

CIVIL ACTION COVER SHEET		DOCKET NUMBER <div style="font-size: 1.5em; font-family: cursive;">20-0155C</div>	Trial Court of Massachusetts The Superior Court 	
PLAINTIFF(S): Commonwealth of Massachusetts <hr/> ADDRESS: Office of the MA Attorney General <hr/> One Ashburton Place, 18th Floor <hr/> Boston, MA 02108 <hr/> ATTORNEY: M. Claire Masinton <hr/> ADDRESS: Office of the MA Attorney General <hr/> One Ashburton Place, 18th Floor <hr/> Boston, MA 02108 <hr/> BBO: 646718			COUNTY Suffolk <hr/> <hr/> DEFENDANT(S): LendingClub Corporation d/b/a LendingClub <hr/> <hr/> ADDRESS: 595 Market Street, Suite 200 <hr/> San Francisco, CA 94105	
TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)				
CODE NO. E99	TYPE OF ACTION (specify) Other Administrative Action	TRACK X	HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
*If "Other" please describe: Assurance of Discontinuance secured by the MA attorney general pursuant to M.G.L. c. 93A, section 5				
Is there a claim under G.L. c. 93A? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				
Is this a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A				
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.				
TORT CLAIMS (attach additional sheets as necessary)				
A. Documented medical expenses to date:				
1. Total hospital expenses				\$ n/a
2. Total doctor expenses				\$ n/a
3. Total chiropractic expenses				\$ n/a
4. Total physical therapy expenses				\$ n/a
5. Total other expenses (describe below)				\$ n/a
Subtotal (A):				\$ n/a
B. Documented lost wages and compensation to date				\$ n/a
C. Documented property damages to date				\$ n/a
D. Reasonably anticipated future medical and hospital expenses				\$ n/a
E. Reasonably anticipated lost wages				\$ n/a
F. Other documented items of damages (describe below)				\$ n/a
G. Briefly describe plaintiff's injury, including the nature and extent of injury:				
				TOTAL (A-F): \$ n/a
CONTRACT CLAIMS (attach additional sheets as necessary)				
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a). Provide a detailed description of claim(s):				
				TOTAL: \$ n/a
Signature of Attorney/ Unrepresented Plaintiff: X			Date: Jan 17, 2020	
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.				
CERTIFICATION PURSUANT TO SJC RULE 1:18				
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.				
Signature of Attorney of Record: X			Date: Jan 17, 2020	

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT

In the Matter of

LENDINGCLUB CORPORATION
d/b/a LENDINGCLUB

Civil Action No. 20-0155C

ASSURANCE OF DISCONTINUANCE

PURSUANT TO M.G.L. CHAPTER 93A, § 5

I. INTRODUCTION

1. The Office of Massachusetts Attorney General Maura Healey ("AGO") and LendingClub Corporation ("LendingClub") enter into this Assurance of Discontinuance ("AOD") pursuant to Section 5 of the Massachusetts Consumer Protection Law, M.G.L. c. 93A.

2. Headquartered in San Francisco, California and incorporated in Delaware, LendingClub is the country's largest online lending marketplace platform, connecting borrowers and investors, and allowing borrowers to obtain unsecured personal loans.¹ LendingClub generates revenues through, among other things, transaction fees, loan servicing fees, and interest income on loans in which it invests.

3. LendingClub facilitates personal loans for borrowers throughout the country, including Massachusetts residents, through its website, www.lendingclub.com. According to LendingClub's website, borrowers use such loans "to consolidate debt, improve their homes, finance major purchases, and more." Loans facilitated by LendingClub range in size from \$1,000 to \$40,000 and have a range of Annual

¹ According to LendingClub, Utah-based WebBank serves as LendingClub's "primary issuing bank for loans facilitated through [LendingClub's] platform ..." See Quarterly Report of LendingClub Corporation on Form 10-Q (for the quarter ended June 30, 2019) (filed August 7, 2019 with the Securities and Exchange Commission) at 50.

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CLERK/MAGISTRATE

Percentage Rates (APRs),² from 6.95% to 35.89%, depending on a number of factors including the size of the loan and the creditworthiness of the borrower.

4. LendingClub advertises to certain Massachusetts residents through, among other things, direct-to-consumer mailings.

5. In addition to advertising the availability of loans it facilitates, LendingClub engages in many other consumer-facing activities related to the process of originating and servicing loans, including hosting the loan application process, managing the underwriting process by which applicants' creditworthiness is assessed, loan servicing, and collecting past due loan payments.

II. ALLEGATIONS

6. Under M.G.L. c. 93A, § 6, the AGO initiated an investigation of LendingClub's practices as they pertain to Massachusetts residents. Based on its investigation, the AGO alleges that LendingClub violated M.G.L. c. 93A by facilitating personal loans in violation of the Massachusetts Small Loan Statute, M.G.L. c. 140, § 96 (the "Small Loan Statute").

7. Concerning whether a loan qualifies as a "small loan" under the Small Loan Statute, the Small Loan Statute provides as follows:

If, after all deductions or payments, whether on account of interest, expenses or principal made substantially contemporaneously with the making of the loan, the amount retained by the borrower be six thousand dollars or less, the transaction shall be deemed to be a loan in the amount of the sum so retained by the borrower after such deductions or payments, notwithstanding that the loan be nominally for a greater sum.

M.G.L. c. 140, § 96. The AGO alleges that any personal loan where the amount retained by the borrower is \$6,000 or less (a "Small Loan"), whether by virtue of the face amount of the loan or due to the deduction

² When calculating the cost of debt, the interest rate is the percentage charged for borrowing money over a given period of time, while "annual percentage rate", or APR, includes not just interest charges, but also any other upfront or recurring loan fees, such as loan origination fees. As such, the APR more accurately represents the true cost of a loan.

of fees or other charges imposed “substantially contemporaneously with the making of the loan”, is subject to the statutory interest rate cap under the Small Loan Statute.

8. LendingClub facilitated personal loans to Massachusetts residents where, although the “face amount” of the loan was more than \$6,000, the actual amount retained by the borrower was \$6,000 or less due to the upfront imposition of a loan origination fee, which ranged from 1% to 6% of the total loan amount. The AGO alleges that these loans were subject to the statutory interest rate cap under the Small Loan Statute. *See* M.G.L. c. 140, § 96.

9. The AGO contends that because of the facts alleged above in Paragraph 8, LendingClub violated the Small Loan Statute in two ways: (i) from August 1, 2011 through the date it obtained a small loan company license in March 2018, LendingClub facilitated Small Loans to Massachusetts residents with an APR above the maximum permitted rate (twelve percent) for companies without a small loan company license; and (ii) even after obtaining its small loan company license, LendingClub facilitated Small Loans to Massachusetts residents with an APR in excess of the maximum permitted rate (twenty-three percent) for *licensed* small loan companies. *See* 209 C.M.R. 26.01(1)(a).

10. LendingClub’s willingness to enter into this AOD does not constitute an admission of liability. LendingClub agrees to enter into this AOD in the spirit of cooperation and to resolve these matters without resort to costly litigation.

11. In lieu of litigation and pursuant to M.G.L. c.93A, § 5, the AGO agrees to accept this AOD on the terms and conditions contained herein. The AGO and LendingClub both voluntarily enter into this AOD.

III. ASSURANCES

12. Within twenty (20) days of the date on which the AGO files this AOD in Suffolk (MA) Superior Court (the “Effective Date”), LendingClub will pay one million two-hundred and fifty thousand dollars (\$1,250,000) (“Settlement Funds”) to the AGO by check, to be made out to and delivered as

specified in writing by the AGO within three (3) days of the date this AOD is filed. No part of this payment is or shall be considered a penalty or fine. The Settlement Funds shall be utilized by the AGO in accordance with M.G.L. c. 12 § 4A for purposes of monitoring, investigation, and/or amelioration efforts relating to this matter, and the AGO may, no sooner than six (6) months after the Effective Date, direct any relevant portion of funds not so designated, encumbered, or utilized to the Commonwealth of Massachusetts' General Fund.

13. For so long as LendingClub remains licensed as a small loan company in Massachusetts, LendingClub agrees that as to any new loan applications initiated on or after the Effective Date, it will comply with Massachusetts law and not make or facilitate Small Loans to Massachusetts residents with an interest rate or APR in excess of the twenty-three percent maximum permissible rate for licensed small loan companies. If LendingClub ever ceases to be licensed as a small loan company in Massachusetts, LendingClub agrees that as to any new loan applications initiated on or after the date it ceases to be licensed as a small loan company in Massachusetts, it will comply with Massachusetts law and not make or facilitate Small Loans to Massachusetts residents with an interest rate or APR in excess of the twelve percent maximum permissible rate for non-licensed small loan companies. Nothing in this paragraph is intended to impose requirements on LendingClub beyond those already embodied in applicable state or federal laws or regulations (or to remove rights from LendingClub embodied in such laws or regulations), including those related to bank charters.

IV. MONITORING AND COMPLIANCE

14. Within thirty (30) days of the Effective Date, LendingClub will provide the AGO with a list of all Small Loans facilitated by LendingClub and made to Massachusetts residents (i) with an interest rate or APR greater than twelve percent, if such loan was made in the period from June 1, 2014 until the date on which LendingClub became licensed in Massachusetts as a small loan company, or (ii) with an interest rate or APR greater than twenty-three percent, if such loan was made in the period from June 1,

2014 to the Effective Date. The list to be provided by LendingClub will include the borrower's name, phone number, email address, and mailing address; the date the loan was issued; the face amount of the loan; the amount disbursed to the borrower; the loan period (*e.g.*, 36 months, 60 months, etc.); the APR applicable to the loan; and the total amount in interest thus far paid by the borrower.

15. LendingClub will also cooperate with the AGO concerning any efforts the AGO may undertake to ensure compliance with this AOD, which cooperation shall require, without limit, that for a period of at least three (3) years from the Effective Date, LendingClub maintain all records necessary to demonstrate its compliance with its obligations under this AOD and provide such records to the AGO within a reasonable time following the AGO's request for same.

V. MISCELLANEOUS PROVISIONS

16. By signing below, LendingClub agrees to comply with all terms of this AOD. By signing below, the AGO agrees that it will not proceed with or institute a civil action or proceeding pursuant to M.G.L. c. 93A or any other statute, regulation, or common law, against LendingClub, or any of LendingClub's agents, subsidiaries and subdivisions, successors, assigns, or any purchasers of all or substantially all of its business assets, relating to the alleged violations of the Massachusetts Small Loan Statute, M.G.L. c. 140, § 96, predating the Effective Date.

17. This AOD is not intended to impair any right of action that any person or entity other than the AGO might have against LendingClub.

18. This AOD constitutes the entire agreement between the AGO and LendingClub and supersedes any prior communication, understanding, or agreements, whether written or oral, concerning the subject matter of this AOD. This AOD can be modified or supplemented only by a written document signed by both parties.

19. This AOD will be binding upon LendingClub and any of LendingClub's agents, subsidiaries and subdivisions, successors, assigns, and/or purchasers of all or substantially all of LendingClub's business assets.

20. The AGO may waive or extend any deadlines in this AOD by which a particular action must occur in its sole discretion and any such waiver or extension will not constitute a broader waiver of its right to enforce any part of this AOD.

21. This AOD shall be filed with the Superior Court of Suffolk County, Massachusetts, and will be subject to the provisions of Section 5 of M.G.L. c. 93A. Except as otherwise stated herein, the provisions of this AOD will be effective as of the date it is filed.

22. LendingClub represents and warrants that it has the full legal power, capacity, and authority to bind the parties for whom it is acting in connection with this AOD.

23. By signing below, LendingClub agrees to comply with all of the terms of this AOD. The parties shall work together in good faith to try to resolve any disputes or disagreements with respect to the terms of this AOD. Any violation of this AOD may be pursued in a civil action or proceeding under M.G.L. c. 93A hereafter commenced by the AGO.

24. Notices to be sent pursuant to this AOD shall be sent as follows:

To LendingClub:

Daniel R. Suvor
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071

To the AGO:

M. Claire Masinton, Assistant Attorney General
Massachusetts Attorney General's Office
1 Ashburton Place, 18th Floor
Boston, MA 02108

Signed this 17th day of January, 2020.

FOR LENDINGCLUB CORPORATION

By: _____

Brandon Pace
General Counsel and Corporate Secretary
595 Market Street, Suite 200
San Francisco, CA 94105

**FOR THE ATTORNEY GENERAL,
MAURA HEALEY**

By:  _____

M. Claire Masinton, BBO # 646718
Assistant Attorney General
Massachusetts Attorney General's Office
Insurance & Financial Services Division
1 Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
Claire.Masinton@mass.gov

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To LendingClub:

Daniel R. Suvor
O'Melveny & Myers LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071

To the AGO:

M. Claire Masinton, Assistant Attorney General
Massachusetts Attorney General's Office
1 Ashburton Place, 18th Floor
Boston, MA 02108

Signed this 14 day of January, 2020.

FOR LENDINGCLUB CORPORATION

By: 

Brandon Pace
General Counsel and Corporate Secretary
595 Market Street, Suite 200
San Francisco, CA 94105

**FOR THE ATTORNEY GENERAL,
MAURA HEALEY**

By: _____

M. Claire Masinton, BBO # 646718
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