

This Settlement Agreement ("Agreement") is entered into between the United States, acting through the U.S. Attorney's Office for the Northern District of California ("United States"), and LendingClub Corporation ("LendingClub" or "the company"). The United States and LendingClub are collectively referred to as "the Parties."

RECITALS

A. LendingClub operates a "peer to peer" online lending marketplace platform that facilitates loans between borrowers and investors. Prospective borrowers apply for loans using the online platform, and upon acceptance of the loan applications, investors can use the online platform to fund the loans.

B. LendingClub operates nationwide and is headquartered and with a principal place of business in San Francisco, California.

C. The Relevant Period for purposes of this Agreement is January 2009 through September 2010.

D. During the Relevant Period, LendingClub's online platform facilitated loans between borrowers seeking unsecured personal loans, between \$1,000 and \$25,000, and investors looking to indirectly fund these loans in amounts as low as \$25.

E. After receiving a borrower's application, LendingClub evaluated the borrower's creditworthiness and either declined the application or recommended origination of a loan on certain terms to WebBank, a FDIC-insured, Utah-chartered industrial bank ("WebBank"). All loans on the platform were issued by WebBank. After issuing a loan, WebBank sold and assigned the loan to LendingClub in exchange for the principal amount of the loan. LendingClub would then sell the loan to investors on the platform.

F. The obligations of LendingClub and WebBank with respect to loan origination and sales activities were set forth in a series of agreements, including a Loan Sale Agreement

dated December 10, 2007 and amended on October 8, 2008, and a Loan Account Program Agreement dated December 10, 2007, and amended on April 30, 2008 and October 8, 2008.

- a. The Loan Account Program Agreement called for WebBank to create and approve a Credit Policy, and for LendingClub to determine whether applicants met the eligibility criteria set forth in the Credit Policy. The Agreement provided that LendingClub had no discretion to override the Credit Policy with respect to any loan application. The Agreement required LendingClub to deny loan applications that did not satisfy the Credit Policy criteria. LendingClub's Credit Department reviewed, approved, and declined loan applications.
- b. The Loan Account Program Agreement called for LendingClub to send WebBank a request to issue loans to applicants whose applications satisfied the Credit Policy criteria. This request was made by means of a Funding Statement that listed the number of loans to be issued and their value, as well as other information necessary for the transfer of loan proceeds. LendingClub provided a Funding Statement to WebBank on each "Funding Date," which the agreement defined as the business day on which any pending loan application was approved.
- c. LendingClub provided WebBank with a series of representations and warranties effective as of each Funding Date. In particular, LendingClub represented that, as of each loan's Funding Date: (1) to the best of its knowledge, all information in the borrower's loan application was true and correct; and (2) each borrower listed on the Funding Statement was eligible for a loan under the Credit Policy.

d. As part of the loan origination process, LendingClub did not supply WebBank with the loan applications, nor did WebBank undertake a secondary review to confirm that borrowers were eligible for loans under the Credit Policy. Instead, WebBank relied on the representations and warranties made by LendingClub.

G. The United States contends that it has certain civil claims against LendingClub specified in Paragraph 3 of the Terms and Conditions section below, including those under the Financial Institution Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. § 1833a. The United States contends that these civil claims are predicated on LendingClub’s violations of 18 U.S.C. § 1014 (false statements to financial institutions), 18 U.S.C. § 1343 (wire fraud), and 18 U.S.C. § 1344 (financial institutions fraud) during the Relevant Period.

H. “Covered Conduct” as used herein is defined as three schemes that the United States contends LendingClub executed during the Relevant Period: (1) the approval of “TP” loans; (2) the approval of “CEO-Approved” loans; and (3) the approval of certain “Friends and Family” loans. All three schemes fraudulently increased LendingClub’s volume of loan originations through approval of loan applications from borrowers who did not satisfy the Credit Policy.

(1) TP Loans

- a. In early 2009, LendingClub began a “Test Proposal” program. The program’s stated purpose was to test the effectiveness of certain criteria in the Credit Policy.
- b. In the Test Proposal 1, or “TP1” program, LendingClub approved loan applications from borrowers who did not meet certain criteria in the Credit Policy, including criteria relating to the length and breadth of the borrower’s credit history. These loans were initially declined by LendingClub’s Credit Department

- for failure to satisfy the Credit Policy, then subsequently approved as "TP1" loans. The TP1 program was in effect for two weeks in January 2009. Executive management at LendingClub, including the company's founder and then-Chief Executive Officer ("CEO"), approved the TP1 program, and the then-CEO personally approved loans originated under the program.
- c. The Test Proposal 2, or "TP2" program, was conceived as a follow-on program in February 2009. Under the TP2 program, LendingClub again approved loan applications from borrowers who did not meet certain criteria in the Credit Policy, including criteria relating to the length and breadth of the borrower's credit history. These loans were initially declined by the company's Credit Department for failure to satisfy the Credit Policy, then subsequently approved as "TP2" loans. Executive management at LendingClub, including the company's then-CEO, approved the TP2 program, and the company's then-CEO again personally approved loans originated under the program.
- d. The TP2 program was initially designed to last for two weeks in February 2009. However, at the end of the two-week period, LendingClub's then-CEO directed that the program continue "until further notice." The company ultimately continued approving loans under the TP2 program for another year and a half, until at least September 2010.
- e. Approximately 13% of the loans originated in 2009 were TP1 or TP2 loans, and TP2 loans comprised approximately 14% of loan origination volume during March to July 2010. It was known within the company that the purpose of the TP2 program was to increase loan origination volume by subsequently approving loans that were initially declined by the Credit Department.

- f. LendingClub's executive management acknowledged that TP2 loans performed worse than standard loans that were approved by the Credit Department. In August 2009, the then-CEO noted in an email that "we know [TP2 loans] will underperform." In September 2009, employees in the Credit Department expressed concern that the company was "doing our investors a disservice" because the TP2 loans were listed on the company's platform as "approved" even though they were initially declined by the Credit Department. The then-Chief Operating Officer responded that "the performance on these loans is certainly worse, but not terrible." An analysis by the Credit Department in September 2010 found that the early delinquency rate for TP2 loans originated between March and July 2010 was "2X higher than the average."
- g. LendingClub did not advise WebBank of the existence of the TP1 or TP2 programs, nor did it seek approval from WebBank to override the Credit Policy or conduct the programs.

(2) CEO-Approved Loans

- a. Throughout 2009, LendingClub's then-CEO approved loans for borrowers whose applications were initially declined by the company's Credit Department ("CEO-Approved loans"). Many of these loans did not meet the income requirements in the Credit Policy, and were initially declined either because: (1) the borrower's pre-loan or post-loan debt-to-income ("DTI") ratio exceeded the thresholds in the Credit Policy; (2) the borrower's verified income was less than the income stated by the borrower on the loan application, such that the DTI ratio, when calculated using the verified income, exceeded the threshold in the Credit Policy; or (3) the borrower's income could not be verified.

- b. The number of CEO-Approved loans grew drastically in December 2009, as LendingClub sought to meet its reported goal for monthly loan originations. In the last two weeks of December 2009, over 18% of the loans approved by LendingClub were CEO-Approved loans.
- c. LendingClub did not advise WebBank of the existence of the CEO-Approved loans, nor did it seek approval from WebBank to override the Credit Policy. It also did not notify WebBank that the verified income for some borrowers was less than the income stated in the borrower's loan application, or that certain borrowers' income could not be verified. In instances where the borrower's verified income was less than stated income, LendingClub nonetheless listed the loan on its platform with a DTI that corresponded to the higher, unverified number.

(3) Friends and Family Loans

- a. On June 28, 2016, LendingClub publicly reported that it had identified 32 loans made in the second half of December 2009 through its platform, totaling approximately \$722,800 in originations and \$25,000 in revenue, to its then-CEO and three of his family members. The company internally referred to these loans as "Friends and Family" loans, even though eight of the loans were taken out by the then-CEO himself. The other three family members also had eight loans in each of their names.
- b. The Credit Policy prohibited LendingClub from issuing more than two loans to the same borrower, and it permitted a second loan only after six months of performance on the first loan. LendingClub did not advise WebBank of the

circumstances surrounding these 32 loans, nor did it seek approval from WebBank to override the Credit Policy.

- c. LendingClub's then-CEO directed its Credit Department to bypass normal verification and credit approvals for these 32 loans, including giving all the loans automatic approval, verifying the bank account information, and not reporting the loans to credit bureaus.
- d. At the direction of the then-CEO, LendingClub took steps to conceal that the 32 loans were taken out by the same four borrowers. Efforts included "sprinkling" the loans onto the online platform at different times, so that they would not be listed next to each other; changing the city and state of the "borrowers;" and changing the reason for the loans. Despite these efforts, multiple platform investors questioned whether the same borrowers had taken out certain of the 32 loans. At the direction of the then-CEO, LendingClub misrepresented to investors that although the loans looked similar, they were all taken out by different borrowers.
- e. These 32 loans were originated in order to increase loan volume for December 2009, in an attempt to meet the company's reported goal for monthly loan originations. All but three of the loans were repaid in full in January or February 2010.
- f. LendingClub publicly trumpeted that it met its origination goal for the month of December 2009, with increased originations of approximately \$250,000 over the month of November. The company would not have met its goal, nor its month-over-month increase in loan originations, without the 32 loans.

I. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties reach a full and final settlement pursuant to the terms and conditions below. This Settlement Agreement is neither an admission of liability or facts by LendingClub nor a concession by the United States that its claims are not well-founded.

TERMS AND CONDITIONS

1. LendingClub shall pay a total amount of two million dollars (\$2,000,000.00) (the "Settlement Amount") to the United States no later than 15 days after the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided by the U.S. Attorney's Office for the Northern District of California.

2. The entirety of the Settlement Amount is a civil monetary penalty recovered pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), 12 U.S.C. §1833a.

3. **Releases by the United States.** Subject to the exceptions in Paragraph 4 ("Excluded Claims") and conditioned upon LendingClub's full payment of the Settlement Amount, the United States fully and finally releases LendingClub, each of its current and former subsidiaries and affiliated entities, and each of their respective successors and assigns (collectively, the "Released Entities"), from any civil claim the United States has against the Released Entities for the Covered Conduct arising under FIRREA, 12 U.S.C. § 1833a; the False Claims Act, 31 U.S.C. §§ 3729, *et seq.*; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, *et seq.*; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any

of the foregoing; or that the U.S. Attorney's Office for the Northern District of California has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d).

4. **Excluded Claims.** Notwithstanding the releases in Paragraph 3 of this Agreement, or any other term(s) of this Agreement, the following claims are specifically reserved and not released by this Agreement:

- a. Any conduct other than the Covered Conduct;
- b. Any criminal liability;
- c. Any liability of any individual;
- d. Any liability arising under Title 26 of the United States Code (the Internal Revenue Code);
- e. Any administrative liability, including the suspension and debarment rights of any federal agency; and
- f. Any liability based upon obligations created by this Settlement Agreement.

5. **Releases by LendingClub.** LendingClub and any current or former affiliated entity and any of their respective successors and assigns fully and finally release the United States and its officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that LendingClub has asserted, could have asserted, or may assert in the future against the United States and its officers, agents, employees, and servants, related to the Covered Conduct to the extent released hereunder and the investigation to date thereof.

6. **Waiver of Potential FDIC Indemnification Claims by LendingClub.** LendingClub hereby irrevocably waives any right that it otherwise might have to seek (and in any event agrees that it shall not seek) any form of indemnification, reimbursement or

contribution from the FDIC in any capacity, including the FDIC in its Corporate Capacity or the FDIC in its Receiver Capacity for any payment under this Agreement.

7. **Waiver of Potential Defenses by LendingClub.** LendingClub and any current or former affiliated entity (to the extent that LendingClub retains liability for the Covered Conduct associated with such affiliated entity) and any of their respective successors and assigns waive and shall not assert any defenses LendingClub may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. LendingClub agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, LendingClub shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. LendingClub further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

9. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California.

10. This Agreement is intended for the benefit of the Parties only and does not create any third-party rights.

11. The Parties acknowledge that this Agreement is made without any trial or adjudication or judicial finding of any issue of fact or law, and is not a final order of any court or governmental authority.

12. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

13. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. For the purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

15. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

16. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

17. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

18. This Agreement is binding on LendingClub's successors, transferees, heirs, and assigns.

19. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

Alex G. Tse
United States Attorney

DATED: 9/27/18

BY: Kimberly Friday
Kimberly Friday
Assistant United States Attorney
Northern District of California

LENDINGCLUB CORPORATION

DATED: 9/26/18

BY: Scott Sanborn
Scott Sanborn
Chief Executive Officer

DATED: 9/26/18

BY: John M. Potter
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