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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

LENDINGCLUB CORPORATION d/b/a Lending Club,

Defendant.

CASE NO. 3:18-CV-02454-JSC

JOINT STIPULATION AND ~~[PROPOSED]~~ ORDER TO STRIKE THE FTC'S PRAYER FOR MONETARY RELIEF

Date: n/a
Time: n/a
Courtroom: n/a
Judge: Hon. Jacqueline Scott Corley

JOINT STIPULATION

Pursuant to N.D. Cal. Loc. Civ. R. 7-12, Plaintiff Federal Trade Commission (the "FTC") and Defendant LendingClub Corporation ("LendingClub"), by and through their undersigned counsel, hereby agree and stipulate as follows:

WHEREAS the FTC filed a First Amended Complaint on October 22, 2018, that includes demands for monetary restitution pursuant to Section 13(b) of the FTC Act (15 U.S.C. § 53(b)) (¶¶ 1, 6, 69, Prayer for Relief, ¶ C);

WHEREAS, on April 22, 2021, the United States Supreme Court ruled in *AMG Capital Management, LLC v. F.T.C.*, that Section 13(b) of the FTC Act does not "authorize[] the Commission to seek, [or] a court to award, equitable monetary relief such as restitution or disgorgement." No. 19-508, 141 S. Ct. 1341, 1344 (2021);

WHEREAS, the FTC wishes to reserve all rights available under the law to seek to assert claims for monetary relief in the event of new legislation, and LendingClub wishes to reserve all rights to object to any such effort;

NOW, THEREFORE, THE PARTIES STIPULATE that the demand for equitable monetary relief in the FTC's First Amended Complaint should be stricken. If new legislation during the pendency of this case provides the FTC with the authority to seek monetary relief under Section 13(b), the FTC reserves the right to seek to assert claims for monetary remedies to the extent permissible by law, and LendingClub reserves the right to object to any such effort.

A proposed form of order is attached for the Court's consideration.

DATED: May __, 2021

By */s/ Katherine R. Roller*
Katharine R. Roller
Attorney for Plaintiff Federal Trade Commission

By */s/ Diane M. Doolittle*
Diane M. Doolittle
Attorney for Defendant LendingClub Corporation

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

/s/ Diane M. Doolittle
Diane M. Doolittle

[PROPOSED] ORDER

Having reviewed the Joint Stipulation to Strike the FTC's Prayer for Monetary Relief filed jointly by Plaintiff Federal Trade Commission (the "FTC") and Defendant LendingClub Corporation ("LendingClub"), and good cause appearing therefor, the Court hereby **STRIKES** without prejudice the following demands for monetary relief in the FTC's First Amended Complaint (Dkt. 57):

- "rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies" (¶ 1)
- "including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies" (¶ 6)
- "including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies," (¶ 69); and
- "Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, the Privacy Rule, and Regulation P including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies" (Prayer for Relief (C)).

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: May 14, 2021

Jacqueline Scott Corley

Jacqueline S. Corley

United States Magistrate Judge