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11 Attorneys for Complainant

12 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
13 OF THE STATE OF CALIFORNIA

14 In the Matter of: ) NMLS ID No.: 1266627  
15 THE COMMISSIONER OF BUSINESS ) CONSENT ORDER  
16 OVERSIGHT, )  
17 Complainant, )  
18 v. )  
19 LENDKEY TECHNOLOGIES, INC., )  
20 Respondent. )

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22 This Consent Order (the Consent Order) is entered between the Commissioner of Business  
23 Oversight (Commissioner) and LendKey Technologies, Inc. (LendKey) and is made with respect to  
24 the following facts:

25 **I.**

26 **Recitals**

27 A. The Commissioner has jurisdiction over the licensing and regulation of student loan  
28 servicing in this state under the Student Loan Servicing Act (SLSA) (Fin. Code, § 28100 et seq.)

1 and title 10 of the California Code of Regulations (CCR) (Cal. Code Regs., § 2032 et seq.).

2 B. Starting July 1, 2018, the Student Loan Servicing Act (SLSA) became effective and  
3 required that all persons engaged in the business of servicing student loans in California must be  
4 licensed, with limited exception.

5 C. LendKey is a corporation with a principal place of business is at 9999 Carver Road,  
6 Suite 400, Cincinnati, Ohio 45242. Vince Passione is LendKey's Chief Executive Officer and, as  
7 such, is authorized to enter into the Consent Order on behalf of LendKey.

8 D. LendKey became licensed with the Department as a California Student Loan  
9 Servicer on July 5, 2018.

10 E. Pursuant to Financial Code section 28140, all licensees under the SLSA are required  
11 to maintain a minimum tangible net worth of \$250,000.00 at all times.

12 F. LendKey's audited financial statements for calendar year 2018 showed a tangible  
13 negative net worth of \$866,902.00, failing to meet the minimum tangible net worth (TNW)  
14 requirement in violation of Financial Code section 28140 (Minimum TNW Violation).

15 G. LendKey has submitted unaudited financial statements as of December 31, 2019,  
16 signed and certified by LendKey's Chief Executive Officer showing compliance with the minimum  
17 TNW requirements of Financial Code section 28140.

18 H. It is the intention of LendKey and the Commissioner (the Parties) to resolve  
19 the Minimum TNW Violation without an administrative hearing or other litigation.

20 NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set  
21 forth herein, the Parties agree as follows:

22 **II.**

23 **Terms and Conditions**

24 1. Purpose. This Consent Order resolves the issues before the Commissioner, set forth  
25 in paragraphs E-G, above, in a manner that avoids the expense of a hearing and other possible court  
26 proceedings, protects consumers, is in the public interest, and is consistent with the purposes,  
27 policies, and provisions of the applicable law.

28 2. Final Order to Discontinue Violations. Pursuant to Financial Code section 28162,

1 LendKey is hereby ordered to discontinue from failing to comply with the minimum tangible net  
2 worth requirements of Financial Code section 28140. LendKey agrees that the Order to  
3 Discontinue Violations is hereby deemed a final order.

4 3. Compliance with Tangible Net Worth. LendKey agrees to comply with Financial  
5 Code section 28140 going forward, and agrees to submit audited financials for calendar year 2019  
6 no later than May 29, 2020, which is 105 days after LendKey's fiscal year end, that will confirm  
7 LendKey's compliance with Financial Code section 28140.

8 4. Waiver of Hearing Rights. LendKey acknowledges the Commissioner is ready,  
9 willing, and able to proceed with the filing of an administrative enforcement action on the  
10 Minimum TNW Violation contained in this Consent Order and, solely for the purposes of this  
11 proceeding, LendKey hereby waives the right to a hearing, and to any reconsideration, appeal, or  
12 other right to review which may be afforded pursuant to the SLSA, the California Administrative  
13 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by  
14 waiving such rights, LendKey effectively consents to this Consent Order becoming final.

15 5. Full and Final Settlement. The Parties hereby acknowledge and agree that the  
16 Consent Order is intended to constitute a full, final, and complete resolution of the Minimum TNW  
17 Violation, and that no further proceedings or actions will be brought by the Commissioner in  
18 connection with the Minimum TNW Violation under the SLSA, excepting therefrom any  
19 proceeding to enforce compliance with the terms of this Consent Order.

20 6. Failure to Comply with Consent Order. LendKey agrees that if it fails to comply  
21 with the terms of this Consent Order, the Commissioner may, in addition to all other available  
22 remedies it may invoke under the SLSA, summarily suspend/revoke the SLSA license of LendKey  
23 until LendKey is in compliance. LendKey waives any notice and hearing rights to contest such  
24 summary suspension with respect to its failure to comply with the terms of this Consent Order,  
25 which may be afforded under the SLSA, the California Administrative Procedure Act, the  
26 California Code of Civil Procedure, or any other provision of law in connection therewith.

27 7. Information Willfully Withheld. This Consent Order may be revoked and the  
28 Commissioner may pursue any and all remedies available under the law against LendKey if the

1 Commissioner discovers that LendKey knowingly or willfully withheld or misrepresented  
2 information used for and relief upon in this Consent Order.

3 8. Future Actions by Commissioner. If LendKey fails to comply with any term of the  
4 Consent Order, the Commissioner may institute proceedings for such failure. The Commissioner  
5 reserves the right to bring any future actions against LendKey, or any of its partners, owners,  
6 officers, shareholders, directors, employees or successors for any and all unknown violations of the  
7 SLSA.

8 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's  
9 ability to assist any other government agency (city, county, state, or federal) with any prosecution,  
10 administrative, civil or criminal brought by that agency against LendKey or any other person based  
11 upon the Minimum TNW Violation or otherwise.

12 10. Headings. The headings to the paragraphs of this Consent Order are inserted for  
13 convenience only and will not be deemed a part hereof or affect the construction or interpretation of  
14 the provisions hereof.

15 11. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in  
16 interest.

17 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
18 Consent Order it has relied solely on the statements set forth herein and the advice of its own  
19 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent  
20 Order it has placed no reliance on any statement, representation, or promise of any other Party, or  
21 any other person or entity not expressly set forth herein, or upon the failure of any Party or any  
22 other person or entity to make any statement, representation or disclosure of anything whatsoever.  
23 The Parties have included this clause: (1) to preclude any claim that any Party was in any way  
24 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol  
25 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

26 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
27 of this Consent Order will be valid or binding unless it is in writing and signed by each of the  
28 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any

1 other provision. No waiver by either Party of any breach of, or of compliance with, any condition  
2 or provision of this Agreement by the other Party will be considered a waiver of any other condition  
3 or provision or of the same condition or provision at another time.

4 14. Full Integration. This Consent Order is the final written expression and the complete  
5 and exclusive statement of all the agreements, conditions, promises, representations, and covenant  
6 between the Parties with respect to the subject matter hereof, and supersedes all prior or  
7 contemporaneous agreements, negotiations, representations, understandings, and discussions  
8 between and among the Parties, their respective representatives, and any other person or entity with  
9 respect to the subject matter covered hereby.

10 15. Governing Law. This Consent Order will be governed by and construed in  
11 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,  
12 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient  
13 forum to the maintenance of such action or proceeding in such court.

14 16. Counterparts. This Consent Order may be executed in one or more separate  
15 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
16 together constitute a single document.

17 17. Effect Upon Future Proceedings. If Respondent applies for any license, permit, or  
18 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future  
19 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be  
20 admitted for the purpose of such application(s) or enforcement proceeding(s).

21 18. Voluntary Agreement. LendKey enters this Consent Order voluntarily and without  
22 coercion and acknowledges that no promises, threats or assurances have been made by the  
23 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent  
24 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and  
25 without any duress or undue influence of any kind from any source.

26 19. Notice. Any notice required under this Consent Order be provided to each party at  
27 the following addresses:  
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1 To LendKey Technologies, Inc.: LendKey Technologies, Inc.  
2 David Mark, General Counsel  
3 9999 Carver Road, Suite 400  
4 Cincinnati, Ohio 45242  
5 david.mark@lendkey.com

6 To the Commissioner: Trevor Carroll, Counsel  
7 Department of Business Oversight  
8 1515 K Street, Suite 200  
9 Sacramento, California 95814  
10 trevor.carroll@dbo.ca.gov

11 20. Signatures. This Consent Order may be executed by facsimile or scanned signature,  
12 and any such facsimile or scanned signature by any Party hereto shall be deemed to be an original  
13 signature and shall be binding on such Party to the same extent as if such facsimile or scanned  
14 signature were an original signature.

15 21. Public Record. LendKey acknowledges that this Consent Order is and will be a  
16 matter of public record.

17 22. Effective Date. This Consent Order shall become final and effective when signed by  
18 all Parties and delivered by the Commissioner's agent via e-mail to LendKey's General Counsel,  
19 David Mark at david.mark@lendkey.com.

20 23. Authority to Sign. Each signatory hereto covenants that he/she possesses all  
21 necessary capacity and authority to sign and enter into this Consent Order and undertake the  
22 obligations set forth herein.

23 24. No Presumption Against Drafting Party. Each Party acknowledges that it has had the  
24 opportunity to draft, review and edit the language of this Consent Order. Accordingly, the Parties  
25 intend that no presumption for or against the drafting Party will apply in construing any part of this  
26 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or  
27 corresponding provisions of any successor statute, which provide that in cases of uncertainty,  
28 language of a contract should be interpreted most strongly against the Party who caused the  
uncertainty to exist.

25. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that

1 it has received independent advice from its attorney(s) and/or representatives with respect to the  
2 advisability of executing this Consent Order.

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Dated: May 21, 2020

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_

MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division

Dated: May 19, 2020

LENDKEY TECHNOLOGIES, INC., Respondent

By \_\_\_\_\_

VINCE PASSIONE  
CEO