPD. [8] The CGFD likewise added that the Online Lending Operators are not included in the List of Financing and Lending Companies with Online Lending Platforms (OLPs) reported to the Commission pursuant to SEC Memorandum Circular No. 19 series of 2019.[9]

ISSUE

Whether the evidence on record presented by the EIPD warrants the issuance of a CDO against the Online Lending Operators.

RULING

The Motion is impressed with merit.

The pieces of evidence presented by the EIPD sufficiently support the allegations in the Motion that the Online Lending Operators are actually engaged in the business of offering and providing loans to the public, and are carrying out transactions proper to a lending company without a validly subsisting Certificate of Authority issued by the Commission.

The powers and authority, as well as the jurisdiction of the Commission are specifically provided in Section 5.1(a) of Republic Act No. 8799 or the Securities Regulation Code (SRC), thus:

> "SECTION 5. Powers and Functions of the Commission. — 5.1. **The Commission shall act with transparency and shall have the powers and functions provided by this Code**, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, **the Financing Company Act and other existing laws. Pursuant thereto the**

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[6] Annexes C-1 to C-4 of the Motion
[7] Annex "E" of the Motion dated 08 March 2022.
[8] *Ibid,* Annex "F."
[9] Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platform.

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Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;

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(d) **Regulate, investigate or supervise the activities of persons to ensure compliance;**

Xxx

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws." (Emphasis supplied)

In relation to the performance of its authority to investigate persons, and exact compliance with laws administered by it, the Supreme Court emphasized in *Provident International Resources Corp. v. Venus*,[10] that the Commission has the concomitant duty to impose the appropriate sanctions/penalties for non-compliance, thus:

> "It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted." (Emphasis supplied)

Among the existing laws that the Commission is mandated to implement is Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007" (the "Lending Company Regulation Act"), Section 4 of which specifically requires that persons or entities operating as lending companies should be registered as a corporation and should have a Certificate of Authority issued by the Commission, to wit:

[10] G.R. No. 167041, 17 June 2008.

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"SEC. 4. Form of Organization. - **A lending company shall be established only as a corporation**: *Provided,* That existing lending investors organized as single proprietorships or partnerships shall be disallowed from engaging in the business of granting loan to the public one year after the date of effectivity of this Act.

No lending company shall conduct business unless granted an authority to operate by the SEC." (Emphasis and underscoring supplied)

The Lending Company Regulation Act penalizes any person who, without being registered as a corporation and without a subsisting Certificate of Authority obtained from the Commission, engages in the business of a lending company, to wit:

"**SEC. 12. Penalty**. - **A fine** of not less than Ten thousand pesos (P10,000.00) and not more than fifty thousand pesos (P50,00.00) **or imprisonment** of not less than six months but not more than ten (10) years **or both, at the discretion of the court, shall be imposed upon**:

1. Any person who shall engage in the business of a lending company without a validly subsisting authority to operate from the SEC.

2. The president, treasurer and other officers of the corporation, including the managing officer thereof, who shall knowingly and willingly:
   a. Engage in the business of a lending company without a validly subsisting authority to operate from the SEC;
   b. Hold themselves out to be a lending company, either through advertisement in whatever form, whether in its stationery, commercial! paper, or other document, or through other representations without authority;
   c. Make use of a trade or firm name containing the words lending company or "lending investor" or any other designation that would give the public the impression that it is engaged in the business of a lending company as defined in this Act without authority; and
   d. Violate the provisions of this Act." (Emphasis supplied)

Moreover, it bears emphasis that the Commission is mandated in Section 2 of the Lending Company Regulation Act to implement the policy of regulating lending companies to effectively prevent and mitigate the commission of practices prejudicial to public interest, thus:

"SEC 2. Declaration of Policy. - It is hereby declared the policy of the State to regulate the establishment of lending Companies and to place their operation on a sound, efficient and stable condition to derive the optimum advantages from them as an additional source of credit, to prevent and mitigate, as far as practicable, practices prejudicial to public interest; and to lay down the minimum requirements and

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standards under which they may be established and do business." (Emphasis supplied)

On the basis of the foregoing, the Commission finds that the continued operation of the Online Lending Operators constitutes a clear violation of, and should be penalized pursuant to the Lending Company Regulation Act because the evidence presented by the EIPD shows that they are engaged in, or are carrying out a lending business without the required license from the Commission, not to mention the fact that they are not registered corporations. Moreover, the abusive collection practices, misrepresentations, and unreasonable terms and conditions perpetrated and imposed by the Online Lending Operators, their agents and representatives are the very acts and practices that, as a matter of policy, the State seeks to prevent and penalize.

To ensure that the Commission is able to effectively perform and carry out its regulatory functions for the purpose, among others, of protecting the public, Section 179(f) and (p) of the Revised Corporation Code authorizes it to issue a cease and desist order and to perform such other powers which are incidental or necessary in carrying out its mandate, to wit:

"Section 179. Powers, Functions, and Jurisdiction of the Commission. - The Commission shall have the power and authority to:

xxx xxx xxx

(f) Issue cease and desist orders ex parte to prevent imminent fraud or injury to the public;

xxx xxx xxx

(p) Exercise such other powers provided by law or those, which may be necessary or incidental to carrying out the powers expressly granted to the Commission." (Emphasis added)

The Certification issued by the CRMD, which the EIPD submitted in evidence, confirmed that the Online Lending Operators are not registered with the Commission either as corporations, partnerships, or OPC. Neither is there anything in the records of the Commission that will show that these Online Lending Operators Applications have been issued the Certificate of Authority which is required to validly engage in the lending business and related activities. The act of the Online Lending Operators in engaging in the lending business sans the required registrations/licenses constitutes a clear violation of Section 4 of the Lending Company Regulation Act, which warrants the imposition of the appropriate penalties provided under Section 12 of the same statute.

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Thus, the Commission finds that the lending business and related activities carried out by the Online Lending Operators are illegal on the ground that they are not registered as corporations, and have no Certificate of Authority issued by the Commission. Also, the act of these Online Lending Operators in offering and providing loans to the public through their respective online lending applications constitutes actual fraud[11] which was intentionally employed to lead the public into the belief that they are engaged in a legitimate lending business when in truth and in fact, it is not and has never been the case.

Finally, the Commission finds and so holds that the abusive collection practices employed by the Online Lending Operators which was substantiated by evidence constitute unfair debt collection practices which are expressly prohibited under SEC Memorandum Circular No. 18, Series of 2019 (Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies). As provided in the said Circular, the following conduct constitute unfair collection practices:

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 (exceptions to the confidentiality of information);

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 (exceptions to the confidentiality of information);

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 AM or after 10:00

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[11] "Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons." (*Encinares vs Achero*, G.R. No. 161419, August 25, 2009).

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> PM, 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.

On account thereof, the Commission hereby affirms the position of the EIPD that the issuance of a CDO is warranted in the instant case not only to stop an illegal act, but also to prevent the continued fraud on the public who are led by the Online Lending Operators to the belief that they are operating a legitimate business. This is a power that is expressly granted to the Commission under Section 179 (f) and (p) of the RCC, in relation to the SRC and the Lending Company Regulation Act.

The acts of the unregistered Online Lending Operators in illegally offering and providing loans to the public, charging high interest rates, and subjecting its debtors to unfair treatment through abusive and even libelous language in collecting the loaned amount, have no place in a society that is governed by, and faithfully adheres to positive laws. The Commission is duty-bound to strictly implement the provisions of the Lending Company Regulation Act, ensure that public interest is at all times upheld, and that the public is protected from persons who carry out unauthorized or illegal lending activities.

WHEREFORE, premises considered, **PESOKWENTO, PONDO CASH, TBAG, CASH SKY, LOAN CASH,** and **EAST CASH**, 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, promoting and facilitating any lending activity/transaction until they have incorporated and have secured from this Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending Companies or Financing Companies.

PESOKWENTO, PONDO CASH, TBAG, CASH SKY, LOAN CASH, and **EAST CASH**, its owners, operators, promoters, representatives, agents and any and all persons acting for and on their behalf, are also directed to immediately CEASE and DESIST from offering and advertising their lending business through the internet or any other media, and to delete/remove any and all materials involving or covering the same.

The **EIPD** is hereby **DIRECTED** to:

1.) Cause the posting of a copy of this CDO in the Commission's website, and the publication of the same in two (2) newspapers of general circulation;

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2.) Coordinate with the appropriate cyber-criminal investigation and enforcement agency(ies) of the government in order to determine, identify, and apprehend the responsible persons involved in the illegal online operations of PESOKWENTO, PONDO CASH, TBAG, CASH SKY, LOAN CASH, and EAST CASH, including its author, creator, owner and its officers, or any person, agent, representative conniving with them. The EIPD is also directed to conduct an investigation to determine and recommend the filing of a criminal complaint, if warranted; and

3.) Submit a formal compliance report, by way of pleading, to the Commission En Banc within ten (10) days from receipt of this CDO.

In accordance with the provisions of Sec. 64.3[12] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules of Procedure of the Commission, the parties subject of the Cease and Desist Order may file a Verified Motion to lift thereof within five (5) days from the date of its posting or publication.

SO ORDERED.

Pasay City, 22 March 2022

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

[12] Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

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