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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10 _____, Individually and On Behalf of Case No.
11 All Others Similarly Situated,

12 Plaintiff,

13 vs.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE SECURITIES ACT
OF 1933**

JURY TRIAL DEMANDED

14 LENDINGCLUB CORPORATION, RENAUD
15 LAPLANCHE, CARRIE DOLAN, DANIEL
16 CIPORIN, JEFFREY CROWE, REBECCA LYNN,
17 JOHN J. MACK, MARY MEEKER, JOHN C.
18 (HANS) MORRIS, LAWRENCE SUMMERS,
19 SIMON WILLIAMS, MORGAN STANLEY & CO.
20 LLC, GOLDMAN, SACHS & CO., CREDIT
21 SUISSE SECURITIES (USA) LLC, CITIGROUP
22 GLOBAL MARKETS INC., ALLEN & COMPANY
23 LLC, STIFEL, NICOLAUS & COMPANY,
24 INCORPORATED, BMO CAPITAL MARKETS
25 CORP., WILLIAM BLAIR & COMPANY, L.L.C.,
26 and WELLS FARGO SECURITIES, LLC,

27 Defendants.
28

1 Plaintiff _____ ("Plaintiff"), individually and on behalf of all others similarly situated,
2 by the undersigned attorneys, alleges the following based upon personal knowledge, as to Plaintiff and
3 Plaintiff's own acts, and upon information and belief, as to all other matters, based on the investigation
4 conducted by and through Plaintiff's attorneys, which included, among other things, a review of
5 LendingClub Corporation's ("LendingClub" or the "Company") press releases, Securities and Exchange
6 Commission ("SEC") filings, analyst reports, media reports, and other publicly disclosed reports and
7 information. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth
8 herein after a reasonable opportunity for discovery.
9

10 NATURE OF THE ACTION

11 1. This is a securities class action on behalf of Plaintiff and all other persons or entities,
12 except for Defendants, who purchased or otherwise acquired the common stock of LendingClub,
13 pursuant and/or traceable to the Company's initial public stock offering on or around December 11,
14 2014 (the "Offering"), seeking to pursue strict liability and negligence remedies under the Securities Act
15 of 1933 (the "Securities Act").
16

17 2. LendingClub operates an online marketplace that allows private investors to invest in
18 personal loans. LendingClub originates loans through its partnership with WebBank, a Utah-chartered
19 industrial bank. LendingClub does not retain ownership of the loans, but, rather, sells the interests in the
20 loans to investors. LendingClub makes its money from transaction fees associated with pairing the
21 borrower and investor, as well as servicing and management fees paid by loan investors.
22

23 3. On December 11, 2014, Lending Club conducted the Offering. The Company sold 50.3
24 million shares at \$15.00 per share, certain of the Company's shareholders sold another 7.7 million
25 shares, and the underwriters of the Offering exercised their option to purchase an additional 8.7 million
26 shares, bringing the total number of shares sold to 66.7 million.
27

28 4. The Registration Statement and Prospectus for this Offering (collectively referred to as

1 the "Registration Statement," unless otherwise specified), distributed in connection with the Company's
2 Offering contained false statements and omissions of material facts concerning LendingClub's
3 operations and financial health and prospects. Specifically, the Registration Statement misleadingly
4 concealed the fact that (i) LendingClub had an unsustainable business model that was predicated on it
5 being able to issue loans with extremely high and/or usurious rates across the country; (ii) that
6 LendingClub's loan investors would not be able to enforce the extremely high and/or usurious rates
7 imposed by LendingClub because they violated state usury laws; (iii) that without the extremely high
8 and/or usurious rates, the loans generated through LendingClub's marketplace would not be attractive to
9 investors because the loans had very high credit risk and were subject to issues concerning insufficient
10 documentation; and (iv) that a substantial portion of its loans were issued with rates in excess of those
11 allowed by applicable state usury laws.
12

13
14 5. This action seeks recovery, including rescission, for innocent purchasers who suffered
15 many millions of dollars in losses when the truth about LendingClub emerged and its stock price
16 plummeted.

17 6. For all of the claims stated herein, Plaintiff expressly excludes any allegation that could
18 be construed as alleging fraud or intentional or reckless misconduct. Plaintiff's claims are not based on
19 and do not sound in fraud.
20

21 JURISDICTION AND VENUE

22 7. This Court has subject matter jurisdiction over the causes of action asserted herein,
23 pursuant to the California Constitution, Article VI, §10, because this case is a cause not given by statute
24 to other trial courts. This action is not removable. The claims alleged herein arise under §§11, 12(a)(2),
25 and 15 of the Securities Act. *See* 15 U.S.C. §§77k, 77l(a)(2), and 77o. Jurisdiction is conferred by §22
26 of the Securities Act and venue is proper pursuant to §22 of the Securities Act. §22 of the Securities Act
27 explicitly states that "[e]xcept as provided in section 16(c), no case arising under this title and brought in
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1 any State court of competent jurisdiction shall be removed to any court in the United States.” §16(c)
2 refers to “covered class actions,” which are defined as lawsuits brought as class actions or brought on
3 behalf of more than 50 persons asserting claims under state or common law. This is an action asserting
4 federal law claims. Thus, it does not fall within the definition of “covered class action” under §16(b)-(c)
5 and therefore, is not removable to federal court.
6

7 8. This Court has personal jurisdiction over each of the Defendants named herein because
8 they conducted business in, resided in, and/or were citizens of California at the time of the Offering
9 and/or participated in the drafting of the Registration Statement and execution of the Offering.

10 9. Venue is proper in this Court because some of the Defendants reside in this County.
11 Venue is also proper in this Court because Defendants' wrongful acts arose in and emanated from, in
12 part, this County. The violations of law complained of herein occurred in this County, including the
13 dissemination of materially misleading statements into this County, the purchase of the Company's
14 common stock by members of the class who reside in this County, and the sale of the Company's
15 common stock by certain of the Underwriter Defendants (as defined below) in this County. In addition,
16 certain of the Defendants live in, are headquartered in, and/or maintain offices of operations in this
17 County.
18

19 PARTIES

20 10. Plaintiff _____ purchased LendingClub common stock, pursuant and/or
21 traceable to the Offering, and was damaged thereby.
22

23 11. Defendant LendingClub is a Delaware corporation headquartered in San Francisco,
24 California, and its shares are traded on the NYSE stock exchange under the ticker symbol “LC.” The
25 Company does business in this County.

26 12. Defendant Renaud Laplanche (“Laplanche”) is, and was at the time of the Offering,
27 LendingClub’s founder, Chief Executive Officer (“CEO”), and a director on LendingClub’s Board of
28

1 Directors. Defendant Laplanche signed the false and misleading Registration Statement. Defendant
2 Laplanche is a resident of San Francisco City and County.

3 13. Defendant Carrie Dolan ("Dolan") is, and was at the time of the Offering, the Company's
4 Chief Financial Officer ("CFO"). Defendant Dolan signed the false and misleading Registration
5 Statement. Defendant Dolan is a resident of Contra Costa County.
6

7 14. Defendant Daniel Ciporin ("Ciporin") is, and was at the time of the Offering, a director
8 of the Company. Defendant Ciporin signed the false and misleading Registration Statement. Defendant
9 Ciporin is a resident of Connecticut.

10 15. Defendant Jeffrey Crowe ("Crowe") is, and was at the time of the Offering, a director of
11 the Company. Defendant Crowe signed the false and misleading Registration Statement. Defendant
12 Crowe is a resident of San Mateo County.
13

14 16. Defendant Rebecca Lynn ("Lynn") is, and was at the time of the Offering, a director of
15 the Company. Defendant Lynn signed the false and misleading Registration Statement. Defendant
16 Lynn is a resident of San Mateo County.

17 17. Defendant John J. Mack ("Mack") is, and was at the time of the Offering, a director of
18 the Company. Defendant Mack signed the false and misleading Registration Statement. Defendant
19 Mack is a resident of New York.
20

21 18. Defendant Mary Meeker ("Meeker") is, and was at the time of the Offering, a director of
22 the Company. Defendant Meeker signed the false and misleading Registration Statement. Defendant
23 Meeker is a resident of San Mateo County.

24 19. Defendant John C. (Hans) Morris ("Morris") is, and was at the time of the Offering, a
25 director of the Company. Defendant Morris signed the false and misleading Registration Statement.
26 Defendant Morris is a resident of Massachusetts.

27 20. Defendant Lawrence Summers ("Summers") is, and was at the time of the Offering, a
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1 director of the Company. Defendant Summers signed the false and misleading Registration Statement.

2 Defendant Summers is a resident of Massachusetts.

3 21. Defendant Simon Williams ("Williams") is, and was at the time of the Offering, a
4 director of the Company. Defendant Williams signed the false and misleading Registration Statement.
5 Defendant Williams is a resident of Connecticut.
6

7 22. Defendants Laplanche, Dolan, Ciporin, Crowe, Lynn, Mack, Meeker, Morris, Summers,
8 and Williams are referred to collectively as the "Individual Defendants."

9 23. Defendant Morgan Stanley & Co. LLC ("Morgan Stanley") was an underwriter of the
10 Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination of
11 LendingClub's false and misleading Registration Statement. Defendant Morgan Stanley conducts
12 business in this County.
13

14 24. Defendant Goldman, Sachs & Co. ("Goldman Sachs") was an underwriter of the
15 Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination of
16 LendingClub's false and misleading Registration Statement. Defendant Goldman Sachs conducts
17 business in this County.

18 25. Defendant Credit Suisse Securities (USA) LLC ("Credit Suisse") was an underwriter of
19 the Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination
20 of LendingClub's false and misleading Registration Statement. Defendant Credit Suisse conducts
21 business in this County.
22

23 26. Defendant Citigroup Global Markets Inc. ("Citigroup") was an underwriter of the
24 Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination of
25 LendingClub's false and misleading Registration Statement. Defendant Citigroup conducts business in
26 this County.

27 27. Defendant Allen & Company LLC ("Allen") was an underwriter of the Company's
28

1 Offering, served as a financial advisor, and assisted in the preparation and dissemination of
2 LendingClub's false and misleading Registration Statement. Defendant Allen conducts business in this
3 County.

4 28. Defendant Stifel, Nicolaus & Company, Incorporated ("Stifel") was an underwriter of the
5 Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination of
6 LendingClub's false and misleading Registration Statement. Defendant Stifel conducts business in this
7 County.
8

9 29. Defendant BMO Capital Markets Corp. ("BMO") was an underwriter of the Company's
10 Offering, served as a financial advisor, and assisted in the preparation and dissemination of
11 LendingClub's false and misleading Registration Statement. Defendant BMO conducts business in this
12 County.
13

14 30. Defendant William Blair & Company, L.L.C. ("William Blair") was an underwriter of
15 the Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination
16 of LendingClub's false and misleading Registration Statement. Defendant William Blair conducts
17 business in this County.

18 31. Defendant Wells Fargo Securities, LLC ("Wells Fargo") was an underwriter of the
19 Company's Offering, served as a financial advisor, and assisted in the preparation and dissemination of
20 LendingClub's false and misleading Registration Statement. Defendant Wells Fargo conducts business
21 in this County.
22

23 32. Defendants Morgan Stanley, Goldman Sachs, Credit Suisse, Citigroup, Allen, Stifel,
24 BMO, William Blair, and Wells Fargo are referred to collectively as the "Underwriter Defendants."

25 33. Pursuant to the Securities Act, the Underwriter Defendants are liable for the false and
26 misleading statements in the Offering's Registration Statement and Prospectus. The Underwriter
27 Defendants' failure to conduct adequate due diligence investigations was a substantial factor leading to
28

1 the harm complained of herein.

2 34. The Underwriter Defendants are investment banking houses which specialize, *inter alia*,
3 in underwriting public offerings of securities. They served as the underwriters of the Offering and
4 received, collectively, approximately \$57.5 million in fees. The Underwriter Defendants determined
5 that in return for their share of the Offering, they were willing to merchandize LendingClub stock in the
6 Offering. The Underwriter Defendants arranged a multi-city road show prior to the Offering during
7 which they, and certain of the Individual Defendants, met with potential investors and presented highly
8 favorable information about the Company, its operations, and its financial prospects.

9
10 35. The Underwriter Defendants also demanded and obtained an agreement from
11 LendingClub that LendingClub would indemnify and hold harmless the Underwriter Defendants from
12 any liability under the federal securities laws. They also made certain that LendingClub purchased
13 millions of dollars in directors and officers liability insurance.

14
15 36. Representatives of the Underwriter Defendants also assisted LendingClub and the
16 Individual Defendants in planning the Offering and purportedly conducted an adequate and reasonable
17 investigation into the business and operations of LendingClub, an undertaking known as a “due
18 diligence” investigation. The due diligence investigation was required of the Underwriter Defendants in
19 order to engage in the Offering. During the course of their “due diligence,” the Underwriter Defendants
20 had continual access to confidential corporate information concerning LendingClub’s business sales
21 model, financial condition, internal controls, and its future business plans and prospects.

22
23 37. In addition to availing themselves of access to internal corporate documents, agents of the
24 Underwriter Defendants, including their counsel, met with LendingClub’s lawyers, management, and
25 top executives to determine: (i) the strategy to best accomplish the Offering; (ii) the terms of the
26 Offering, including the price at which LendingClub’s stock would be sold; (iii) the language to be used
27 in the Registration Statement; (iv) what disclosures about LendingClub would be made in the
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1 Registration Statement; and (v) what responses would be made to the SEC in connection with its review
2 of the Registration Statement. As a result of those constant contacts and communications between the
3 Underwriter Defendants' representatives and LendingClub's management and top executives, the
4 Underwriter Defendants knew, or should have known, of LendingClub's existing problems and
5 misstatements and omissions contained in the Registration Statement, as detailed herein.

6
7 38. The Underwriter Defendants caused the Registration Statement to be filed with the SEC
8 and declared effective in connection with offers and sales thereof, including to Plaintiff and the Class.

9 **SUBSTANTIVE ALLEGATIONS**

10 39. According to its most recently filed Form 10-K with the SEC, LendingClub is the largest
11 online marketplace for connecting borrowers and investors in the world, facilitating over \$7.6 billion in
12 loan originations from its launch in 2007 through December 31, 2014. Its marketplace facilitates
13 various types of loan products for consumers and small businesses, including unsecured personal loans,
14 super prime consumer loans, unsecured education and patient finance loans, and unsecured small
15 business loans. The Company also offers investors an opportunity to invest in a range of loans based on
16 term and credit characteristics. The Company was founded by Defendant Laplanche and incorporated in
17 2006.

18
19 40. The Company claims that "consumers and small business owners borrow through
20 Lending Club to lower the cost of their credit and enjoy a better experience than traditional bank
21 lending," and that "[i]nvestors use Lending Club to earn attractive risk-adjusted returns from an asset
22 class that has generally been closed to many investors and only available on a limited basis to large
23 institutional investors."

24
25 41. The Company offers three principal ways for investors to invest in loans: notes issued,
26 pursuant to a shelf registration statement; certificates issued by an independent trust; and whole loan
27 sales. The Company generates revenue from (i) transaction fees from matching borrowers with
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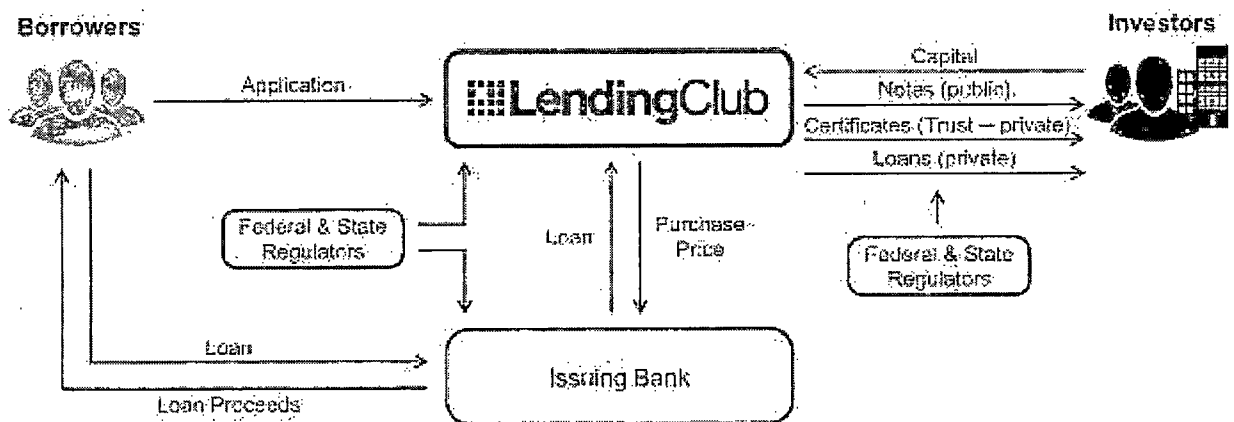
investors to enable loan originations; (ii) servicing fees from investors; and (iii) management fees from investment funds and other managed accounts.

42. LendingClub does not directly make loans to its customers. Rather, banks originate loans to borrowers that apply on LendingClub's website and the Company then purchases a majority of these loans, with funds provided by investors, through a variety of investment channels, thereby enabling investors to capture the interest rate return on each loan.

43. LendingClub's primary issuing bank is WebBank, a Utah-chartered industrial bank that handles a variety of consumer and commercial financing programs.

44. Under a loan sale agreement between LendingClub and WebBank, two business days after a loan is closed, WebBank sells the loan to LendingClub, including all rights related to the loan, without recourse.

45. Below is a diagram illustrating LendingClub's loan issuing and investment process:



THE FALSE AND MISLEADING REGISTRATION STATEMENT

46. On August 27, 2014, LendingClub filed its Registration Statement with the SEC on Form S-1. After several amendments in response to comments by the SEC, the Registration Statement was declared effective on December 10, 2014 and the Company filed the final Prospectus for the Offering, which forms part of the Registration Statement. The Company sold 50.3 million shares at \$15.00 per

1 share, selling shareholders sold another 7.7 million shares, and the underwriters of the Offering
2 exercised their option to purchase an additional 8.7 million shares, bringing the total number of shares
3 sold to 66.7 million.

4 47. The Registration Statement contained material false and misleading statements, omitted
5 to state other facts necessary to make the statements made not misleading, and was not prepared in
6 accordance with the rules and regulations governing its preparation.

8 48. The Registration Statement touted LendingClub's ability to provide its borrower
9 customers with "affordable credit":

10 *Access to Affordable Credit.* Our innovative marketplace model, online delivery and
11 process automation enable us to offer borrowers interest rates that are generally lower on
12 average than the rates charged by traditional banks on credit cards or installment loans.
13 Based on responses from 21,051 borrowers in a survey of 103,439 randomly selected
14 borrowers conducted by us during the nine months ended September 30, 2014, borrowers
15 who received a loan to consolidate existing debt or pay off their credit card balance
16 reported that the interest rate on the loan they received through our marketplace was on
17 average 680 basis points lower than the rate on their outstanding debt or credit card
18 balances, representing a 32% savings.

16 49. The Registration Statement included a letter from founder, CEO, and director, Defendant
17 Laplanche, further emphasizing the importance of extending "affordable capital" to consumers:

18 It all started in the summer of 2006 when I opened a credit card statement charging me a
19 16.99% interest rate, and a savings account statement from the same bank where I was
20 earning a 0.48% interest rate on my deposits. The extreme difference between these two
21 rates – one paid by me to the bank and the other paid by the bank to me – made me
22 wonder whether the existing banking system was indeed the most efficient mechanism to
23 allocate capital from savers and depositors into the hands of people and businesses
24 looking for affordable credit. At that point, I considered the idea that an online
25 marketplace could be a far more cost-efficient solution. Now, with a seven-year track
26 record and billions of dollars of credit extended, we have clear evidence that our platform
27 delivers extraordinary value and a considerably better experience to borrowers and
28 investors than traditional banks.

25 Affordable capital provides more financial flexibility to consumers and gives small
26 businesses an opportunity to drive growth and create jobs. Our model furthermore lowers
27 systemic risk, because our marketplace has at all times a perfect match of assets and
28 liabilities: loans and investments are in equal amount and identical terms at any point in
time.

We offer responsible credit products with a fixed rate, fixed monthly payment, no prepayment penalty and no hidden fees, at a lower interest rate than prevailing alternatives, and disclose all terms upfront in a manner that is easy for borrowers to understand.

50. The Registration Statement emphasized LendingClub's ability to quickly determine the appropriate interest rate to assign to a prospective borrower:

Fast and Efficient Decisioning. We leverage online data and technology to quickly assess risk, determine a credit rating and assign appropriate interest rates. Qualified applicants receive offers in just minutes and can evaluate loan options without impacting their credit score.

Attractive Risk-Adjusted Returns. We have historically offered investors attractive risk-adjusted returns across loans offered through our marketplace. We screen loan applicants based on proprietary credit decisioning and scoring models and also factor in historical borrower performance in setting interest rates.

51. The Registration Statement also stressed the Company's ability to provide an attractive return, tied directly to the interest rates on the securitized loans:

We utilize credit decisioning and scoring models that assign each loan offered on our marketplace a corresponding interest rate and origination fee. Our investors' returns are a function of the assigned interest rates for each particular loan invested in less any defaults over the term of the applicable loan.

52. The Registration Statement contained a partial disclosure regarding the Company's regulatory environment:

Regulatory Environment

The regulatory environment for credit is complex and evolving, creating both challenges and opportunities that could affect our financial performance. We expect to continue to spend significant resources to comply with various federal and state laws and various licensing requirements designed to, among other things, protect borrowers (such as truth in lending, equal credit opportunity, fair credit reporting and fair debt collections practices) and investors. Our marketplace incorporates a number of automated features to help comply with these laws in an efficient and cost effective manner. While new laws and regulations or changes under existing laws and regulations could make facilitating loans or investment opportunities more difficult to achieve on acceptable terms, or at all, these events could also provide new product and market opportunities. To the extent we

1 seek to grow internationally, we would become subject to additional foreign regulation
2 and related compliance requirements and expense.

3 53. The Registration Statement also disclosed a limited risk related to state usury laws:

4 ***If our marketplace was found to violate a state's usury laws, we may have to alter our***
5 ***business model and our business could be harmed.***

6 The interest rates that are charged to borrowers and that form the basis of payments to
7 investors through our marketplace are based upon the ability under federal law of the
8 issuing bank that originates the loan to export the interest rates of its jurisdiction of
9 incorporation to provide uniform rates to all borrowers in all states that have not opted
10 out. WebBank, our primary issuing bank, exports the interest rates of Utah, which allows
11 parties to generally agree by contract to any interest rate. The current annual percentage
12 rates offered by WebBank through our marketplace for personal loans range from 6.78%
13 to 29.99%, which equate to interest rates for investors that range from 6.03% to 26.06%.
14 Of the forty-six jurisdictions whose residents may obtain loans (including the District of
15 Columbia), certain states, including Utah, have no statutory interest rate limitations on
16 personal loans, while other jurisdictions have a maximum rate less than the current
17 maximum rate offered by WebBank through our platform. If a borrower were to
18 successfully bring claims against us for state usury law violations, and the rate on that
19 borrower's personal loan was greater than that allowed under applicable state law, we
20 could be subject to fines and penalties. Further, if we were unable to partner with another
21 issuing bank, we would have to substantially modify our business operations from the
22 manner currently contemplated and would be required to maintain state-specific licenses
23 and only provide a limited range of interest rates for personal loans, all of which would
24 substantially reduce our operating efficiency and attractiveness to investors and possibly
25 result in a decline in our operating results.

17 * * *

18 ***Consumer Protection Laws***

19 ***State Usury Limitations.*** Section 521 of the Depository Institution Deregulation and
20 Monetary Control Act of 1980 (DIDA) and Section 85 of the National Bank Act (NBA),
21 federal case law interpreting the NBA such as *Tiffany v. National Bank of Missouri* and
22 *Marquette National Bank of Minneapolis v. First Omaha Service Corporation* and FDIC
23 advisory opinion 92-47 permit FDIC-insured depository institutions, such as WebBank,
24 to "export" the interest rate permitted under the laws of the state or U.S. territory where
25 the bank is located, regardless of the usury limitations imposed by the state law of the
26 borrower's residence unless the state has chosen to opt out of the exportation regime.
27 WebBank is located in Utah, and Title 70C of the Utah Code does not limit the amount of
28 fees or interest that may be charged by WebBank on loans of the type offered through our
marketplace. Only Iowa and Puerto Rico have opted out of the exportation regime under
Section 525 of DIDA and we do not operate in either jurisdiction. We believe, however,
if a state or U.S. territory in which we operate opted out of rate exportation, judicial
interpretations support the view that such opt outs would apply only to loans "made" in

1 those states. We believe that the “opt-out” of any state would not affect the ability of our
2 marketplace to benefit from the exportation of rates. If a loan made through our
3 marketplace were deemed to be subject to the usury laws of a state or U.S. territory that
4 had opted-out of the exportation regime, we could become subject to fines, penalties and
possible forfeiture of amounts charged to borrowers, and we could decide not to originate
loans in that jurisdiction, which could adversely impact our growth.

5 54. The above statements made in the Registration Statement were materially false and
6 misleading when made because the Company failed to disclose the following material facts: (i)
7 LendingClub had an unsustainable business model that was predicated on it being able to issue loans
8 with extremely high and/or usurious rates across the country; (ii) LendingClub’s loan investors would
9 not be able to enforce the extremely high and/or usurious rates imposed by LendingClub because they
10 violated state usury laws; (iii) without the extremely high and/or usurious rates, the loans generated
11 through LendingClub’s marketplace would not be attractive to investors because the loans had very high
12 credit risk and were subject to issues concerning insufficient documentation; and (iv) a substantial
13 portion of LendingClub’s loans were issued with rates in excess of those allowed by applicable state
14 usury laws.
15

16 **THE TRUTH BEGINS TO EMERGE**

17 55. On May 22, 2015, the Second Circuit affirmed that the business model used by
18 LendingClub was not valid because loans sold by banks to non-bank, third-parties (such as LendingClub
19 and its investors) are not exempt from state usury laws that limit interest rates. *See Madden v. Midland*
20 *Funding, LLC*, 786 F.3d 246 (2d Cir. 2015), *petition for cert. docketed, Midland Funding, LLC v.*
21 *Madden*, No. 15-610 (U.S. Nov. 10, 2015). Specifically, the Second Circuit observed that assignees and
22 third-party debt buyers could not rely on the National Bank Act to export interest rates that were legal in
23 one state, but usurious in another, to the states where those rates were impermissible. The Second
24 Circuit further explained that the National Bank Act generally does not apply to third-parties unless the
25 third-party is acting on behalf of a bank in carrying out the bank’s business. Thus, if state usury laws
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1 apply to third-party purchasers of debt (including individual and institutional investors who buy
2 LendingClub's notes and certificates from WebBank), loans with interest rates exceeding the limits of a
3 borrower may not be fully collectable – or potentially collectable at all.

4 56. In the wake of the *Madden* decision, investors and analysts have expressed concerns
5 about the impact of the decision on LendingClub. According to Moody's analysts Alan Birnbaum and
6 Matias Langer, "[i]f interpreted broadly, interest rates on some loans backing marketplace lending
7 [asset-backed securities] transactions could be reduced, or the loans themselves be void." Morgan
8 Stanley reported that some buyer of the notes that the Company had spoken to had been proactively
9 avoiding notes above state usury limits. Gilles Gade, CEO of Cross River Bank, stated to Bloomberg
10 Business that "[s]ome investors have warned they may simply shun loans to borrowers in certain states,
11 because they either don't yield as much or could be affected by the decision."
12

13 57. Statements by Defendants have shown the significant percentage of the Company's loan
14 portfolio, which is violating state usury laws under *Madden*, as well as the changes the Company has
15 made to its business in direct response to *Madden*. For example, on August 8, 2015, LendingClub held a
16 conference call with analysts to discuss its second quarter 2015 financial results. During the call,
17 Defendants made the following statements, among others:
18

19 **Defendant Laplanche:**

20 Next let me say a few words about the regulatory framework we operate in. Our market
21 place benefits from what we believe to be an efficient regulatory framework that offers
22 borrowers the same level of consumer protection that benefit from a bank while
23 providing us with more flexibility and the more cost efficient and capital light
framework.

24 In particular, all loans are overseen, issued and originated by Federally regulated banks
25 and [often] our lending regulation which has truth in lending, and fair lending and fair
26 credit reporting (inaudible). We believe that one of the benefits of our platform is to use
technology to make consumer protection more effective and more efficient.

27 As an alternative to our partnerships with issuing banks and other framework available to
28 us is a direct lending approach by utilizing state licenses. Under a state license

1 framework, however, interest rates would be limited by state specific interest rate caps.
2 *And based on our current mix, we estimate that roughly 12.5% of our platform's loan*
3 *volume would exceed the interest rate caps in certain states.*

4 Another key aspect of our regulatory framework is that we do not collect deposits like a
5 bank would. Instead we sell securities or whole loans to investors and the securities are
6 matched in terms of rate and duration with the underlying loans. *Lending Club does not*
7 *assume credit risk or interest rate risk which are borne by investors.* Therefore, there is
8 no capital requirement or [DSE] insurance.

9 * * *

10 **Analyst:**

11 And do you have any comments on the Madden versus Midland funding case that's going
12 through the court system right now in terms of how it potentially impact your business?

13 **Defendant Laplanche:**

14 Yes, so we've seen that case that came out a couple of months ago. I think the --our take
15 there is obviously the particular circumstances of the case are different from what we're
16 seeing on our platform. But in general what really helps us apply Utah law to most of
17 our loans is really a couple of things. One is for the all preemption. And the second is
18 choice of law provision in our contract.

19 The Madden case really challenged the federal preemption but did not challenge the
20 choice of law provision, so that's really the -- and we don't need both, we need one of
21 them. So we continue to operate in the second [separate] district where that decision was
22 rendered exactly as we did before and are relying on our choice of provisions.

23 Note that this particular case is getting challenged by a lot of payers in the banking
24 industry, including the American Banking Association. And I think it's an unusual case,
25 but certainly that doesn't come back to us in that the sense that we continue to rely on
26 choice of law provision.

27 If we were to see that the choice of law provision was getting challenged elsewhere,
28 which there's no reason to expect at this point, we could also think of a different issuance
framework than the one we're using now where we would switch to a series of state
licenses. *And that's in (inaudible) we provided in our slide deck that shows that using*
the current mix we have about 12.5% of our loans that would exceed the state interest
rate caps.

So that certainly would be (inaudible) demand and we'd have to revise our pricing in
certain states, but that certainly would be another option available to us if our choice
of law provision and federal preemption was getting challenged in other states.

[Emphasis added.]

1 58. On December 2, 2015, Defendant Laplanche spoke on behalf of the Company at the
2 Credit Suisse Technology, Media & Telecom Conference, during which he made the following
3 statements:

4 **Analyst:**

5 Yes. I think there's also regulatory concerns around the business right now. And, in
6 particular, the one that comes up the most is the ruling on Madden. Can you explain, or at
7 least remind us, what that entails? And I guess starting from there, and how that might
8 impact your business.

9 **Defendant Laplanche:**

10 Yes. The Madden case was a Court of Appeals decision from the Second Circuit Court
11 of Appeals, so that concerns New York, Vermont, and Connecticut. And it was a case
12 where a bank -- it was Bank of America -- made a loan to a borrower in New York, and
13 then subsequently sold that loan to a collection agency that sent a notice to the customers
14 saying, hey, now your loan is subject to the law of Delaware, and we're going to collect
15 using the maximum available rate in the state of Delaware.

16 What the Court said is when the bank sells the loan to the collection agency, the loan
17 stops getting the benefit of the National Bank Act, and the state's maximum rate would
18 then apply. Which was a departure from any other case before that, and from a lot of
19 cases that came after that, as well, in other Circuits. That case is making its way through
20 the court system. There's Midland, which is the other party, is trying to get the Supreme
21 Court to pick it up. We don't know yet if that's going to happen.

22 In the meantime, I think so far there's been no impact to our business. I think the
23 circumstances, the facts, are very different. We think we have a much better situation.
24 We don't change the law applicable to the contract at any point in time. The applicable
25 law remains in the state of Utah for the life of the loan. *But as an additional precaution,*
26 *we made some changes to our relationship with our issuing bank to make sure that*
27 *even if the Madden criteria were to be applied to us, we would still be able to operate as*
28 *we have before, and not be subject to state-specific regulations.*

Analyst:

Yes. I can go on your Investor Relations site now and download all of the historical loans
data, deep data explicitly there, and you can overlay that with the maximum interest rate
allowances on a state-by-state basis. And if I were to sit there and say, okay, Lending
Club, you can't do loans above a certain interest rate anymore -- it seems like if you do
that analysis, it's about 11% or so of the total loan volume out there (multiple speakers)?

Defendant Laplanche:

That's right. If you take a worst-case scenario analysis and say, okay, let's assume that

1 case becomes the national jurisprudence and it is expanded nationwide. The facts, again,
2 we believe are different, but let's assume we are . . . *The worst-case scenario happens,*
3 *and the Madden case were to be applied to us, we'd have about 12.5% of our loans that*
4 *are in excess of state limit, which doesn't mean we would lose 12.5% of our volume.*
5 *We would have to reprice some of these loans. There might be a portion of that that*
6 *can't be priced in a way that makes it attractive to investors, so we might lose a portion*
7 *of the 12.5%, but that's really a worst-case scenario.*

8 [Emphasis added.]

9 59. As of the filing of this action, the price of LendingClub common stock was \$8.45 on
10 February 25, 2016, a *more than 43% decline from the Offering price.*

11 PLAINTIFF'S CLASS ACTION ALLEGATIONS

12 60. Plaintiff brings this action as a class action on behalf of a Class consisting of all those
13 who purchased LendingClub common stock, pursuant or traceable to the Company's Offering and
14 Registration Statement, and who were damaged thereby (the "Class"). Excluded from the Class are
15 Defendants, the officers and directors of the Company, at all relevant times, members of their immediate
16 families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants
17 have or had a controlling interest.

18 61. The members of the Class are so numerous that joinder of all members is impracticable.
19 While the exact number of Class members is unknown to Plaintiff at this time, and can only be
20 ascertained through appropriate discovery, Plaintiff believes that there are thousands of members in the
21 proposed Class. The proposed Class may be identified from records maintained by LendingClub or its
22 transfer agent and may be notified of the pendency of this action by mail, using the form of notice
23 similar to that customarily used in securities class actions.

24 62. Plaintiff's claims are typical of the claims of the members of the Class, as all members of
25 the Class are similarly affected by Defendants' wrongful conduct.

26 63. Plaintiff will fairly and adequately protect the interests of the members of the Class and
27 has retained counsel competent and experienced in class and securities litigation.
28

64. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- a. whether the federal securities laws were violated by Defendants' acts as alleged herein;
- b. whether the Registration Statement contained materially false and misleading statements and omissions; and
- c. to what extent Plaintiff and members of the Class have sustained damages and the proper measure of damages.

65. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CLAIM
Violations of §11 of the Securities Act
Against All Defendants

66. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

67. This claim is brought pursuant to §11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against each of the Defendants.

68. The Registration Statement was inaccurate and misleading, contained untrue statements of material facts, omitted facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein.

69. Defendant LendingClub is the issuer of the securities purchased by Plaintiff and the

1 Class. As such, LendingClub is strictly liable for the materially inaccurate statements contained in the
2 Registration Statement and the failure of the Registration Statement to be complete and accurate.

3 70. The Individual Defendants each signed the Registration Statement. The Individual
4 Defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and
5 accuracy of the statements contained in the Registration Statement. They had a duty to ensure that they
6 were true and accurate, that there were no omissions of material facts that would make the Registration
7 Statement misleading and that the document contained all facts required to be stated therein. In the
8 exercise of reasonable care, the Individual Defendants should have known of the material misstatements
9 and omissions contained in the Registration Statement and also should have known of the omissions of
10 material fact necessary to make the statements made therein not misleading. As such, the Individual
11 Defendants are liable to Plaintiff and the Class.
12

13 71. The Underwriter Defendants each served as underwriters in connection with the Offering.
14 These Defendants each had a duty to make a reasonable and diligent investigation of the truthfulness and
15 accuracy of the statements contained in the Registration Statement. They had a duty to ensure that they
16 were true and accurate, that there were no omissions of material facts that would make the Registration
17 Statement misleading, and that the documents contained all facts required to be stated therein. In the
18 exercise of reasonable care, the Underwriter Defendants should have known of the material
19 misstatements and omissions contained in the Registration Statement and also should have known of the
20 omissions of material facts necessary to make the statements made therein not misleading. As such, the
21 Underwriter Defendants are liable to Plaintiff and the Class.
22

23 72. By reasons of the conduct herein alleged, each Defendant violated §11 of the Securities
24 Act.
25

26 73. Plaintiff acquired LendingClub common stock in reliance on the Registration Statement
27 and without knowledge of the untruths and/or omissions alleged herein. Plaintiff sustained damages and
28

1 the price of LendingClub shares declined substantially due to material misstatements in the Registration
2 Statement.

3 74. This action was brought within one year after the discovery of the untrue statements and
4 omissions and within three years of the date of the Offering.

5 75. By virtue of the foregoing, Plaintiff and the other members of the Class are entitled to
6 damages under §11, as measured by the provisions of §11(e), from the Defendants and each of them,
7 jointly and severally.
8

9
10 **SECOND CLAIM**
Violations of §12(a)(2) of the Securities Act
Against All Defendants

11 76. Plaintiff repeats and realleges each and every allegation contained above as if fully set
12 forth herein.

13 77. Defendants were sellers and offerors and/or solicitors of purchasers of the LendingClub
14 securities offered pursuant to the Offering. Defendants issued, caused to be issued, and signed the
15 Registration Statement in connection with the Offering. The Registration Statement was used to induce
16 investors, such as Plaintiff and the other members of the Class, to purchase LendingClub securities.
17

18 78. The Registration Statement contained untrue statements of material facts, omitted to state
19 other facts necessary to make the statements made not misleading, and omitted material facts required to
20 be stated therein. Defendants' actions of solicitation included participating in the preparation of the
21 false and misleading Registration Statement.
22

23 79. As set forth more specifically above, the Registration Statement contained untrue
24 statements of material fact and omitted to state material facts necessary in order to make the statements,
25 in light of circumstances in which they were made, not misleading.

26 80. Plaintiff and the other Class members did not know, nor could they have known, of the
27 untruths or omissions contained in the Registration Statement.
28

1 81. The Defendants were obligated to make a reasonable and diligent investigation of the
2 statements contained in the Registration Statement to ensure that such statements were true and that
3 there was no omission of material fact required to be stated in order to make the statements contained
4 therein not misleading. None of the Defendants made a reasonable investigation or possessed
5 reasonable grounds for the belief that the statements contained in the Registration Statement were
6 accurate and complete in all material respects. Had they done so, these Defendants could have known of
7 the material misstatements and omissions alleged herein.
8

9 82. This claim was brought within one year after discovery of the untrue statements and
10 omissions in the Registration Statement and within three years after LendingClub securities were sold to
11 the Class in connection with the Offering.
12

13 **THIRD CLAIM**
14 **Violations of §15 of the Securities Act**
 Against the Individual Defendants

15 83. Plaintiff repeats and realleges each and every allegation contained above as if fully set
16 forth herein.

17 84. The Individual Defendants acted as controlling persons of LendingClub within the
18 meaning of §15 of the Securities Act. By reason of their ownership, senior management positions,
19 and/or directorships at the Company, as alleged above, these Defendants, individually and acting
20 pursuant to a common plan, had the power to influence and exercised same to cause LendingClub to
21 engage in the conduct complained of herein. By reason of such conduct, the Individual Defendants are
22 liable pursuant to §15 of the Securities Act.
23

24 85. By reason of such wrongful conduct, the Individual Defendants are liable pursuant to §15
25 of the Securities Act. As a direct and proximate result of the wrongful conduct, Class members suffered
26 damages in connection with their purchases of the Company's securities.
27
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- A. Declaring this action to be a proper class action pursuant and certifying Plaintiff as Class representative;
- B. Awarding Plaintiff and other members of the Class compensatory damages;
- C. Awarding Plaintiff and other members of the Class rescission on their §12(a)(2) claims;
- D. Awarding Plaintiff and other members of the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees, and other costs and disbursements; and
- E. Awarding Plaintiff and other members of the Class any other relief as the Court may deem just and proper.

Plaintiff hereby demands a trial by jury.