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8 **BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT**
9 **OF THE STATE OF CALIFORNIA**

10 In the Matter of:

11 THE COMMISSIONER OF BUSINESS
12 OVERSIGHT,

13 Complainant,

14 v.

15 LENDINGCLUB CORPORATION., a Delaware
16 corporation;

17 Respondent.
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SETTLEMENT AGREEMENT

20 This Settlement Agreement ("Agreement") is entered into by and between the Complainant,
21 California Department of Business Oversight ("Department"), by and through Jan Lynn Owen,
22 Commissioner of Business Oversight ("Commissioner") and the Respondent, LendingClub
23 Corporation (hereinafter collectively the "Parties").

24 **RECITALS**

25 This Agreement is made with reference to the following facts:

26 A. At all relevant times, LendingClub Corporation ("LendingClub") is, or was a
27 Delaware corporation with a registered place of business located at 71 Stevenson St., Suite 300,
28 San Francisco, California 94105. LendingClub is purportedly an online market portal that

1 facilitates and acquires loans to consumers and businesses. LendingClub maintains a website at
2 www.lendingclub.com where it represents that it is "... the world's largest online marketplace
3 connecting borrowers and investors."

4 B. On or about October 31, 2014, LendingClub's common shares were authorized for
5 listing on the New York Stock Exchange. On or about December 10, 2014, the United States
6 Securities and Exchange Commission ("SEC") declared effectiveness of LendingClub's common
7 shares under the Securities Act of 1933, and LendingClub became a publicly traded company
8 listed on the New York Stock Exchange.

9 C. The Commissioner is head of the California Department of Business Oversight
10 ("Department"). The Department regulates, among other things, the offer and sale of securities in
11 California under the Corporate Securities Law of 1968 ("CSL"), (Corp. Code § 25100 *et seq.*)

12 D. The CSL prohibits the offer or sale of any securities within, into, or from this state
13 unless a qualification or permit has been obtained from the Department or unless the security or
14 transaction is exempt from the qualification requirements.

15 E. CSL section 25102, subdivision (o) exempts offers and sales of securities issued
16 pursuant to an option plan from registration or qualification under Corporations Code section
17 25110. However, in order to satisfy this exemption, the issuer must show that: (1) the securities, at
18 the time of issuance are exempt from registration under the Securities Act of 1933 pursuant to Rule
19 701; (2) that the terms of the option plan are in compliance with rules implemented by the
20 Commissioner under California Code of Regulations, title 10, sections 260.140.41, 260.140.45,
21 and 260.140.46; and (3) the issuer must file a Notice of Issuance of Securities with the
22 Commissioner.

23 F. Under Rule 701 of the Securities Act of 1933, companies may offer their own
24 securities as part of written compensation agreements to employees, directors, general partners,
25 trustees, officers, or certain consultants without registering the securities under the federal
26 securities laws. The Rule 701 exemption is available to any company or issuer that is not subject to
27 the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.
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1 G. In February 2007, LendingClub adopted an employee and consultant stock option
2 plan aimed at providing compensatory benefit to its employees, directors or contractors. On
3 August 15, 2007 and June 23, 2009, LendingClub filed Notices of Issuance of Securities pursuant
4 to CSL section 25102, subdivision (o) to notify the Department of its intention to rely on the CSL
5 section 25102, subdivision (o) exemption to offer the stock option plans to its employees, directors
6 or contractors.

7 H. Beginning October 10, 2008 to about October 31, 2014, LendingClub offered to sell
8 securities in the form of stock options totaling at least 40,469,837 options purportedly valued at
9 approximately \$117.8 million to its employees, directors or contractors.

10 I. On October 10, 2008, LendingClub became a reporting company subject to the
11 reporting requirements of section 13 or 15 (d) of the Securities and Exchange Act of 1934. As a
12 result, LendingClub could no longer rely on Rule 701 or CSL section 25102, subdivision (o) as an
13 exemption for qualification of the stock options offered. Consequently, the stock options
14 LendingClub offered its employees, directors or contractors from October 10, 2008 to October 31,
15 2014 after becoming a reporting company were not qualified or otherwise exempt and were
16 granted in violation of CSL section 25110.

17 J. On or around October 3, 2014, pursuant to CSL section 25507, subdivision (b), and
18 California Code of Regulations, title 10, section 260.507, and in order to protect investors, the
19 Department directed LendingClub to file a notice of violation and offer option holders the right to
20 rescind and repurchase the options issued in violation of CSL section 25110. LendingClub filed
21 the requested application on or around October 14, 2014.

22 K. Pursuant to an order issued by the Commissioner on May 20, 2015, and amended
23 June 3, 2015, LendingClub made a "Rescission Offer" to 150 common stock holders and 555
24 option holders. LendingClub represents that upon completion of the "Rescission Offer" on July 15,
25 2015, none of its stockholders accepted the "Rescission Offer" and two option holders accepted
26 LendingClub's offer to repurchase 101,000 shares for \$192,310.20.

27 L. The securities in the form of stock options described herein have been offered or
28 sold in California in issuer transactions.

1 M. CSL section 25110 prohibits the offer and/or sale of non-exempt securities in this
2 state that are subject to qualification. The Department has not issued a permit or other form of
3 qualification authorizing any person to offer and sell the described securities in this state.

4 N. It is the intention and desire of the parties to resolve this matter without the necessity
5 of a hearing and/or other litigation.

6 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set
7 forth herein, the Parties agree as follows:

8 TERMS AND CONDITIONS

9 1. **Purpose:** The purpose of this Agreement is to settle and resolve the matters between the
10 Parties hereto, for judicial economy and expediency, and to avoid the expense of a hearing, and
11 possible further court proceedings.

12 2. **Stipulation to the Desist and Refrain Order :** LendingClub stipulates to the attached
13 Desist and Refrain Order incorporated herein as Exhibit A. Further, LendingClub acknowledges
14 the right to a hearing under the Corporate Securities Law of 1968 in connection with the Desist and
15 Refrain Order and hereby waives that right to a hearing, and to any reconsideration, appeal, or other
16 right to review which may be afforded pursuant to the Corporate Securities Law of 1968, the
17 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
18 provision of law.

19 3. **Acknowledgement and Stipulation to the Recital of Facts:** LendingClub
20 acknowledges and stipulates to the foregoing recital of facts. The acknowledgment and stipulation
21 by LendingClub is for the purpose of this and any other future proceedings that may be initiated by
22 or brought before the Department. The Parties agree that this Agreement and any
23 acknowledgements hereunder shall not be admissible or binding against LendingClub in any
24 action(s) brought against them by third parties that are not signatories to this Agreement.

25 4. **Certification:** LendingClub stipulates to undertake all appropriate steps designed to
26 assure full compliance with the laws of California in the conduct of its business. LendingClub
27 acknowledges that failure to comply under this Agreement shall be a breach of this Agreement and
28 shall be cause for the Commissioner to immediately revoke any licenses held by, and/or deny any

1 pending application(s) of LendingClub, its successors and assigns, by whatever names they might
2 be known. LendingClub hereby waives any notice and hearing rights to contest such revocations
3 and/or denial(s) which may be afforded under the Corporate Securities Law of 1968, the California
4 Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of
5 law in connection therewith.

6 5. **Administrative Penalties:** LendingClub agrees to pay to the Commissioner
7 penalties in the amount of forty-six thousand dollars (\$46,000.00). The administrative penalties
8 shall be paid in the form of a cashier's check, within 10 days of the effective date of this
9 Agreement. The cashier's check shall be made payable to:

10 "The Department of Business Oversight," and shall be sent to the following address:

11 Uche L. Enenwali
12 Senior Counsel
13 Department of Business Oversight
14 320 W. 4th Street, Suite 750
15 Los Angeles, CA 90013

16 In the event the payment due date falls on a weekend or holiday, the payment shall be due
17 the next business day. LendingClub acknowledges that failure to timely pay the Penalties in this
18 Agreement shall be a breach of this Agreement and shall be cause for the Commissioner to
19 immediately revoke any licenses held by, and/or deny any pending application(s) of LendingClub
20 and/or its successors and assigns, by whatever names they might be known. LendingClub hereby
21 waives any notice and hearing rights to contest such revocations and/or denial(s) which may be
22 under the Corporate Securities Law of 1968, the California Administrative Procedure Act, the
23 California Code of Civil Procedure, or any other provision of law in connection therewith.

24 6. **Future Actions by the Commissioner:** The Commissioner reserves the right to
25 bring any future action(s) against LendingClub and/or any of the officers, directors, shareholders, or
26 employees of LendingClub for any and all unknown or future violations of the Corporate
27 Securities Law of 1968. This Agreement shall not serve to exculpate LendingClub or any of the
28 officers, directors, shareholders, or employees of LendingClub from liability for any and
all unknown or future violations of the Corporate Securities Act of 1968.

1 7. **Effective Date:** This Agreement shall not become effective until signed, and
2 delivered by all parties.

3 8. **Settlement Agreement Coverage:** The Parties hereby acknowledge and agree that
4 this Agreement is intended to constitute a full, final, and complete resolution of this matter. The
5 Parties further acknowledge and agree that nothing contained in this Agreement shall operate to
6 limit the Commissioner's ability to assist any other agency, county, state or federal, with any
7 prosecution, administrative, civil or criminal, brought by any such agency against LendingClub
8 based upon any of the activities alleged in this matter or otherwise.

9 9. **Independent Legal Advice:** Each of the Parties represents, warrants, and agrees
10 that it has received or been advised to seek independent legal advice from its attorneys with respect
11 to the advisability of executing this Agreement.

12 10. **No Other Representation:** Each of the parties represents, warrants, and agrees that
13 in executing this Agreement it has relied solely on the statements set forth herein and the advice of
14 its own counsel. Each of the parties further represents, warrants, and agrees that in executing this
15 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
16 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
17 other person or entity to make any statement, representation or disclosure of anything whatsoever.
18 The parties have included this clause: (1) to preclude any claim that any party was in any way
19 fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol
20 evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

21 11. **Modifications and Qualified Integration:** No amendment, change or modification
22 of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of
23 the parties affected by it.

24 12. **Full Integration:** This Agreement is the final written expression and the complete
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
26 between the parties with respect to the subject matter hereof, and supersedes all discussions
27 between and among the parties, their respective representatives, and any other person or entity, with
28 respect to the subject matter covered hereby.

1 13. **No Presumption From Drafting:** In that the parties have had the opportunity to
2 draft, review and edit the language of this Agreement, no presumption for or against any party
3 arising out of drafting all or any part of this Agreement will be applied in any action relating to,
4 connected to, or involving this Agreement. Accordingly, the parties waive the benefit of Civil Code
5 section 1654 and any successor or amended statute, providing that in cases of uncertainty, language
6 of a contract should be interpreted most strongly against the party who caused the uncertainty to
7 exist.

8 14. **Counterparts:** This Agreement may be executed in any number of counter-parts by
9 the Parties, and when each party has signed and delivered at least one such counterpart to the other
10 party, each counterpart shall be deemed an original and taken together shall constitute one and the
11 same Agreement.

12 15. **Headings and Governing Law:** The headings to the paragraphs of this Agreement
13 are inserted for convenience only and will not be deemed a part hereof or affect the construction or
14 interpretation of the provisions hereof. This Agreement shall be construed and enforced in
15 accordance with, and governed by, the laws of the State of California.

16 16. **Authority For Settlement:** Each party warrants and represents that such party is
17 fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and
18 without limiting the generality of the foregoing, each party warrants and represents that it is fully
19 entitled to enter into the covenants, and undertake the obligations set forth herein.

20 17. **Public Record:** LendingClub hereby acknowledges that this Agreement will be a
21 matter of public record.

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18. **Voluntary Agreement:** The Parties each represent and acknowledge that he, she, or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

Dated: December 4, 2015

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: December 3, 2015

LENDINGCLUB CORPORATION

By: _____
JASON ALTIERI
GENERAL COUNSEL
LENDINGCLUB CORPORATION