



**IN RE: POPULUS LENDING
CORPORATION (PESOPOP)
AND ITS RESPONSIBLE OFFICERS**

NPC SS 21-008

For: Violation of the
Data Privacy Act of
2012

INITIATED AS A *SUA SPONTE* NPC
INVESTIGATION ON THE
POSSIBLE DATA PRIVACY
VIOLATIONS COMMITTED BY
POPULUS LENDING CORPORATION
(PESOPOP)

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DECISION

AGUIRRE, D.P.C.;

Before this Commission is a Fact-Finding Report with Application for the Issuance of a Temporary Ban on the Processing of Personal Data (FFR) dated 10 June 2021 against Populus Lending Corporation (Pesopop), the operator of the online lending application, Pesopop, and its responsible officers.

The Complaints and Investigation Division (CID) of the National Privacy Commission (NPC), pursuant to its power to conduct *sua sponte* investigations, filed an FFR against Pesopop. The FFR alleged that Pesopop committed violations of Sections 11, 16, and 25 of Republic Act No. 10173 or the Data Privacy Act of 2012 (DPA) and Section 3(D)(4) of NPC Circular 20-01 or the Guidelines on the Processing of Personal Data for Loan-Related Transactions (Loan-Related Transactions Circular).¹ This concludes the *sua sponte* investigation conducted by the NPC.

Facts

¹ Fact-Finding Report, 10 June 2021, at 13, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

On 10 June 2021, the CID submitted its FFR against Pesopop following numerous reports of continuing privacy violations committed by several online lending applications (OLAs).² The CID initiated a *sua sponte* investigation against Pesopop pursuant to Section 7(b) of the DPA that mandates the NPC to institute investigations in cases it deems appropriate, and NPC Circular 21-01 (2021 Rules of Procedure) that permits the NPC to initiate *sua sponte* investigations and file complaints for DPA violations.³ The FFR serves as the complaint, with the CID as the Nominal Complainant, in *sua sponte* investigations.⁴

On 14 May 2021, the CID downloaded Pesopop (version 1.5.1) from the Google Play Store on an Android device and simulated the registration process.⁵

Upon opening the Pesopop application (app), the user must provide a mobile number as the login credential.⁶ Once the user has logged in, a pop-up will appear with the following statement:

Access permission – In order to check your credit score, you must grant permission to access Storage, Phone State, Contacts and Location info. Without these information, you can't use Pesopop.⁷

To proceed, the user must click on the “Setting” button.⁸ The next pop-up messages will request access to the following: (1) device’s location; (2) device’s photos, media, and files; (3) contacts stored on the device; and (4) allow the app to make and manage phone calls.⁹ Each pop-up message gives the user an option to select either “DENY” or “ALLOW.”¹⁰

When the user clicks “DENY,” he or she will be taken back to the previous “Access Permission” pop-up message.¹¹ On the other hand, when the user selects “ALLOW,” the user will be directed to the Main

² *Id.* at 1.

³ *Id.* at 4-5.

⁴ *Id.* at 5.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ Fact-Finding Report, 10 June 2021, at 2, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Screen, where he or she can proceed to the loan processing screen within the app.¹²

The CID stated that the request for access to the phone contacts list will appear before the loan application process starts.¹³ The CID found that the loan application will not proceed to the next step without giving access to the entire phone contacts list.¹⁴ It added that there was no manual way of entering a character reference's phone number.¹⁵

When the CID examined the source code of the app, it showed that the app utilized the Android software development kit (SDK) that provides coding for contacts retrieval, wherein an application will have the ability to collect data from contacts.¹⁶ The "AndroidManifest.xml" file explicitly contained a contacts permissions line ("android.permission.READ_CONTACTS").¹⁷ The CID explained that when this is enabled, it gives the app permission to read the user's contacts data.¹⁸

The CID also stated that it was "unable to locate the Terms of Service or Loan Guarantee Agreement of Pesopop from the application, or from their website."¹⁹ Upon checking Pesopop's website, the CID, however, found Pesopop's Privacy Policy which stated the personal data collected and the purpose for which the collected information will be used:

The Information We Collect

To our beloved customer, to avoid fraud. When you sign up for Pesopop account, in addition to your login username and password, we will also ask for your **name, email address, birthday, gender**. Need your authorization to agree to provided **phone book, camera, internet, location, list of your applications and any other information**.

¹² *Id.*

¹³ Fact-Finding Report, 10 June 2021, at 2, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ Fact-Finding Report, 10 June 2021, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

We also need to collect your contact information. **We will request the "Read Contacts" permission. If you agree to the authorization, we will scan and upload the contact list information** to <https://api.pesopop.com:18062> using the most secure data transfer protocol (HTTPS). We will store your personal information through DES and AES encryption. Storage time will not exceed your usage time.

The data is used only for the credit review process and will not be shared with third-party organizations without your permission. We are committed to encrypting the data and ensuring the security of the information. You click on the check the box below to indicate that you are fully aware of and agree to the application. Please feel free to use. If you do not agree to the authorization, the application will stop working and will not be able to serve you. Thank you for your understanding and cooperation.

If you do not have a successful loan, the information you leave will not be leaked, and the information you provide will only be used for loan review purposes, and the information will never be used for other purposes. *If you do not repay during the repayment period, we have the right to access and use your personal contact information, including FB, Instagram, Google+, etc.*

Pesopop will Collect and Use of Information

These clauses explain how we will use and share your information. By using the Services, you agree that we and members of Pesopop shall use Customer Information in accordance with such clauses.

Pesopop will collect your personally identifiable information when you register a Pesopop account, use other Pesopop products or services, access Pesopop webpages, or participate in promotional or prize winning games. Pesopop also collects personally identifiable information from our business partners. When you register a Pesopop account, we will ask for your name, birthday and gender, in addition to your email address. Once you are successfully registered with Pesopop, we will be able to identify you when you log in to the server.

Information Collected by Third Parties

Pesopop may allow third parties, including advertising partners, to display advertisements on the APP. These companies may use tracking technologies, including cookies, to collect information about users of the APP who view or interact with these advertisements. Pesopop does not provide Personally Identifiable Information to these third parties.

Sharing Your Personally Identifiable Information

Pesopop may share your Personally Identifiable Information (including, without limitation, your financial account information and social security number) with Payment Partners with whom Pesopop has a business relationship.

Any third parties with whom Pesopop shares Personally Identifiable Information may have their own policies which describe how they use and disclose your information. Those policies will govern the use, handling, and disclosure of your information once Pesopop has transferred or shared it with those third parties as described in this Policy or the Pesopop Terms and Conditions.

Pesopop will disclose your Personally Identifiable Information in response to a subpoena or similar investigative demand, a court order, or a request for cooperation from a law enforcement agency or other government agency; to establish or exercise our legal rights; to defend against legal claims; or as otherwise required by law. Pesopop will disclose your Personally Identifiable Information when Pesopop believes disclosure is necessary to investigate, prevent, or take action regarding illegal activity, suspected fraud, or other wrongdoing; to protect and defend the rights, property, or safety of Pesopop's parent company, its employees, its website users, or others; or to enforce the Terms and Conditions or other agreements or policies.

In addition, Pesopop may transfer Personally Identifiable Information to an entity acquiring all or substantially all of its parent company's stock or assets.²⁰

Based on the foregoing, the CID argued that Pesopop violated Sections 11, 16, and 25 of the DPA and Section 3(D)(4) of the Loan-Related Transactions Circular.²¹

First, the CID contended that Pesopop's processing of personal information does not adhere to the general privacy principles of transparency, legitimate purpose, and proportionality.²²

The CID stated that pursuant to the transparency principle, a data subject must be aware of the nature, purpose, and extent of processing of their personal data, including the risks and safeguards involved, the

²⁰ *Id.* at 3-4.

²¹ *Id.* at 13.

²² *Id.* at 11.

identity of the personal information controller (PIC), their rights as a data subject, and how these can be exercised.²³ It elaborated that any information and communication relating to the processing of personal data should be accessible and easy to understand, using clear and plain language.²⁴ It also explained that this is commonly done through a privacy notice or privacy policy.²⁵

The CID argued that Pesopop's Privacy Policy failed to "sufficiently and clearly inform the data subject of the extent of the processing of his/her personal data and how he/she can exercise his/her rights as a data subject."²⁶

Here, the Pesopop Privacy Policy's multiple declarations, "to avoid fraud"; "The data is used only for the credit review process and will not be shared with third-party organizations without your permission"; and "If you do not repay during the repayment period, we have the right to access and use the (sic) your personal contact information, including FB, Instagram, Google+, etc.", are contradictory phrases that do not conform with the general privacy of transparency.²⁷

On the legitimate purpose principle, the CID elaborated that the processing of information under the DPA must be compatible with a declared and specified purpose which must not be contrary to law, morals, or public policy.²⁸ The CID explained that this principle is adhered to when there exists a lawful criterion to process personal data, such that the processing is grounded on at least one of the criteria provided under Sections 12 and 13 of the DPA.²⁹

According to the CID, the access, retention, and storage of a data subject's phone contacts are considered processing activities under the DPA, and "as such, it needs to have legitimate purpose as provided by Sections 12 and 13 of the DPA."³⁰ Further, where consent is the basis of the processing, expressed consent must be freely given, specific,

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ Fact-Finding Report, 10 June 2021, at 6, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

²⁶ *Id.* at 6-7.

²⁷ *Id.* at 6.

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ *Id.* at 8.

informed, and indication of will.³¹ Thus, for consent to be considered valid, it should be informed consent, where the information provided is accessible, clear, and easily understood.³² The CID elaborated that bundled consent does not meet the criteria for specific consent.³³ Further, where consent is the basis for processing, data subjects can object to the processing or withdraw consent.³⁴

The CID argued that Pesopop's Privacy Policy is written and presented in such a way that the data subject is not given an opportunity to make an informed choice:

The Privacy Policy states that to avoid fraud, Pesopop "will scan and upload the contact list information..."; "will store your personal information"; and that in case of non-payment of debt: "we have the right to access and use your personal contact information, including FB, Instagram, Google+, etc."

Pesopop's Privacy Policy initially states that the data is used only for the credit review process and will not be shared with third-party organizations without the user's permission. However, a fine reading of the said policy shows that if the user, once he/she fails to repay during the repayment period, also consents or gives Pesopop the right to access and use the user's personal contact information, including FB, Instagram, Google+, etc. The stored personal information, including the phone contact list, are not only used to know the customer for credit review, but it will be weaponized later on for debt collection if the need arises.³⁵

The CID stressed that for data subjects to avail of the services of Pesopop, "they have no choice but to accept all the terms and conditions provided by [Pesopop] and give consent for all the purposes for which [Pesopop] intends to use the personal data" because otherwise, the data subject cannot obtain a loan.³⁶ The CID argued that the consent was not freely given and did not serve as an indication of will of the data subjects.³⁷ Thus, consent was not validly acquired.³⁸

³¹ Fact-Finding Report, 10 June 2021, at 8, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 8-9. Emphasis supplied.

³⁶ *Id.* at 9.

³⁷ Fact-Finding Report, 10 June 2021, at 9 *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

³⁸ *Id.*

Further, the CID saw no other reason for Pesopop to store the data subject's contacts list throughout the duration of the loan agreement other than for use in debt collection.³⁹ The CID stated that Pesopop's Privacy Policy provides that "if you do not repay during the repayment period, we have the right to access and use your personal contact information, including FB, Instagram, Google+, etc."⁴⁰

Therefore, the CID asserted that Pesopop's processing of the data subjects' personal data was unauthorized because it did not have lawful basis to store the data subjects' phone contacts list and failed to validly acquire the data subjects' consent.⁴¹

The CID further asserted that Pesopop's requirement that users grant Pesopop permission to access their phone contacts violates the principle of proportionality.⁴² The CID explained that it is "excessive and unnecessary in fulfilling its purpose of loan or debt collection, in the event that the information provided in the credit agreement is false, invalid or otherwise not responsive to its collection attempts."⁴³

Second, the CID asserted that Pesopop's requirement to grant it the "permission to access several phone capabilities, such as contacts, photos, media and files, in order to successfully install, register, and avail of its loan facilities, and failing to provide a separate interface for a user to provide character references or co-makers of his own choosing" is in violation of Section 3(D)(4) of the Loan-Related Transactions Circular.⁴⁴ According to the CID, it is explicit in the Loan-Related Transactions Circular that processing of phone contacts list for use in debt collection is strictly prohibited.⁴⁵ Further, it argued that "in all instances, online lending apps must have a separate interface where borrowers can provide character references and/or co-makers to their loan application, of their own choosing."⁴⁶

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Fact-Finding Report, 10 June 2021, at 9, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁴⁴ *Id.* at 10.

⁴⁵ *Id.*

⁴⁶ *Id.*

The CID reiterated that “Pesopop’s processing of personal data does not adhere to the [general] privacy principles of transparency, legitimate purpose, and proportionality.”⁴⁷ The CID reiterated that the access, use, and storage of the phone contact list finds no legitimate basis under the DPA.⁴⁸ Thus, there is unauthorized processing under Section 25 of the DPA.⁴⁹

The CID further argued that since Pesopop is a corporation, “it is its board of directors who decides and should have the duty of diligence.”⁵⁰ Thus, according to CID, “liability should fall upon the Board of Directors, as responsible officers, who by their gross negligence, allowed the commission of violation of the DPA.”⁵¹

Finally, the CID interposed that there is substantial evidence to warrant the issuance of a temporary ban on the processing of personal data against Pesopop through its app:

From the discussion above, it was shown that Pesopop’s processing of personal data is without adherence to the Data Privacy Principles enshrined in the DPA. It collects personal data without clearly informing the data subject the extent by which it will use the personal data. It also has no legitimate purpose from which it can anchor its personal data processing, particularly its storage and use of phone contacts, as free and informed consent was not validly acquired and there is no other basis in law. It likewise collects and processes more personal data in relation for the purposes it has expressed in its Privacy Policy.

Further, there is sufficient information to support that Pesopop has the ability to access, store, and copy phone contact lists of its borrowers and utilizes that stored data for use in debt collection or to harass its borrowers, in direct violation of the issuance of this Commission in NPC Circular 20-01, Section 3 (D) (4).

Hence, the issuance of a Temporary Ban on Pesopop is crucial to preserve and protect the rights of the data subject from further processing.⁵²

⁴⁷ *Id.* at 11.

⁴⁸ *Id.*

⁴⁹ Fact-Finding Report, 10 June 2021, at 11, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁵⁰ *Id.* at 12.

⁵¹ *Id.* at 11.

⁵² *Id.* at 12.

On 16 June 2021, the Commission issued an Order suspending the complaint proceedings until the resolution of the application for the issuance of a temporary ban.⁵³ It directed Pesopop to submit a position paper on the application for the issuance of a temporary ban within ten (10) days from its receipt of the Order.⁵⁴

On 23 June 2021, the Commission attempted to personally serve the Order to Pesopop's office address.⁵⁵ It was reported, however, that Pesopop had already moved out.⁵⁶

On 24 June 2021, the Commission served the Order by email to Pesopop's email address available on its official website.⁵⁷ Thus, Pesopop had until 04 July 2021 to file its position paper.⁵⁸ As of 12 August 2021, the Commission did not receive any position paper from Pesopop.⁵⁹

On 05 July 2021, the CID submitted a Supplemental Fact-Finding Report with Application for Issuance of Temporary Ban on the Processing of Personal Data, impleading specific responsible officers of Pesopop, namely RCJ, FLB, JIS, MM, and WL (collectively, individual respondents), in their official capacities as responsible officers of Pesopop in line with Section 34 of the DPA.⁶⁰

On 12 August 2021, the Commission issued an Order granting the application for the issuance of a temporary ban against Pesopop given that all the requisites for granting a temporary ban were satisfied:

WHEREFORE, premises considered, this Commission **GRANTS** the Application for Temporary Ban on the processing of personal data filed by the Complaints and Investigation Division of the National Privacy Commission. A **TEMPORARY BAN ON PROCESSING OF PERSONAL DATA** is hereby issued against Respondent Populus Lending Corporation, as the operator of the online lending application, Pesopop.

⁵³ Order, 16 June 2021, at 1, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁵⁴ *Id.*

⁵⁵ Order, 12 August 2021, at 2, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 3.

⁵⁹ *Id.*

⁶⁰ Supplemental Fact-Finding Report, 05 July 2021, at 2, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

Further, pursuant to the ORDER FOR TEMPORARY BAN, Respondent Populus Lending Corporation shall:

1. Immediately take down its online lending application, Pesopop, to ensure that it is no longer available for download, installation or use by data subjects; and
2. Stop personal data processing activities, including those activities outsourced to third parties, where the processing operations involves use of information from the phonebook, directory, and contact list of data subjects, disclosure of false or unwarranted information, and other unduly intrusive personal data processing methods.

This **TEMPORARY BAN ON THE PROCESSING OF PERSONAL DATA** shall remain in effect until the final resolution of the *sua sponte* investigation against Respondent and its responsible officers.

. . .

Furthermore, Respondent Populus Lending Corporation and its responsible officers are **ORDERED, within ten (10) days** from receipt of this Order, to file a **COMMENT** on the allegations in the attached Fact-Finding Report, pursuant to Section 6 of Rule X of NPC Circular No. 2021-01 (2021 NPC Rules of Procedure).⁶¹

On 03 September 2021, Pesopop, through its counsel Zosa & Quijano Law Offices, submitted its Notice of Entry of Appearance with Motion for Reconsideration.⁶² The individual respondents also manifested that they are adopting the Motion as their comment in compliance with the Order to comment dated 12 August 2021.⁶³

In its Motion for Reconsideration, Pesopop argued that the Order granting the temporary ban “is not warranted [sic] and issued with grave abuse of discretion amounting to lack or excess of jurisdiction for having been issued without authority and in violation of Sec[ti]on] 3, Rule 9 of the 2021 NPC Rules of Procedure.”⁶⁴ It contended that the second and third requisites for the issuance of a temporary ban were absent.⁶⁵ Pesopop stated that there was no mention in the assailed

⁶¹ Order, 12 August 2021, at 10-11, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁶² Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁶³ *Id.* at 6.

⁶⁴ *Id.* at 3.

⁶⁵ *Id.* at 2.

Order that the required motion has been filed to warrant the application.⁶⁶ It further stated that the NPC does not have *motu proprio* authority to apply for a temporary ban because it cannot post the necessary bond required and the exemption pertains only to the payment of filing fees and not to the posting of the required bond.⁶⁷

Alternatively, Pesopop asserted that assuming the temporary ban was valid, the complete takedown of its application is “not warranted on the ground that the temporary ban only warrants a ban on the processing of personal data.”⁶⁸ It explained that a complete takedown [sic] of the application is prejudicial because that would include taking down areas not related to the processing of personal data.⁶⁹

Further, Pesopop explained that the inclusion of a request for the phone contacts list upon registration was “purely unintentional and a result of an inadvertent and honest mistake.”

In this case, although respondent PesoPop requested for the inclusion of the phone contact list, the said list was limited to include five (5) persons from the contact list as character reference only. In other words, respondent PesoPop does not have access to the entire the [sic] phone contact list of its clients and/or its potential users.

Moreover, although it was initially stated in the terms and conditions of use that, “If you do not repay during the repayment period, we have the right to access and use the [sic] your personal contact information, including FB, Instagram, Google+, etc.”, respondent PesoPop never requested any of its clients to disclose their FB, Instagram and Google+ in the collection of debts or for whatever purpose.

Therefore, **respondents respectfully assert that although there could have been a mistake in the data terms and privacy of respondent PesoPop**, the latter in good faith did not use and/or was able to obtain excess information considering that the request for access of the phone contact list was limited to only five (5) numbers solely used for character reference and that respondent PesoPop follows a strict collection policy without the use of harassment and/or excess of information.⁷⁰

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁶⁹ *Id.*

⁷⁰ *Id.* at 3-4. Emphasis supplied.

Pesopop asserted that all elements of valid consent are present in this case.⁷¹ It argued that the consent it obtained from its clients were not bundled and were voluntarily requested as many times as the access to the information was requested.⁷² It stressed that its clients and potential users will “always have a choice in giving consent to the gathering, access, processing and storage of their personal data.”⁷³ Citing the CID’s technical and supplemental reports, Pesopop argued that users of the app were asked multiple requests for access to information.⁷⁴ Absent the grant of access to such information, the users would not have any chance to provide information, use, or even obtain a loan.⁷⁵

Pesopop added that this is its first offense for a data privacy violation.⁷⁶ It explained that it “has not received any data privacy complaint from any other party other than the instant case.”⁷⁷ For this purpose, Pesopop undertook “to immediately make a complete and thorough review and amendment of its existing data privacy terms and conditions and will revise the same to conform to the DPA.”⁷⁸

Lastly, Pesopop argued that the individual respondents did not actively participate in the processing of personal data of Pesopop’s clients.⁷⁹ It asserted that there was no allegation and proof in the complaint that the individual respondents acted in gross negligence, fraud, bad faith, and malice.⁸⁰

On 17 September 2021, the Commission directed Pesopop and the individual respondents to appear for a clarificatory hearing on 28 September 2021.⁸¹

⁷¹ *Id.* at 5.

⁷² *Id.* at 4.

⁷³ *Id.*

⁷⁴ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 4, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁷⁵ *Id.*

⁷⁶ *Id.* at 5.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 6, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁸¹ Order, 17 September 2021, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

On 28 September 2021, the Commission conducted the Clarificatory Hearing.⁸² As a result of the Clarificatory Hearing, the Commission directed Pesopop and the individual respondents to submit the following information and documents:

1. Revised Privacy Policy of Pesopop;
2. Revised Terms and Conditions or Terms of Service of Pesopop;
3. Revised Pesopop application;
4. Company Profile and a discussion of the business model of the corporation;
5. An explanation of the discrepancy between Counsel's representations in the Motion for Reconsideration on the access to the phone contact list and the Privacy Policy dated 10 September 2021;
6. A technical explanation on the purpose of the code "android.permission.READ_CONTACTS", which if enabled, gives the application permission to read the user's contacts data;
7. Collection Policy of the corporation;
8. An Agreement between the corporation and its third party collection partners or agents;
9. An Agreement between the corporation and its third party payment partners;
10. An explanation behind the drafting process of the Privacy Policy dated 10 September 2021;
11. Privacy Manual; and
12. Employee Manual, particularly on the provisions governing its employees' conduct of collecting debt and collection and usage of personal information.⁸³

On 20 October 2021, the Respondents filed its Motion to Admit with Compliance and submitted the following documents:

1. Revised Privacy Policy of Pesopop;
2. Revised Terms and Conditions or Terms of Service of Pesopop;
3. Revised Pesopop application;
4. Company Profile and a discussion of the business model of the corporation;
5. An explanation of the discrepancy between Counsel's representations in the Motion for Reconsideration on the access to the phone contact list and the Privacy Policy dated 10 September 2021;

⁸² Order, 28 September 2021, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁸³ *Id.* at 2.

6. A technical explanation on the purpose of the code “android.permission.READ_CONTACTS”, which if enabled, gives the application permission to read the user's contacts data;
7. Collection Policy of the corporation;
8. An Agreement between the corporation and its third party collection partners or agents;
9. An Agreement between the corporation and its third party payment partners;
10. An explanation behind the drafting process of the Privacy Policy dated 10 September 2021;
11. Privacy Manual; and
12. Employee Manual, particularly on the provisions governing its employees’ conduct of collecting debt and collection and usage of personal information.⁸⁴

Meanwhile, the Enforcement Division (EnD) of the NPC continuously monitored the availability of the app pursuant to the temporary ban.⁸⁵ The EnD confirmed that, as of 06 September 2021, the app was no longer available for download on different platforms.⁸⁶

Despite this, during the EnD’s monitoring activity on 29 October 2021, it noticed that Pesopop was once again available for download in the Google Play Store and that it was last updated on 18 October 2021 to a new version (version 1.5.4).⁸⁷ The EnD further stated that links to download the app can be found in Pesopop’s official Facebook page and official website.⁸⁸

Thus, on 08 November 2021, the EnD issued a Letter to Pesopop regarding its compliance with the Commission’s Order dated 12 August 2021.⁸⁹ The EnD relayed that:

[D]uring a monitoring activity on 29 October 2021, EnD noticed that Pesopop is again made available for download in the Google

⁸⁴ Motion to Admit with Compliance, 20 October 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁸⁵ Enforcement Division Memorandum, 03 November 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁸⁶ Letter Re: Compliance with Order dated 12 August 2021 in NPC SS 21-008 entitled “*In re: Populus Lending Corporation (Pesopop) and its Responsible Officers*”, 08 November 2021, at 2, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁸⁷ Enforcement Division Memorandum, 03 November 2021, at 1, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁸⁸ *Id.*

⁸⁹ Letter Re: Compliance with Order dated 12 August 2021 in NPC SS 21-008 entitled “*In re: Populus Lending Corporation (Pesopop) and its Responsible Officers*”, 08 November 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

Play Store. Google Download Links of the mobile application can also be accessed on Pesopop's official Facebook page, through the "Use App" buttons and in its official website through the buttons "Get it on Google Play" and "Download Pesopop now."

As the Temporary Ban on the Processing of Personal Data against Pesopop "shall remain in effect until the final resolution of the *sua sponte* investigation against Respondent and its responsible officers," Pesopop is instructed to **EXPLAIN** the foregoing incident within **TEN (10) days** from receipt of this letter.

Populus Lending Corporation is also **ORDERED** to **IMMEDIATELY ENSURE** that Pesopop is no longer available for download, installation or use by the data subjects in any manner until the Temporary Ban is lifted.⁹⁰

On 15 November 2021, Pesopop submitted its Reply to the EnD's letter dated 08 November 2021.⁹¹ Pesopop stressed that it has already filed its Motion for Reconsideration to the Order dated 12 August 2021 in which it argued that the temporary ban imposed is *void ab initio*:

In the meantime, please be advised that my client has already filed a motion for reconsideration to the order dated 12 August 2021 which is now pending for resolution. Kindly note that one of the arguments raised by my client in their motion is that the Temporary Ban imposed is *void ab initio* on the ground that the same cannot be filed *motu proprio* and that the same was issued without posting the required bond. **As such, the said motion for reconsideration filed maybe treated as a motion to lift and/or cancel the temporary ban.** In other words, when the motion for reconsideration will be granted it will have the same effect of nullifying the temporary ban ordered against my client.⁹²

Nevertheless, Pesopop stressed that it has already manifested to the Commission that it will comply with all its orders.⁹³ It explained that it has already "modified its data privacy policy, modified its app to conform to its data privacy policy and submitted other compliance documents directed to be submitted by this Honorable Commission."⁹⁴

⁹⁰ *Id.* at 2.

⁹¹ Reply to letter dated 08 November 2021, 15 November 2021, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

⁹² *Id.* at 1. Emphasis supplied.

⁹³ *Id.*

⁹⁴ *Id.*

On 19 November 2021, the EnD once again simulated downloading the app, account registration, and attempted a loan application.⁹⁵ It found that “based on the simulations of the two (2) versions, versions 1.5.1 and 1.5.4, no evident changes were present.”⁹⁶ According to the EnD “the processes were similar, and the data being requested by the forms provided are still the same.”⁹⁷ The EnD observed that the permissions requested during the registration and loan application processes in both versions were also the same:

The “AndroidManifest.xml” file of the two (2) versions were also checked for comparison. Derived from the files [ANNEX D], the dangerous permissions (Contacts, Location, Storage, Telephone and Camera) were still present in the current version 1.5.4 which is available for download to the public.⁹⁸

On 25 November 2021, the EnD issued a second Letter to Pesopop regarding its compliance with the Order dated 12 August 2021.⁹⁹ The EnD reiterated that the temporary ban against Pesopop remains in effect until the final resolution of the main case or upon further orders by the Commission or other lawful authority.¹⁰⁰ The EnD explained that the Motion for Reconsideration filed by Pesopop does not in any way lift or suspend the effectivity of the temporary ban, as the case is still pending with the Commission.¹⁰¹

Further, the EnD confirmed that as of date, despite the Commission’s Order, the app is still available for download, installation, and use by the data subjects, in clear violation of the Order dated 12 August 2021.¹⁰² The EnD ordered Pesopop to “immediately ensure that Pesopop is no longer available for download, installation or use by the data subjects in any manner until the temporary ban is lifted.”¹⁰³

As of 26 November 2021, the EnD reported that the app was no longer available for download in the Google Play Store and other

⁹⁵ Enforcement Division Memorandum, 23 November 2021, at 1, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Letter Re: Compliance with Order dated 12 August 2021 in NPC SS 21-008 entitled “*In re: Populus Lending Corporation (Pesopop) and its Responsible Officers*”, 25 November 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

platforms.¹⁰⁴ On 06 December 2021, however, the EnD found that a new version of the app (version 1.5.5) was once again made available on the Google Play Store.¹⁰⁵ The EnD observed that the same permissions were still present when compared to the previous versions:

Below is a summary of the app permissions present in the different versions of Pesopop:¹⁰⁶

App Permissions	Version 1.5.1 (Investigated by CID)	Version 1.5.4	Version 1.5.5	Proposed revised version from the Motion
Location	Present and required	Present and required	Present and required	Present and required
Camera	Present and required	Present and required	Present and required	Present and required
Contacts	Present and required	Present and required	Present and required	Present and required
Phone	Present and required	Present and required	Present and required	Present and required
Storage	Present and required	Present and required	Present and required	Present and required

On 28 December 2021, the EnD issued a third Letter to Pesopop regarding its compliance with the Order dated 12 August 2021.¹⁰⁷ The EnD stated that during its conduct of regular monitoring, it found that the app was again available for download on Google Play Store.¹⁰⁸ The EnD reiterated that the temporary ban against Pesopop remains in effect until the final resolution of the main case, or upon further orders by the Commission or other lawful authority.¹⁰⁹ It ordered the immediate take down of the app:

¹⁰⁴ Enforcement Division Memorandum, 26 November 2021, at 1, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 3.

¹⁰⁷ Letter Re: Compliance with Order dated 12 August 2021 in NPC SS 21-008 entitled "*In re: Populus Lending Corporation (Pesopop) and its Responsible Officers*", 28 December 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

¹⁰⁸ *Id.* at 2.

¹⁰⁹ *Id.*

Consequently, Populus Lending Corporation is hereby, **ORDERED**, for the last time to **IMMEDIATELY TAKE DOWN** the Pesopop application from Google Play Store and **ENSURE** that it is no longer available for download, installation, or use by the data subjects in any manner until the Temporary Ban is lifted.

Further, Pesopop is instructed to **EXPLAIN** the foregoing incident within **FIVE (5) days** from receipt of this letter. Failure to comply with these orders shall be dealt with accordingly.¹¹⁰

On 02 January 2022, Pesopop replied to the EnD and informed the latter that it already removed the app from the Google Play Store.¹¹¹ It also reiterated that the temporary ban imposed is *void ab initio* for failure to post the required bond and claimed that it exposes the Commission to liability for damages if the temporary ban is not lifted.¹¹² It also prayed for the resolution of the pending Motion for Reconsideration.¹¹³

On 27 January 2022, the Commission issued a Resolution denying the Motion for Reconsideration and maintaining the temporary ban:

WHEREFORE, premises considered, the Commission **ADMITS** the compliance documents submitted by Populus Lending Corporation and its responsible officers.

The Commission **DENIES** the Motion for Reconsideration and **MAINTAINS** the Temporary Ban on the processing of personal data issued against Populus Lending Corporation and its responsible officers.

Further, the Commission orders Populus Lending Corporation and its responsible officers and the Complaints and Investigation Division of the National Privacy Commission to **SUBMIT within ten (10) days from the receipt of this Order** their respective Memoranda on their respective arguments on the facts and issues for the resolution of this Commission.

SO ORDERED.¹¹⁴

¹¹⁰ *Id.*

¹¹¹ Compliance with letter dated 28 December 2021, 02 January 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Resolution, 27 January 2022, at 17, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

The Commission stated that Pesopop has not sufficiently addressed the reasons for the issuance of the temporary ban.¹¹⁵ Pesopop continued to make the app available for download while the temporary ban was in effect.¹¹⁶ In addition, Pesopop did not submit all the documents and information required by the Order dated 28 September 2021.¹¹⁷ The Commission also found that Pesopop has not rectified its operations to comply with the DPA and the issuances of the Commission.¹¹⁸

On 01 March 2022, Pesopop submitted its Memorandum.¹¹⁹

Pesopop reiterated its arguments in its Motion for Reconsideration. First, Pesopop contended that the temporary ban is *void ab initio* because there is no showing that it is necessary to protect national security, or public interest, or to preserve and protect the rights of data subjects, and no posting of the required bond.¹²⁰ It argued that “the initiation of a *sua sponte* investigation is unwarranted because there was no actual or threatened violation of the rights of data subjects.”¹²¹ Pesopop stated that at the time the CID initiated its investigation, there was no complaint filed by any of its customers against its practices.¹²² Thus, Pesopop contended that the CID exceeded its authority.¹²³

Second, Pesopop argued that its Revised Privacy Policy complies with the general privacy principles of transparency, legitimate purpose, and proportionality.¹²⁴

Pesopop explained that the Revised Privacy Policy “sufficiently informs the data subject of the nature, purpose, and extent of the data processing activity.”¹²⁵ It provides:

The Revised Privacy Policy of the respondents expressly provides that personal information will be stored through DES

¹¹⁵ *Id.* at 9.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 10.

¹¹⁸ *Id.* at 16.

¹¹⁹ Memorandum of the Respondents, 01 March 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹²⁰ *Id.* at 6-7.

¹²¹ *Id.* at 6.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 7.

¹²⁵ Memorandum of the Respondents, 01 March 2022, at 9, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

and AES encryption and will be used primarily to prevent fraud, credit risk evaluation management, debt collection, identity verification, anti-money laundering, and to ensure compliance with laws, rules, and regulations.

In addition, **the Revised Privacy Policy provides for specific and concrete instances when personal information collected by respondents, including contact details, will be used.** Specifically, contact details will be used for purposes including character reference and identification, such as instances of suspected fraud or identity theft. Hence, not only are respondents' declared purposes fully compliant with the law, but they are also clearly meant to protect the rights of the data subject.

Likewise, prior versions of the respondents' Privacy Policy's failure to specify a retention period for collected data has already been rectified in the latest version of respondents' Revised Privacy Policy, **which now clearly specifies the period within which respondents can retain the information collected from the data subject.** Thus, the Revised Privacy Policy sufficiently provides the extent to which personal data is processed.¹²⁶

Pesopop argued that its Revised Privacy Policy "expressly declares that the processing of personal information is necessary for all purposes not prohibited by applicable law."¹²⁷ It stressed that there is no law which prohibits the collection of personal data for the purpose of facilitating online lending services.¹²⁸ It states:

The Revised Privacy Policy also expressly provides that the purpose for collecting personal information is to facilitate the use of the service as an online lending application and other related services, including sharing information to third-party Payment Partners to help in facilitating online payments and who third-parties are even bound by the same Privacy Policy.

...

As a matter of fact, **the respondents' declared purpose for collecting personal information is expressly regulated by the National Privacy Commission under NPC Circular 20-01 (Guidelines on Processing Personal Data for Loan-Related Transactions).** In other words, the Honorable Commission itself recognizes that the respondents' declared purpose is legitimate because the Commission has even issued rules regulating Respondents' service. Therefore, the respondents' declared

¹²⁶ *Id.* at 8. Emphasis supplied.

¹²⁷ *Id.* at 9.

¹²⁸ *Id.* at 10.

purpose complies with the principle that the collection of personal data must be for a legitimate purpose.¹²⁹

Pesopop posited that its Revised Privacy Policy provides that it will only collect information that are necessary, material, and relevant in its dealings with the data subject.¹³⁰ It provides:

A cursory reading of the respondents' Revised Privacy Policy readily shows that the respondents' access to the data subject's contact details is not being used to collect debt, much less to harass in any way the borrower or his/her contacts. On the contrary, the respondents' Revised Privacy Policy expressly provides:

[Respondents] will request contact list limited to five (5) phone contacts for character reference purpose and identity verification. By giving us your home and/or mobile phone number, we have your permission to contact you or the phone contacts you provided us. This shall allow us to use text messaging, artificial or prerecorded voice messages, and automatic dialing technology, for all purposes not prohibited by applicable law.

In other words, **the collection of the data subject's contact list is required only when the purpose is not contrary to law, such as for the purpose of character reference and identity verification, including instances of suspected fraud or identity theft, or for the servicing the account of the data subject.** Therefore, the respondents' processing of personal information is adequate, relevant, suitable, necessary, and not excessive in relation to its declared and specified purpose.¹³¹

Third, Pesopop contended that the data subjects validly consented to the agreement entered into with Pesopop.¹³² It argued that prior to accepting the terms and conditions, the data subject is given the opportunity to read its Privacy Policy in full.¹³³

Fourth, Pesopop maintained that a temporary ban applies only against the processing of personal data.¹³⁴ Thus, according to Pesopop, the

¹²⁹ *Id.* Emphasis supplied.

¹³⁰ *Id.*

¹³¹ Memorandum of the Respondents, 01 March 2022, at 11-12, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022). Emphasis supplied.

¹³² *Id.* at 12.

¹³³ *Id.*

¹³⁴ *Id.* at 13.

Commission “acted in excess or with grave abuse discretion in issuing the temporary ban against the online lending activities of (Pesopop)”:

[A]ssuming arguendo that a Temporary Ban is proper under the circumstances, **the Temporary Ban should have only covered the data processing activities of Populus Lending Corporation and not its online lending services, such as its online lending application.** Data processing and online lending services are two activities which exist independently of each other and are entirely separate and distinct from the other. To impose a blanket ban against any other activity other than data processing is beyond the scope of the powers and authority of this Honorable Commission.¹³⁵

Fifth, Pesopop argued that the individual respondents, as directors and officers of Pesopop, should not be held personally liable because there is no allegation that they acted with bad faith, malice, or gross negligence.¹³⁶ It interposed that the fact that the individual respondents have continuously revised the Privacy Policy to comply with the Commission’s Orders negates any allegation of bad faith.¹³⁷

Lastly, Pesopop maintained that there is no longer any legal basis for the continued imposition of the temporary ban because its Revised Privacy Policy already complies with all the principles of proper data collection:

Firstly, the Revised Privacy Policy sufficiently informs the data subjects of the nature, purpose, and extent of the data processing activity. The data subject is given the opportunity to read in full the Privacy Policy prior to accepting its terms and conditions. The party who seeks to adhere to the agreement is free to reject it entirely.

Secondly, the Revised Privacy Policy expressly declares that the processing of personal information is necessary for all purposes not prohibited by applicable law. The declared purpose in collecting personal information for online lending application is not prohibited by law, morals, or public policy. There is no law which prohibits the collection of personal information for the purpose of facilitating online lending services.

¹³⁵ *Id.* at 13-14. Emphasis supplied.

¹³⁶ *Id.* at 15.

¹³⁷ Memorandum of the Respondents, 01 March 2022, at 15, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

Lastly, the collection of personal information is not excessive because it adheres to well-defined standards in order to protect the rights of the data subject. The collection of the data subject's contact list is required only when the purpose is not contrary to law, such as for the purpose of character reference and identity verification, including instances of suspected fraud or identity theft, or for servicing the account of the data subject.¹³⁸

Pesopop prayed that the Commission nullify and set aside the temporary ban.¹³⁹

On 11 March 2022, the CID filed its Memorandum.¹⁴⁰ It reiterated the arguments found in its FFR.¹⁴¹ The CID stated that the Revised Privacy Policy submitted by Pesopop still does not conform with the principles of transparency, legitimate purpose, and proportionality.¹⁴²

In addition, the CID argued that if found liable, the penalty shall be imposed upon the responsible officers, who by their gross negligence, allowed the commission of the violations.¹⁴³ The CID stressed that Pesopop continued to make the app available during the pendency of the temporary ban on the processing of personal information imposed upon Pesopop.¹⁴⁴ Further, the CID stated that based on their submissions and the EnD's findings, Pesopop has not rectified its operations to comply with the DPA, its Implementing Rules and Regulations (IRR), the Loan-Related Transactions Circular, and the lawful orders and issuances of the Commission.¹⁴⁵

As to the individual respondents' liability, the CID explained that Pesopop's Board of Directors, despite their assertion that they have not actively participated in the processing of the data, have the duty to decide for the corporation, and as such, carry the duty of diligence.¹⁴⁶ Thus, the CID argued that "the violation of the corporation is a violation of the persons behind it, which are its officers or board."¹⁴⁷

¹³⁸ *Id.* at 16-17. Emphasis supplied.

¹³⁹ *Id.* at 19.

¹⁴⁰ Memorandum, 11 March 2022, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁴¹ *Id.*

¹⁴² *Id.* at 2.

¹⁴³ *Id.* at 8.

¹⁴⁴ *Id.* at 9.

¹⁴⁵ *Id.*

¹⁴⁶ Memorandum, 11 March 2022, at 9, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁴⁷ *Id.*

Lastly, the CID interposed that there is sufficient legal and factual basis for the issuance of an order for a permanent ban on processing of personal data against Pesopop for the following reasons:

First, Respondent willfully and deliberately violated the issuance of the Order for Temporary Ban on 12 August 2021, when Respondent still made available for download its application on several instances.

Second, despite the Respondent's assertions that it does not have any intention to violate any data privacy law, rules and regulations, issuances and will always consider the privacy rights of its customer supreme, **it failed to rectify its Privacy Policy's provisions to comply with the DPA and its IRR, and Circular 2020-01.**

In light of the Respondent Corporation's continued and willful violation of the Temporary Ban issued against it during the pendency of this case, and in order to preserve and protect the rights of the Respondent's Corporation's data subject from further processing, the CID respectfully recommends for an issuance of a Permanent Ban on processing of personal data, against the Respondent Corporation.¹⁴⁸

The CID prayed that the Commission find Pesopop liable for violations of Sections 11, 12, 13, 16, and 25 of the DPA.¹⁴⁹ Further, it prayed that the Commission find sufficient legal and factual basis for the issuance of an order for a permanent ban on processing of personal data against Pesopop.¹⁵⁰

On 31 March 2022, the Commission ordered Pesopop to show cause in writing why it should not be subject to contempt proceedings for failure to comply with its Order dated 12 August 2021 within ten (10) days from receipt of the Order.¹⁵¹ The Commission stated that:

Despite repeated orders from the Commission to take down the application, the application kept re-appearing on the list of applications available for download in the Google Play Store. The

¹⁴⁸ *Id.* at 10. Emphasis supplied.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 4.

Commission stresses that this is a blatant recurring violation of the Temporary Ban against Pesopop.¹⁵²

On the same day, the Commission directed the EnD to coordinate with Google LLC (Google), which operated Google Play, to determine the number of users who may have downloaded the app during the pendency of the temporary ban.¹⁵³

On 28 June 2022, Pesopop, through its new counsel, Vasig Abarquez Lumauig Abarquel Puno (VAL Law), filed its Entry of Appearance with Motion for Additional Time to File Reply/Comment.¹⁵⁴ Pesopop requested for an additional period of ten (10) days within which to file its Reply/Comment to the Show Cause Order.¹⁵⁵

On 11 July 2022, Pesopop replied to the Show Cause Order.¹⁵⁶ Pesopop manifested that the app was no longer available for download, installation, or use in the Google Play Store, Apple Store, and Huawei App Gallery.¹⁵⁷ It also reiterated its arguments from its previous submissions.¹⁵⁸

With regard to its alleged recurring violations, Pesopop explained that it had no intention to violate the temporary ban and it only allowed a limited launch of the app for its existing users upon the advice of its previous counsel:

Respondents, upon legal advice by previous counsel, allowed a limited launch of the PESOPOP application for existing users only for purposes of processing loans of EXISTING users, especially those who had pending obligations, and avoid incurring further losses from pre-existing liabilities. With no malicious intent to violate the Temporary Ban, Respondents only sought to ensure that EXISTING users can access the necessary information in order to fulfill their outstanding obligations. Otherwise put, new users could not have used the PESOPOP

¹⁵² Order, 31 March 2022, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁵³ Memorandum, 31 March 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁵⁴ Entry of Appearance with Motion for Additional Time to File Reply/Comment, 28 June 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁵⁵ *Id.* at 3.

¹⁵⁶ Reply (To the Show Cause Order dated 31 March 2022), 11 July 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁵⁷ *Id.* at 8.

¹⁵⁸ *Id.*

application. PESOPOP no longer processed any new information/data from new applicants in compliance with the Temporary Ban.¹⁵⁹

On 28 July 2022, the Commission issued an Order to the CID and Pesopop to appear for a clarificatory hearing on the alleged Pesopop's limited launch, on 11 August 2022.¹⁶⁰

On 11 August 2022, the Commission conducted the Clarificatory Hearing.¹⁶¹ Pesopop, through its counsel, explained that the limited launch was only for the purposes of servicing old users, and if a new user applies, the loan application will automatically be denied.¹⁶²

During the Clarificatory Hearing, the Commission ordered Pesopop and the individual respondents to submit the following information and documents:

1. Proof in relation the alleged process of automatically rejecting new loan applications during the "limited launch" that occurred while the Temporary Ban issued by the Commission was in effect;
2. Proof that the version of the Pesopop mobile application launched on a "limited" basis was for the sole purpose of processing payments for existing loan obligations;
3. Android Package Kit (APK) files for versions 1.5.1, 1.5.4, and 1.5.5 of the Pesopop mobile application;
4. Total number of users of the Pesopop mobile application;
5. Total number of users of the Pesopop mobile application with existing loan obligations;
6. Total number of times the Pesopop mobile application was downloaded during the "limited launch";
7. Copy of the Board Resolution of its equivalent indicating who decided to publish the Pesopop mobile application in Google Play Store and other platforms while the Temporary Ban was in effect.¹⁶³

¹⁵⁹ *Id.* at 9. Emphasis supplied.

¹⁶⁰ Order, 28 July 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁶¹ Transcript, 11 August 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁶² *Id.*

¹⁶³ Order, 11 August 2022, at 1-2, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

On 02 September 2022, Pesopop submitted its Compliance.¹⁶⁴ It submitted the following:

3.1. Video entitled “PESOPOP-NO LONGER AVAILABLE FOR NEW USERS.mp4” showing the process of automatically rejecting new loan applications, including rejecting new users, during the “limited launch” that occurred while the Temporary Ban issued by the Commission was in effect. As can be seen from the video, new applicants are not given any verification codes and will not be able to register. Specifically, those attempting to register for a new account are given a notification that states:

‘We have stopped the verification code service, so the new users are unable to fill in the code and register now.’

3.2. Video entitled “PESOPOP-NO LONGER AVAILABLE FOR EXISTING USERS.mp4” showing that the version of the Pesopop mobile application launched on a “limited” basis was for the sole purpose of processing payments for existing loan obligations. The video shows, among others, that the existing user received a loan amount, the fee incurred, and the amount to be repaid or already repaid. Further, the video shows that existing users cannot even be allowed to apply for new loans. Specifically, whenever existing users attempt to apply for a new loan, the user receives the following notification immediately:

‘Not supported during maintenance.’

3.3. Android Package Kit (APK) files for versions 1.5.1, 1.5.4, and 1.5.5 of the Pesopop mobile application.¹⁶⁵

Pesopop also manifested that it has twenty thousand nine hundred eighteen (20,918) users in total since its inception.¹⁶⁶ Out of which, fifteen thousand ten (15,010) users have existing and unpaid loan obligations.¹⁶⁷ Pesopop added that the app was downloaded eight thousand six hundred sixty-one (8,661) times by existing users during the limited launch.¹⁶⁸

Pesopop, however, was not able to submit any board resolution or document showing the approval of the “limited launch.”¹⁶⁹ It posited that it “only automatically implemented and launched the [app] upon

¹⁶⁴ Compliance, 02 September 2022, in In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

¹⁶⁵ *Id.* at 1-2.

¹⁶⁶ *Id.* at 2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

receiving notice that they could do so from their previous counsel.”¹⁷⁰ Then, Mr. JIS, its incorporator and director, approved and implemented the limited launch pursuant to the previous counsel’s advice.¹⁷¹

On 22 September 2022, the Commission directed the EnD to evaluate the APK files that Pesopop submitted and to provide the Commission an update on the EnD’s coordination with the Federal Trade Commission (FTC-USA) regarding the number of users who may have downloaded the app from Google Play Store while the temporary ban is in effect.¹⁷²

On 16 December 2022, the FTC-USA provided the EnD with information on the number of users who may have downloaded the app from the Google Play Store during the pendency of the temporary ban.¹⁷³

On 28 December 2022, the EnD reported to the Commission that there was a total of eighty-four thousand nine hundred seventy-eight (84,978) acquisition counts of the app from August 2021 to October 2022.¹⁷⁴ From this, there were seventy-three thousand four hundred five (73,405) acquisition counts during the “limited launch” or from October 2021 to December 2021.¹⁷⁵

In its report, the EnD narrated that on 02 January 2022, Pesopop informed the EnD that it already removed the app from the Google Play Store.¹⁷⁶ Despite this confirmation, there were still approximately two hundred eighty-eight (288) acquisition counts even after its removal based on information provided by FTC-USA.¹⁷⁷

¹⁷⁰ Compliance, 02 September 2022, at 2, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁷¹ *Id.* at 3.

¹⁷² Endorsement of NPC SS 21-008 *In re: Populus Lending Corporation (Pesopop) and its responsible officers*, 22 September 2022, at 2, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁷³ Letter from US Federal Trade Commission, 16 December 2021, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁷⁴ Supplemental Enforcement Assessment Report, 28 December 2022, at 7, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

¹⁷⁵ *Id.*

¹⁷⁶ 8th Supplemental Enforcement Assessment Report, 17 May 2023, at 3 *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2023).

¹⁷⁷ *Id.*

On 06 January 2023, the EnD requested additional information from Google, including the download count for new users and older users (re-installed or re-downloaded the application) and versions of the app installed or acquired from August 2021 onwards.¹⁷⁸

Based on the information provided by Google through FTC-USA, the EnD found that there were only forty-one thousand thirty-two (41,032) old-time users and this encompasses the number of users who have reinstalled or downloaded the app.¹⁷⁹ Thus, this contradicts Pesopop's claims during the Clarificatory Hearing that the alleged "limited launch" from October 2021 to December 2021 exclusively serves its users who already have existing obligations to Pesopop.¹⁸⁰ It also reiterated that Pesopop blatantly uploaded versions 1.5.4 and 1.5.5 during the pendency of the temporary ban.¹⁸¹

Issues

- I. Whether Pesopop committed violations of the DPA, including Unauthorized Processing of Personal Information and Sensitive Personal Information (Unauthorized Processing), and the Loan-Related Transactions Circular.
- II. Whether Pesopop's violation of the DPA warrants a recommendation for prosecution.

Discussion

The Commission finds that Pesopop violated Section 25 of the DPA or Unauthorized Processing. Pesopop committed multiple violations of the DPA before and during the effectivity of the temporary ban. Pesopop willfully and deliberately violated the Commission's Order dated 12 August 2021 when it made its app available for download in several instances. Taken together, these acts are sufficient to warrant a recommendation for prosecution.

¹⁷⁸ *Id.* at 6.

¹⁷⁹ *Id.* at 8.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 9.

I. Pesopop committed violations of the DPA, including Unauthorized Processing, and the Loan-Related Transactions Circular.

A. Pesopop committed Unauthorized Processing.

Pesopop violated Section 25 of the DPA (Unauthorized Processing) when it processed personal data, including the data subjects' phone contacts list, without lawful basis under the DPA or any existing law.

Section 25 of the DPA provides:

Section 25. Unauthorized Processing of Personal Information and Sensitive Personal Information. – (a) The unauthorized processing of personal information shall be penalized by imprisonment ranging from one (1) year to three (3) years and a fine of not less than Five hundred thousand pesos (Php500,000.00) but not more than Two million pesos (Php2,000,000.00) shall be imposed on persons who process personal information without the consent of the data subject, or without being authorized under this Act or any existing law.¹⁸²

In determining whether Unauthorized Processing occurred, three (3) elements must be established with substantial evidence:

1. The perpetrator processed the information of the data subject;
2. The information processed was personal information or sensitive personal information; and
3. The processing was done without the consent of the data subject, or without being authorized under the DPA or any existing law.¹⁸³

All three (3) requisites are present. The circumstances, when taken together, substantially demonstrate that Pesopop processed the personal and sensitive personal information of its data subjects, particularly their phone contacts list, without lawful basis.

¹⁸² An Act Protecting Individual Personal Information in Information and Communications Systems in the Government and the Private Sector, Creating for this purpose a National Privacy Commission, and For Other Purposes [Data Privacy Act of 2012], Republic Act No. 10173 § 25 (2012).

¹⁸³ In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS 21-006, 16 May 2022, at 31, available at <https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-21-006-2022.05.16-Wefund-Lending-Corporation-Decision-on-the-Main-Case-Final.pdf> (last accessed 24 October 2023).

1. Pesopop processed the information of its users.

The first requisite for Unauthorized Processing is that the perpetrator processed information of the data subjects.¹⁸⁴

The CID stated that Pesopop, through its app, processed the information of its users when it accessed the personal data of its users through app permissions such as READ_CONTACTS.¹⁸⁵

Section 3 of the DPA defines processing as follows:

Section 3. *Definition of Terms.* – Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

...

(j) Processing refers to any operation or any set of operations performed upon personal information including, but not limited to, the collection, recording, organization, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of data.¹⁸⁶

Pesopop's Privacy Policy states that Pesopop will process the personal data of its users:

Pesopop will Collect and Use of Information

...

Pesopop will collect your personally identifiable information when you register a Pesopop account, use other Pesopop products or services, access Pesopop pages, or participate in promotional or prize winning games. Pesopop also collects personally identifiable information from our business partners. When you register a Pesopop account, we will ask for your name, birthday and gender, in addition to your email address. Once

¹⁸⁴ *Id.*

¹⁸⁵ Fact-Finding Report, 10 June 2021, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

¹⁸⁶ Data Privacy Act of 2012, § 3 (j).

you are successfully registered with Pesopop, we will be able to identify you when you log in to the server.¹⁸⁷

Pesopop also explained that “the processing of personal data [is] only used for credit evaluation.”¹⁸⁸ It further provided that it follows a strict collection policy.¹⁸⁹ It stated:

Therefore, respondents respectfully assert that although there could have been a mistake in the data terms and privacy of respondent PesoPop, the latter in good faith did not use and/or was able to obtain excess information considering that the request for access of the phone contact list was limited to only five (5) numbers **solely used for character reference and that respondent PesoPop follows a strict collection policy without the use of harassment and/or excess of information.**¹⁹⁰

Thus, it is undeniable that Pesopop indeed processed the personal data of its users and potential borrowers.

2. Pesopop processed the personal and sensitive personal information of its users.

The second requisite for Unauthorized Processing is that the information processed was personal information or sensitive personal information.¹⁹¹

The CID stated that Pesopop, through its app, collects the user’s mobile number and requests for access to their storage, phone state, contacts, and location information.¹⁹²

Pesopop’s Privacy Policy also provides that it collects other information such as name, email address, birthday, and gender.¹⁹³ It states:

¹⁸⁷ Fact-Finding Report, 10 June 2021, at 3-4, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021). Emphasis supplied.

¹⁸⁸ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 3, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

¹⁸⁹ *Id.* at 4.

¹⁹⁰ *Id.* at 4. Emphasis supplied.

¹⁹¹ *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS 21-006, at 31.

¹⁹² Fact-Finding Report, 10 June 2021, at 2, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

¹⁹³ *Id.* at 3-4.

The Information We Collect

To our beloved customer, to avoid fraud. When you sign up for Pesopop account, in addition to your login username and password, we will also ask for your **name, email address, birthday, gender**. Need your authorization to agree to provided **phone book, camera, internet, location, list of your applications and any other information**.

We also need to collect your contact information. We will request the "Read Contacts" permission. If you agree to the authorization, we will scan and upload the contact list information to <https://api.pesopop.com:18062> using the most secure data transfer protocol (HTTPS). We will store your personal information through DES and AES encryption. Storage time will not exceed your usage time.¹⁹⁴

Section 3 of the DPA defines personal and sensitive personal information as:

Section 3. *Definition of Terms*. Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

...

(g) Personal information refers to any information whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.

...

(l) Sensitive personal information refers to personal information:

- (1) About an individual's race, ethnic origin, marital status, **age**, color, and religious, philosophical or political affiliations;
- (2) About an individual's health, education, genetic or sexual life of a person, or to any proceeding for any offense committed or alleged to have been committed by such person, the disposal of such proceedings, or the sentence of any court in such proceedings;
- (3) Issued by government agencies peculiar to an individual which includes, but not limited to, social security numbers,

¹⁹⁴ *Id.* Emphasis supplied.

- previous or current health records, licenses or its denials, suspension or revocation, and tax returns; and
- (4) Specifically established by an executive order or an act of Congress to be kept classified.¹⁹⁵

Undeniably, the name, gender, email address, birthday, information found in a user's storage, user's contacts, and user's location, when put together, will serve to identify a specific individual. Further, since the phone contacts list contain names and phone numbers, these may also be used to identify individuals other than the user. Thus, Pesopop processed the personal information of its users.

Further, the birthday of the user is considered sensitive personal information under Section 3 (l) of the DPA.¹⁹⁶ Thus, Pesopop likewise processed the sensitive personal information of its users.

Given these, Pesopop processed both personal and sensitive personal information of the users of its app, satisfying the second requisite for Unauthorized Processing.

3. Pesopop processed the personal and sensitive personal information of its users without their consent or lawful basis under the DPA or any existing law.

The third requisite is that the processing was done without the consent of the data subject, or without being authorized under the DPA or any existing law.¹⁹⁷

In this case, Pesopop processed personal and sensitive personal information without lawful basis.

Pesopop claims that it processes its users' personal data following the lawful basis of consent.¹⁹⁸ In its Motion for Reconsideration, it argued that all the elements of valid consent are present because the consent that it obtained from its users were "not bundled and [were]

¹⁹⁵ Data Privacy Act of 2012, § 3 (g) (l). Emphasis supplied.

¹⁹⁶ *Id.* § 3 (l).

¹⁹⁷ *In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers*, NPC SS 21-006, at 31.

¹⁹⁸ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 5, *in In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

voluntarily requested and provided as much time as the number of times access to information was requested.”¹⁹⁹ Pesopop stressed that its users will “always have a choice in giving consent to the gathering, access, processing, and storage of their personal data.”²⁰⁰ The CID, however, contended that Pesopop did not validly obtain the consent of the users of the app.²⁰¹

Personal information of a data subject may be processed when the data subject has given their consent to such processing.²⁰² Section 12 (a) of the DPA provides:

Section 12. *Criteria for Lawful Processing of Personal Information.* The processing of personal information shall be permitted only if not otherwise prohibited by law, and when at least one of the following conditions exists:

(a) **The data subject has given his or her consent[.]**²⁰³

Sensitive personal information of a data subject, as a general rule, shall not be processed.²⁰⁴ It is only permitted when the data subject consents to such processing or any of the other lawful criteria of processing under Section 13 of the DPA is present.²⁰⁵ Section 13 (a) of the DPA allows the processing of sensitive personal information when the data subject has given their consent to the processing:

Section 13. *Sensitive Personal Information and Privileged Information.* The processing of sensitive personal information and privileged information shall be prohibited, except in the following cases:

(a) **The data subject has given his or her consent**, specific to the purpose prior to the processing, or in the case of privileged information, all parties to the exchange have given their consent prior to processing[.]²⁰⁶

The DPA defines consent as follows:

¹⁹⁹ *Id.* at 4.

²⁰⁰ *Id.*

²⁰¹ Fact-Finding Report, 10 June 2021, at 9 *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

²⁰² Data Privacy Act of 2012, § 12 (a), § 13 (a).

²⁰³ *Id.* § 12 (a). Emphasis supplied.

²⁰⁴ *Id.* § 13.

²⁰⁵ *Id.* § 13.

²⁰⁶ *Id.* § 13 (a). Emphasis supplied.

Section 3. *Definition of Terms.* – Whenever used in this Act, the following terms shall have the respective meanings hereafter set forth:

...

(b) Consent of the data subject refers to any **freely given, specific, informed indication of will, whereby the data subject agrees to the collection and processing of personal information about and/or relating to him or her.** Consent shall be **evidenced by written, electronic or recorded means.** It may also be given on behalf of the data subject by an agent specifically authorized by the data subject to do so.²⁰⁷

Personal Information Controllers (PICs) who rely on consent as basis to process information must ensure that such consent is freely given, specific, informed, an indication of will, and evidenced by written, electronic or recorded means.²⁰⁸ Absent any of these requirements, the consent given is not valid.

Consent is freely given if the data subject was given a real choice on the processing of their personal data.²⁰⁹

The CID argued that the consent was not freely given.²¹⁰ It contended that the users of the app have “no choice but to accept all the terms and conditions provided by [Pesopop] and give consent for all the purposes for which [Pesopop] intends to use the personal data” otherwise, they cannot avail of Pesopop’s services.²¹¹

The premise of the CID’s argument is wrong. As the Commission previously held, for consent to be freely given, the data subject must be given a real choice where there is no risk of deception, intimidation,

²⁰⁷ *Id.* § 3 (b). Emphasis supplied.

²⁰⁸ Data Privacy Act of 2012, § 3 (b).

²⁰⁹ *VVC v. CJB.*, NPC 19-134, 10 December 2021, at 10, available at <https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-19-134-VVC-v.-CJB-Decision-2021.12.10.pdf> (last accessed 1 December 2023).

²¹⁰ Fact-Finding Report, 10 June 2021, at 9 *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

²¹¹ *Id.*

coercion or significant negative consequences if they do not consent to the processing.²¹²

Freely given consent does not mean that data subjects can, in all instances, choose not to consent to the processing of their personal data and still expect to be provided the service they want from the PIC. Assuming all the purposes for processing are legitimate and necessary to provide the service sought to be availed of and the personal information collected is proportional, a PIC's denial of service to data subjects who do not consent to the processing of their personal data is valid. There is nothing in the DPA and its IRR that can be construed to prohibit this. It is a finding that the purposes are not legitimate and necessary or the information collected is not proportional that makes the processing problematic, not the denial of service if the data subject does not consent.

On the other hand, there is informed consent when the data subject is made aware of the content, manner, and purpose of processing prior to the collection of their personal data or as soon as practicable and reasonable.²¹³

The CID stated that the Terms of Service or Loan Guarantee Agreement could not be found within the app.²¹⁴ The CID narrated that it only found the Privacy Policy of Pesopop after checking its website.²¹⁵

In this case, valid consent could not have been given by the data subjects because they were not sufficiently informed of the specific nature, purpose, and extent of the processing. As the Commission previously held, uninformed consent is not valid consent.²¹⁶

²¹² MNLC, Inc. v. IKP, NPC 19-528, 29 October 2020, at 17, available at https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-528-MNLC-v.-PXXX-Corporation.pdf (last accessed 04 January 2024).

²¹³ See National Privacy Commission, Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, rule IV, § 19 (a) (3) (2016).

²¹⁴ Fact-Finding Report, 10 June 2021, at 3, in *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

²¹⁵ *Id.*

²¹⁶ AMP v. HXXX Lending Technology Inc., NPC 19-621, 19 November 2020, at 6, available at https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-621-AMP-v.-HXXX-Lending.pdf (last accessed 1 December 2023).

A reading of the Privacy Policy shows that users need to agree to provide access to their phone book, camera, location, list of their applications and any other information that Pesopop requires.²¹⁷ It states:

Need your authorization to agree to provided phone book, camera, internet, location, list of your applications and any other information.

We also need to collect your contact information. **We will request the "Read Contacts" permission. If you agree to the authorization, we will scan and upload the contact list information** to <https://api.pesopop.com:18062> using the most secure data transfer protocol (HTTPS). We will store your personal information through DES and AES encryption. Storage time will not exceed your usage time.²¹⁸

Further, Pesopop's Privacy Policy contained multiple declarations that were contradictory to each other.²¹⁹

Pesopop Privacy Policy's multiple declarations, **"to avoid fraud"; "The data is used only for the credit review process and will not be shared with third-party organizations without your permission"; and "If you do not repay during the repayment period, we have the right to access and use the (sic) your personal contact information, including FB, Instagram, Google+, etc."**, are contradictory phrases that do not conform with the general privacy of transparency. The Notice/Policy fails to sufficiently and clearly inform the data subject of the extent of the processing of his/her personal data and how he/she can exercise his/her rights as a data subject.²²⁰

This is a violation of the general privacy principle of transparency, which requires the PIC to ensure that the data subject is aware of the nature, purpose, and extent of the processing of their personal data.²²¹ The principle of transparency similarly requires that these materials be easily accessible and understandable by the data subjects and should be in clear and plain language.²²² Section 18 (a) of the IRR provides:

²¹⁷ Fact-Finding Report, 10 June 2021, at 3-4, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

²¹⁸ *Id.* Emphasis supplied.

²¹⁹ *Id.* at 6.

²²⁰ *Id.* Emphasis supplied.

²²¹ Rules and Regulations Implementing the Data Privacy Act of 2012, rule IV, § 18 (a) (2016).

²²² *Id.*

Section 18. *Principles of Transparency, Legitimate Purpose and Proportionality.* The processing of personal data shall be allowed subject to adherence to the principles of transparency, legitimate purpose, and proportionality.

a. Transparency. **The data subject must be aware of the nature, purpose, and extent of the processing of his or her personal data**, including the risks and safeguards involved, the identity of personal information controller, his or her rights as a data subject, and how these can be exercised. **Any information and communication relating to the processing of personal data should be easy to access and understand, using clear and plain language.**²²³

The requirement to use clear and plain language means that information should be provided in as simple a manner as possible.²²⁴ The information should be concrete and definitive, leaving no room for different interpretations.²²⁵ As the Commission previously held:

The requirement to use clear and plain language does not mean using layman's terms to substitute technical words at the risk of not capturing the complex concepts they represent. Rather, this requirement means **that information should be provided in as simple a manner as possible**, avoiding sentence or language structures that are complex. **The information provided should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different interpretations** such as in the above-cited provision which uses the word 'any' several times, as well as wordings like 'including but not limited to'.²²⁶

Pesopop, as the PIC, should inform its users that it will process particular personal data for a specific and limited purpose.²²⁷ In addition to the fact that Pesopop's Privacy Policy is not accessible found within the app and the information was not provided at the time the data subject was asked to consent, the statements in the Privacy Policy are contradictory, leaving room for doubt on the specific purpose for which a user's data will be processed. Initially, the Privacy Policy states that information will be collected "to avoid fraud" or used

²²³ *Id.*

²²⁴ See *JRG v. CXXX Lending Corporation*, NPC Case No. 19-450, 09 June 2020, at 6, available at https://www.privacy.gov.ph/wp-content/uploads/2022/01/Decision_NPC-19-450-JRG-v.-CXXX.pdf (last accessed 3 November 2023).

²²⁵ In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS 21-006, at 34.

²²⁶ *Id.* Emphasis supplied.

²²⁷ *Id.* at 35.

only for the credit review process.²²⁸ The Privacy Policy, however, later states that “if you do not repay during the repayment period, we have the right to access and use your personal contact information, including FB, Instagram, Google+, etc.”²²⁹

The only explanation offered by Pesopop was that these were “purely unintentional and a result of an inadvertent and honest mistake.”²³⁰ It asserted that:

[A]lthough there could have been a mistake in the data terms and privacy of respondent PesoPop, the latter in good faith did not use and/or was able to obtain excess information considering that the request for access of the phone contact list was limited to only five (5) numbers solely used for character reference and that respondent PesoPop follows a strict collection policy without the use of harassment and/or excess of information.²³¹

As a result, the users or the data subjects were not able to make an informed decision on the processing of their personal data. They were not informed in a way that they could properly understand the specific nature, purpose, and extent of the processing the PIC is permitted to undertake. Thus, the consent given by the users was not informed consent.

As discussed earlier, absent any of the requirements for consent, the consent given is not valid. Because there was no informed consent, Pesopop cannot rely on consent as its lawful basis for processing the users’ personal data.

The Commission takes this opportunity to emphasize that the general privacy principles continue to apply regardless of the applicable lawful basis for processing.²³²

The CID argued that “the access, retention, and storing of a data subject’s phone contacts is considered a processing activity under the

²²⁸ Fact-Finding Report, 10 June 2021, at 3, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

²²⁹ *Id.*

²³⁰ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 3-4, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021). Emphasis supplied.

²³¹ *Id.* Emphasis supplied.

²³² *See* Data Privacy Act of 2012, § 11.

DPA, and as such, **it needs to have legitimate purpose as provided by Sections 12 and 13 of the DPA.**"²³³

The CID is correct in stating that the processing of a data subject's phone contacts list needs to have basis under Section 12 or 13 of the DPA. These sections, however, refer to the lawful bases for processing personal and sensitive personal information and not to the general privacy principle of legitimate purpose.²³⁴ As stated earlier, the general privacy principles continue to apply regardless of the applicable lawful basis for processing.²³⁵

The legitimate purpose principle requires that: (1) the purpose of the processing must be specified and declared to the data subject; and (2) the purpose must not be contrary to law, morals, or public policy.²³⁶

As discussed earlier, the first requisite of the legitimate purpose principle was not satisfied. The second requisite of the legitimate purpose principle requires the purpose to be within the limitations of the law, which should be understood to include the entire body of laws, rules, and regulations.²³⁷ Additionally, the purpose of the processing should not go against prevailing morals or run counter to public policy.²³⁸

In this case, Pesopop violated the Loan-Related Transactions Circular when it requested access to the users' entire phone contacts list for debt collection and failed to provide a separate interface for them to provide character references.

The CID alleged that Pesopop accessed and stored the phone contacts list of its users in violation of the Loan-Related Transactions Circular.²³⁹ Pesopop, in its Motion for Reconsideration, explained that:

²³³ Fact-Finding Report, 10 June 2021, at 8, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021). Emphasis supplied.

²³⁴ *See* Data Privacy Act of 2012, § 12-13.

²³⁵ *Id.* § 11.

²³⁶ Rules and Regulations Implementing the Data Privacy Act of 2012, Republic Act No. 10173, rule IV, § 18 (2016).

²³⁷ *MLF v. Grab Philippines*, NPC 19-142, 31 March 2022, at 8, *available at* <https://privacy.gov.ph/wp-content/uploads/2023/05/NPC-19-142-MLF-v.-Grab-Philippines-2022.03.31.-Decision.pdf> (last accessed 10 January 2024).

²³⁸ *Id.*

²³⁹ Fact-Finding Report, 10 June 2021, at 9, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021). Emphasis supplied.

In this case, although respondent PesoPop requested for the inclusion of the phone contact list, the **said list was limited to include five (5) persons from the contact list as character reference only**. In other words, respondent PesoPop **does not have access to the entire the phone contact list** of its clients and/or its potential users.

...

Therefore, respondents respectfully assert that **although there could have been a mistake in the data terms and privacy of respondent PesoPop, the latter in good faith did not use and/or was able to obtain excess information** considering that the request for access of the phone contact list was limited to only five (5) numbers solely used for character reference and that respondent PesoPop follows a strict collection policy without the use of harassment and/or excess of information.²⁴⁰

This explanation is insufficient and inconsistent with actual events that have led to numerous complaints filed with the NPC.

Section 3 (D) (4) of the Loan-Related Transactions Circular provides that:

Section 3. *Guidelines*. The processing of personal data for evaluating loan applications, granting loans, collection of loans, and closure of loan accounts shall be subject to the following general guidelines:

...

D. Where online apps are used for loan processing activities, LCs, FCs, and other persons acting as such shall be prohibited from requiring unnecessary permissions that involve personal and sensitive personal information.

...

4. Access to contact details in whatever form, such as but not limited to phone contact list or e-mail lists, the harvesting of social media contacts, and/or copying or otherwise saving these contacts for use in debt collection or to harass in any way the borrower or his/her contacts, are prohibited. **In all instances, online lending apps must have a separate interface where**

²⁴⁰ Notice of Entry of Appearance with Motion for Reconsideration, at 3-4, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021). Emphasis supplied.

borrowers can provide character references and/or co-makers of their own choosing.²⁴¹

Pesopop's processing of phone contacts lists violated the Loan-Related Transactions Circular because it required access to the users' phone contacts list and failed to provide a separate interface for character references. Thus, this violates the general privacy principle of legitimate purpose.

Further, Pesopop required access to the users' entire phone contacts list. This is not only contrary to the Loan-Related Transactions Circular but also goes against the general privacy principle of proportionality.

The proportionality principle requires that the processing must be adequate, relevant, suitable, and necessary, such that it is not excessive in relation to the declared and specified purpose.²⁴² As discussed in the Loan-Related Transactions Circular, online apps used for loan processing activities are prohibited from requiring unnecessary permissions which include access to contact details in whatever form.²⁴³

Pesopop's Privacy Policy stated that in case of non-payment during the repayment period, "[it has] the right to access and use [the user's] personal contact information, including FB, Instagram, Google+, etc."²⁴⁴ This is excessive in relation to the declared purpose of avoiding fraud and loan collection. It is likewise prohibited in the Loan-Related Transactions Circular.²⁴⁵

In sum, Pesopop committed Unauthorized Processing. It processed the personal data of its users without any lawful basis under the DPA or any existing law and in violation of the general privacy principles.

B. Despite the effectivity of the temporary ban, Pesopop committed Unauthorized Processing.

²⁴¹ National Privacy Commission, Guidelines on the Processing of Personal Data for Loan-Related Transactions, Circular No. 01, Series of 2020 [NPC Circ. No. 20-01], § 3 (A) (14 September 2020). Emphasis supplied.

²⁴² Data Privacy Act of 2012, § 11 (c)(d).

²⁴³ NPC Circ. No. 20-01, § 3 (A).

²⁴⁴ Fact-Finding Report, 10 June 2021, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021). Emphasis supplied.

²⁴⁵ NPC Circ. No. 20-01, § 3 (D) (4).

As argued by the CID in its Memorandum, Pesopop “willfully and deliberately violated the issuance of the Order for Temporary Ban on 12 August 2021, when Respondent still made available for download its application on several instances.”²⁴⁶

While the temporary ban was in effect, the EnD, during its monitoring activities, found that a new version of the app (version 1.5.4) was available for download from the Google Play Store.²⁴⁷ It was only after EnD sent two (2) letters ordering the app’s immediate takedown, that the app was removed from the Google Play Store.²⁴⁸ The EnD, however, on 06 December 2021, again discovered that a newer version of the app (version 1.5.5.) was available and accessible for download, prompting it to send a third letter to Pesopop.²⁴⁹

As to the first two letters it received, Pesopop mainly asserted that the temporary ban imposed upon it was *void ab initio* based on the absence of two requisites, (1) that it is necessary to protect national security, or public interest, or to preserve and protect the rights of data subjects, and (2) the posting of the required bond.²⁵⁰

As the Commission explained in its Order dated 27 January 2022, the temporary ban is valid because of the existence of undisclosed permissions that violated the data subjects’ right to be informed.²⁵¹ Further, NPC, as a government agency, is exempt from filing fees and the posting of the required bond.²⁵² The Commission also found that Pesopop has not sufficiently addressed the reasons for the issuance of the temporary ban.²⁵³

As to its recurring violations, Pesopop explained that it had no intent to violate the temporary ban and that it only “allowed a limited launch

²⁴⁶ Memorandum, 11 March 2022, at 10, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

²⁴⁷ 8th Supplemental Enforcement Assessment Report, 17 May 2023, at 9, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2023)

²⁴⁸ *Id.* at 1.

²⁴⁹ *Id.*

²⁵⁰ Memorandum of the Respondents, 01 March 2022, at 6-7, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

²⁵¹ Resolution, 27 January 2022, at 8, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

²⁵² *Id.*

²⁵³ *Id.* at 9.

of the [app] for existing users only for purposes of processing loans of existing users, especially those who had pending obligations, and avoid incurring further losses from pre-existing liabilities.”²⁵⁴

Pesopop’s defenses lack merit. First, intent to violate is not an element of Unauthorized Processing. Intent is completely immaterial.

Second, Pesopop explained that it only allowed a limited launch for its existing users.²⁵⁵ This was, however, found to be untrue by the EnD, supported by information from Google and FTC-USA.²⁵⁶ In fact, there were seventy-three thousand four hundred five (73,405) acquisition counts by new users during the “limited launch.”²⁵⁷ Nevertheless, the temporary ban did not distinguish between existing and new users. The temporary ban was clear in stating that:

[P]ursuant to the ORDER FOR TEMPORARY BAN, Respondent Populus Lending Corporation shall:

1. Immediately take down its online lending application, Pesopop, to ensure that it is no longer available for download, installation or use by data subjects; and
2. **Stop personal data processing activities, including those activities outsourced to third parties, where the processing operations involves use of information from the phonebook, directory, and contact list of data subjects, disclosure of false or unwarranted information, and other unduly intrusive personal data processing methods.**²⁵⁸

Pesopop also argued that the temporary ban should only apply to processing of personal data and not to the whole app.²⁵⁹ Pesopop, however, failed to delineate and provide evidence on which parts of the app did not involve the processing of personal data.

²⁵⁴ Reply (To the Show Cause Order dated 31 March 2022), at 9, 11 July 2022, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

²⁵⁵ *Id.*

²⁵⁶ 8th Supplemental Enforcement Assessment Report, 17 May 2023, at 8, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2023).

²⁵⁷ *Id.*

²⁵⁸ Order, 12 August 2021, at 10-11, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021). Emphasis supplied.

²⁵⁹ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

The Commission finds that Pesopop repeatedly violated its Order dated 12 August 2021 imposing a temporary ban. Despite repeated orders from the Commission to take down the app, the app kept reappearing on the list of applications available for download in the Google Play Store.²⁶⁰ While the Commission has given Pesopop several chances to explain, Pesopop's only defense was the so-called "limited launch" that was discovered to be contradictory to the findings of the EnD and the information provided by Google and FTC-USA.²⁶¹

As earlier established, even before the imposition of the temporary ban, Pesopop processed personal data without the consent of its data subjects. It continued doing so despite the imposition of the temporary ban. Thus, without any lawful basis to process the information during the temporary ban, Pesopop likewise committed Unauthorized Processing during the effectivity of the temporary ban.

C. Pesopop's Revised Application and Privacy Policy continues to violate the DPA and the Loan-Related Transactions Circular.

Pesopop contended that it is no longer liable for violations of the DPA, its IRR, and the Commission's issuances since it has already revised its Privacy Policy to comply with the general privacy principles.²⁶²

As the Commission held in its Resolution dated 27 January 2022, Pesopop has not sufficiently addressed the reasons for the issuance of the temporary ban and rectified its operations to comply with the DPA, its IRR, and the Loan-Related Transactions Circular.²⁶³

In compliance with the Order dated 28 September 2021, Pesopop submitted its Revised Privacy Policy, Revised Terms and Conditions of Service, Revised Application, among other documents.²⁶⁴

²⁶⁰ Order, 31 March 2022, at 3, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

²⁶¹ 8th Supplemental Enforcement Assessment Report, 17 May 2023, at 8, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2023).

²⁶² Memorandum of the Respondents, 01 March 2022, at 7, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

²⁶³ Resolution, 27 January 2022, at 9 and 16, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

²⁶⁴ Motion to Admit with Compliance, 20 October 2021, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

The EnD, however, observed that the Revised Privacy Policy does not fully abide by Section 16 of the DPA.²⁶⁵ The EnD determined the following:

[T]he revised Privacy Policy failed to:

1. discuss any methods utilized for automated access and the logic involved;
2. provide its contact details for except for an e-mail address: pesopop.cs@cashrocket.com.ph, which the users can use if they want to request for an update of information;
3. specify the retention period for data collected, except for generic terms stated like:
 - a. "Storage time will not exceed your usage time."
And
 - b. "We will only keep your information for as long as we are either required to by law or as is relevant and material for the purposes for which it was collected."; and
4. discuss the existence of rights of data subjects, except the right to update their personal data or the right to rectify.

Upon comparison of the Privacy Policies in the different versions of the app, it can be observed that the respondent made several changes from the Privacy Policy in the 1.5.1 version (the one investigated by CID) and Policies in the later versions, which are all the same. **Despite the changes, however, the revised Privacy Policy still lacks the required information mandated by the DPA and its IRR.**

Further, the policy also failed to provide details on its use of profiling, automated processing, automated decision-making, or credit rating or scoring, and the categories of data considered in deciding whether to approve or disapprove a loan application. Despite informing its users that it will use the information it collects to prevent fraud, credit risk evaluation management, debt collection, identity verification, and anti-money laundering, activities that obviously involves profiling, credit rating or scoring.²⁶⁶

Pesopop argued that its Revised Privacy Policy "expressly declares that the processing of personal information is necessary for all purposes not prohibited by applicable law."²⁶⁷ As discussed earlier,

²⁶⁵ Resolution, 27 January 2022, at 11, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

²⁶⁶ *Id.* at 12-13. Emphasis supplied.

²⁶⁷ Memorandum of the Respondents, 01 March 2022, at 9, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022).

under the transparency principle, Pesopop should inform its users that it will process particular personal data for a specific and limited purpose.²⁶⁸ The statement “necessary for all purposes not prohibited by applicable law” is just another way of saying that Pesopop can do anything that can legally be done under Philippine law. Being neither specific nor limited, this violates the general privacy principle of transparency.

Further, the EnD discovered that Pesopop’s submissions show that the app still contains the undisclosed permissions identified in the FFR:

Based on the screenshots of the revised application submitted by Populus Lending Corporation, it can be deduced that the same dangerous permissions (Phone, Location, Storage and Camera) are still present.

The ‘Notice’ found in the application shows that the Contact list is one of the permissions needed to start the loan application. However, it was not shown in the screenshots the specific part where the application asks for the Contacts permission during the collection of information or loan application process.

It can also be seen that Step 4, where the app asks for contact references based on the simulation of other versions, is missing in the attached screenshots as Step 5 is shown after Step 3. Thus, it cannot be verified whether the revised app offered a separate interface where borrowers can provide character references and/or co-makers of their own choosing as required by the NPC Circular 20-01.

Further, the Division cannot verify if the revised application, which requires access to camera, turn off such permission by default, or at the very least, prompt the borrowers through appropriate means, i.e. just-in-time, pop-up notices, etc. that they may already turn off or disallow such permission as the same is no longer necessary for the operation of the application, after use during loan application or account creation.²⁶⁹

Aside from these, the EnD also found that the Revised Application still has access to the contacts list of the users of the app:

Consequently, it can be assessed, based on the statement made in their revised Privacy Policy, that the Revised Application

²⁶⁸ In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS 21-006, at 35.

²⁶⁹ Resolution, 27 January 2022, at 14-15, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2022). Emphasis supplied.

indeed still have access to the contacts of the user's phone, as stated:

We will request you to 'Read Contacts' permission. If you agree to the authorization, we will scan and upload the contact list information to <https://api.pesopop.com:18062> using the most secured data transfer protocol (HTTPS). We will store your personal information through DES and AES encryption.

Storage time will not exceed your usage time.

We will request contact list limited to five (5) phone contacts for character reference purpose and identity verification. **By giving us your home and/or mobile phone number, we have your permission to contact you or the phone contacts you provided us.** This shall allow us to use text messaging, artificial or pre-recorded voice messages, and automatic dialing technology, for all purposes not prohibited by applicable law. We may also send an email to any address where we reasonably believe we can contact you (include the contact list). Some of the purposes for calls and messages include suspected fraud or identity theft; obtaining information; transactions on or servicing of your account; and collecting on your account or collecting the delinquent account.

However, it was not shown in the Revised Application screenshots submitted, the supposed 'Step 4' where users will choose character reference from their phone contact list. But, it should be noted that the app versions 1.5.4 and the 1.5.5. currently available in Google Play Store, have these features.

...

Clearly, the app's access to the phone contacts, though limited to five (5) contacts for character reference is a violation of the said circular, especially that the contact lists are not only for purpose of character verification but will also be used to contact them for debt collection as stated in the revised Privacy Policy:

By giving us your home and/or mobile phone number, we have your permission to contact you or the phone contacts you provided us. This shall allow us to use text messaging, artificial or prerecorded voice messages, and automatic dialing technology, for all purposes not prohibited by applicable law. **We may also send an email to any address where we reasonably believe we can contact you (include the contact list).** Some of the purposes for calls and messages include suspected fraud or identity theft;

obtaining information; transactions on or servicing of your account; and collecting on your account or collecting the delinquent account.²⁷⁰

This practice does not only violate the Loan-Related Transactions Circular but also Memorandum Circular 18, Series of 2019 of the Securities and Exchange Commission (SEC).

The SEC Memorandum Circular prohibits unfair debt collection practices of financial and lending companies.²⁷¹ Section 1(h) of the SEC Memorandum Circular states:

Section 1. *Unfair Collection Practices.* F[inancing] C[ompanies], L[ending] C[ompanies], and T[hird] P[arty] S[ervice] P[rovider]s hired by them may resort to all reasonable and legally permissible means to collect amounts due them under the loan agreement, provided that, in the exercise of their rights and performance of their duties, they must observe good faith and reasonable conduct and refrain from engaging in unscrupulous and untoward acts. 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:

...

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.²⁷²

To reiterate, the legitimate purpose principle requires that the purpose for processing be within the limitations of the law.²⁷³ This should be understood to include the entire body of laws, rules, and regulations, and not just the DPA, its IRR, and the Commission's issuances.²⁷⁴

Pesopop's access and use of the phone contacts list is an unfair debt collection practice, which is prohibited by the SEC Memorandum Circular. Pesopop's violation of the SEC Memorandum Circular, even

²⁷⁰ *Id.* at 15-16. Emphasis supplied.

²⁷¹ Securities and Exchange Commission, Prohibition on Unfair Debt Collection Practices or Financing Companies (FC) and Lending Companies (LC), Memorandum Circular No. 18, Series of 2019 [SEC M.C. No. 19-18 (19 August 2019)].

²⁷² *Id.* § 1 (h).

²⁷³ *MLF v. Grab Philippines*, NPC 19-142, at 8.

²⁷⁴ *Id.*

if it is an issuance from a different government agency, and the Loan-Related Transactions Circular, renders its purpose for processing as illegitimate. Thus, Pesopop's access and use of the phone contacts list go against the general privacy principle of legitimate purpose.

Given all these, despite the changes to its app and Privacy Policy, Pesopop still blatantly violated the DPA and the Loan-Related Transactions Circular.

II. Pesopop's violation of the DPA warrants a recommendation for prosecution. The penalty shall be imposed upon the responsible officers who participated in the commission of the offense.

Having established that Pesopop committed Unauthorized Processing before and during the effectivity of the temporary ban, the Commission proceeds to determine whether Pesopop's Board of Directors and corporate officers are liable based on Section 34 of the DPA.

The DPA imposes criminal penalties on specific offenses, which are imposed by courts of law after the conduct of a criminal trial.²⁷⁵ Upon finding of a violation, the Commission may recommend to the Department of Justice the prosecution and imposition of penalties on the violations enumerated under the DPA.²⁷⁶ These unlawful acts provided in Sections 25 to 32 are unauthorized processing of personal or sensitive personal information, processing personal or sensitive personal information for unauthorized purposes, accessing of personal or sensitive personal information, unauthorized access or intentional breach, improper disposal of personal or sensitive personal information, concealment of security breaches involving sensitive personal information, malicious disclosure, and unauthorized disclosure.²⁷⁷ If the PIC or Personal Information Processor (PIP) is a juridical person, then the penalties are imposed on its responsible officers.²⁷⁸

²⁷⁵ Data Privacy Act of 2012, §§ 25-37.

²⁷⁶ *Id.* § 7 (i).

²⁷⁷ *Id.* §§ 23-32.

²⁷⁸ *Id.* § 34.

Corporations and other juridical entities cannot be prosecuted for crimes under Philippine law.²⁷⁹ It is an established principle in criminal law that:

Only natural persons can be the active subject [the criminal] because of the highly personal nature of the criminal responsibility.

Since a felony is a punishable act or omission which produces or tends to produce a change in the external world, it follows that **only a natural person can be the active subject [the criminal] of a crime, because he alone by his act can set in motion a cause or by his inaction can make possible the completion of a developing modification in the external world.**²⁸⁰

Specific to violations committed by a corporation, the Revised Corporation Code provides that:

Section 171. *Liability of Directors, Trustees, Officers, or Other Employees.* If the offender is a corporation, the penalty may, at the discretion of the court, be imposed upon such corporation and/or upon its directors, trustees, stockholders, members, officers, or employees **responsible for the violation or indispensable to its commission.**²⁸¹

Jurisprudence provides that corporations have a separate and distinct personality from its officers:

Bicol Gas is a corporation. As such, it is an entity separate and distinct from the persons of its officers, directors, and stockholders. It has been held, however, that **corporate officers or employees, through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime.**²⁸²

Thus, as held by the Supreme Court, “[a] corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable.”²⁸³ Certain special laws provide for the particular officers

²⁷⁹ See *People v. Tan Boon Kong*, G.R. L-35262 (1930).

²⁸⁰ LUIS B. REYES, *THE REVISED PENAL CODE CRIMINAL LAW BOOK 1* 505 (2012). Emphasis removed. Emphasis supplied.

²⁸¹ An Act Providing for the Revised Corporation Code of the Philippines [Revised Corporation Code], Republic Act No. 11232, § 171 (2019). Emphasis supplied.

²⁸² *Espiritu Jr. v. Petro Corporation*, G.R. No. 170891 (2009). Emphasis supplied.

²⁸³ *People v. Tan Boon Kong*, G.R. L-35262 (1930).

who shall be held responsible for corporate crimes.²⁸⁴ In the DPA, this is specified in Section 34:

Section 34. *Extent of Liability.* If the offender is a corporation, partnership or any juridical person, **the penalty shall be imposed upon the responsible officers, as the case may be, who participated in, or by their gross negligence, allowed the commission of the crime.** If the offender is a juridical person, the court may suspend or revoke any of its rights under this Act. If the offender is an alien, he or she shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties prescribed. If the offender is a public official or employee and he or she is found guilty of acts penalized under Sections 27 and 28 of this Act, he or she shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.²⁸⁵

Therefore, Section 34 supplies the gap in Sections 25 to 32 of the DPA by specifying that the officers of erring corporations are the natural persons that may be held responsible for such violations and will be the accused in the criminal case that will be filed.²⁸⁶

As the Commission has emphasized in previous decisions, for juridical entities, a violation of Section 25 does not automatically result in a recommendation for prosecution.²⁸⁷ Rather, there is a need to identify the proper responsible officers that shall be accused in the criminal case.²⁸⁸

Section 34 of the DPA explicitly states that a responsible officer can be subject to the imposable penalties in two instances: (1) participation in the commission of the crime, or (2) allowing the commission of the violation through gross negligence.²⁸⁹

The clause “who participated in, or by their gross negligence” should be viewed in relation to the acts of the responsible officers that reasonably caused the violation, without which the violation would

²⁸⁴ JOSE R. SUNDIANG, SR. & TIMOTEO B. AQUINO, REVIEWER ON COMMERCIAL LAW 60 (2019).

²⁸⁵ Data Privacy Act of 2012, § 34. Emphasis supplied.

²⁸⁶ In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS 21-006, at 40.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ Data Privacy Act of 2012, § 34.

not have occurred.²⁹⁰ Ultimately, however, this shall be applied on a case-to-case basis.²⁹¹

The Commission has previously defined the phrase “participated in” as follows:

The term “participated in,” as found in Section 34 of the DPA, requires that **the responsible officers committed acts that reasonably caused the violation, without which the violation would not have occurred.** As such, the instance of “participated in” contemplates a situation wherein the officers and employees that will be recommended for prosecution are “responsible” for **and the root cause of the violation of the DPA in such a way that if they had not committed certain acts, then the violation would not have transpired.** Examples of this instance cover situations wherein the responsible officer directs the execution of the act resulting in the violation or through his acts, reasonably caused the commission of the violation without which such violation would not have occurred. Thus, a sense of causation is essential when determining if the responsible officers may be held liable based on participation.²⁹²

Given these, the first ground or “participation in the commission of the crime” has three elements:

1. There is an act that reasonably caused the violation;
2. The violation would not have occurred without the act;
3. The person:
 - a. exercised a certain degree of responsibility over the act that caused the violation; or
 - b. whose actions were indispensable to the commission of the crime.²⁹³

In this case, individual respondents RCJ, FLB, JIS, MM, and WL, in Pesopop’s Motion for Reconsideration, argued that they did not actively participate in the processing of personal data of its clients.²⁹⁴ They claimed that upon discovery of the Order dated 12 August 2021, they “immediately set a meeting to discuss and instruct the management of Pesopop to immediately review and amend the data

²⁹⁰ In re: Wefund Lending Corporation (JuanHand) and its Responsible Officers, NPC SS 21-006, at 41.

²⁹¹ *Id.*

²⁹² *Id.* at 43-44. Emphasis supplied.

²⁹³ See Revised Corporation Code, § 171; Data Privacy Act of 2012, § 34.

²⁹⁴ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 5, *in* In re: Populus Lending Corporation and its Responsible Officers, NPC SS 21-008 (NPC 2021).

privacy terms and conditions to conform to the provision of the Data Privacy Act of 2012.”²⁹⁵ Further, they asserted that there was no allegation nor proof of gross negligence, fraud, bad faith and malice.²⁹⁶

It can no longer be said, however, that the individual respondents, as Pesopop’s officers and directors, did not participate in the commission of these violations. Pesopop repeatedly violated the temporary ban by making its app available for download in several instances during the effectivity of the temporary ban.

Applying the elements discussed earlier, there were acts that caused the violation, which was making the app available for download or the “limited launch” during the effectivity of the temporary ban and the revision of the app and policies. These acts were necessary for the violation to occur. Finally, it is the officers and directors who exercised a certain degree of responsibility over the limited launch and revisions which caused the violation of the temporary ban.

First, as stated by Pesopop in its Compliance, Mr. JIS, one of the individual respondents, as incorporator and director, approved and implemented the so-called “limited launch” which it argued was the reason why the app was made available for download during the temporary ban.²⁹⁷

Second, Pesopop explained that upon discovery of the individual respondents of the Commission’s Order imposing the temporary ban, they “immediately set a meeting to discuss and instruct the management of Pesopop to immediately review and amend the data privacy terms and conditions to conform to the provision of the [DPA].”²⁹⁸ Pesopop also stated that the individual respondents have continuously revised the Privacy Policy to comply with the Commission’s Orders.²⁹⁹ As earlier established, however, the Commission found the Revised Application and Privacy Policy not only wanting but violative of the DPA and the Loan-Related Transactions Circular.

²⁹⁵ *Id.* at 5-6.

²⁹⁶ *Id.* at 6.

²⁹⁷ Compliance, 02 September 2022, at 3, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

²⁹⁸ Notice of Entry of Appearance with Motion for Reconsideration, 03 September 2021, at 5-6, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2021).

²⁹⁹ Memorandum of the Respondents, 01 March 2022, at 15, *in* *In re: Populus Lending Corporation and its Responsible Officers*, NPC SS 21-008 (NPC 2022).

These show that the individual respondents, as directors and officers of Pesopop, directed both the relaunching of the app and revision of the app and policies during the temporary ban. The only conclusion then is that they allowed the repeated violations to happen which led to the commission of Unauthorized Processing during the effectivity of the temporary ban.

Even assuming that the individual respondents did not directly participate in the commission of Unauthorized Processing, their failure to prevent these acts, given the repeated nature and gravity of the violations, is tantamount to gross negligence.

The Supreme Court has consistently defined gross negligence as:

[N]egligence characterized by the want of even slight care, or **by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally**, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.³⁰⁰

Despite the imposition of the temporary ban and the repeated reminders from the EnD, the app remained continuously accessible. This continuous availability demonstrates the inaction of the individual respondents, which amounts to gross negligence. Thus, they could still be held liable for Unauthorized Processing based on their gross negligence.

Given the totality of the evidence presented, the Commission finds that the present case warrants a recommendation for prosecution.

The Commission emphasizes that PICs are accountable for the protection of the personal information of individuals and for the observation of the obligations under the DPA. At the core of these obligations are the general privacy principles. Following this, any person or entity that processes information should process information only for legitimate purposes that have been made known

³⁰⁰ Fernandez v. Office of the Ombudsman, G.R. No. 193983, 14 March 2012. Emphasis supplied.

to the data subject.³⁰¹ They should only process as much information as is needed to achieve their clearly defined and stated business purposes or to comply with the provisions of law or regulation.³⁰²

WHEREFORE, premises considered, this Commission:

1. **FINDS** that Respondents Populus Lending Corporation (Pesopop) and its directors and officers, namely RCJ, FLB, JIS, MM, and WL, as responsible officers, violated Section 25 of Republic Act No 10173 or the Data Privacy Act of 2012 (DPA); and
2. **FORWARDS** this Decision and a copy of the pertinent case records to the Secretary of Justice and **RECOMMENDS** the prosecution of the responsible officers for Unauthorized Processing of Personal or Sensitive Personal Information under Section 25 of the DPA.

SO ORDERED.

City of Pasay, Philippines.
26 September 2023.

Sgd.
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

WE CONCUR:

Sgd.
JOHN HENRY D. NAGA
Privacy Commissioner

³⁰¹ KGR v. BB, et. al., CID 18-E-040, 12 May 2020, at 5, *available at* <https://privacy.gov.ph/wp-content/uploads/2023/05/CID-18-E-040-KGR-v.-BB-et-al.-Decision-2020.05.12.pdf> (last accessed 04 December 2023)

³⁰² *Id.*

Sgd.
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National Privacy Commission