IN THE HIGH COURT OF JUSTICE **CLAIM NO: BL-2024-000191**
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BEFORE:

BETWEEN:

MANOLETE PARTNERS PLC

Claimant

-and-

MSR PARTNERS LLP

Defendant

CLAIMANT'S RESPONSE TO THE DEFENDANT'S PART 18 REQUEST DATED 20 JUNE 2025

Request 1:

1. New allegations of negligence [APOC/27.20]: paragraph 27.20.3 alleges that the Defendant was, or ought to have been aware *"that Lendy was unable to make prompt payment of its liabilities"*. In relation to this:

    a. How and when is it alleged that the Defendant ought to have appreciated that Lendy was unable to make prompt payments of its liabilities?

    b. Is it alleged that the Defendant ought to have appreciated as at 14 February 2018 and/or 3 August 2018 (when the FY16 and FY17 audit opinions were signed, respectively) that Lendy would not be able to pay sums due in the future under the remediation plan (by December 2018, on the Claimant's proposed case)? If so, how? If not, how (if at all) is the remediation plan relevant to the Claimant's case.

c. Paragraph 27.20.3(iii) refers to Corporation Tax bills for 2016 and 2017 *"said to amount to about £650,000"*. In relation to this:

   i. What, if anything, does the Claimant allege Lendy's liability to pay Corporation Tax in 2016 and 2017 actually was? (The Defendant wishes to understand what is meant by *"said to amount to"* as well as the Claimant's case that it should have appreciated that Lendy was insolvent).

   ii. Is it alleged that the Defendant ought to have appreciated as at 14 February 2018 and/or 3 August 2018 that Lendy would not be able to pay Corporation Tax for 2016 and/or 2017? If s, how?

<u>Response 1:</u>

1 **The following responses are given before disclosure by the Defendant of its audit files. The Claimant reserves the right to amend them after disclosure by the Defendant of its audit files.**

1(a) **The Defendant ought to have appreciated that Lendy was unable to make prompt payment of its liabilities as at the audit sign-off dates of 14 February and 3 August 2018. The Defendant ought to have reached that appreciation through competent audits of Lendy's financial statements and of its going concern status, as pleaded at the following paragraphs of the APOC: 27.5 (incorrectly bringing forward revenue); 27.13.3 (tax implications of the Marshall Islands Payments); 27.14 (audit and presentation of the cashflow statements); 27.15 (set-up costs of loans); 27.16 (defaulting loans and the state of the loan book); 27.20 (going concern basis); and 28.7 (implications of outstanding Corporation Tax returns and liabilities).**

1(b) **As the Defendant knew or ought to have known by the audit sign-off dates of 14 February and 3 August 2018, by not later than December 2017 Lendy had agreed to undertake a formal remediation exercise as a condition of its**

pending FCA authorisation. As the Defendant further knew, or ought to have known, the cost of that remediation exercise was established by May 2018 at £1.9m, for which Lendy agreed a payment plan with the FCA calling for payment by December 2018. As at February 2018, the Defendant ought, as part of its going concern assessment, to have considered the likely cost of the remediation plan and, if that was not ascertainable, treat it as a material uncertainty affecting both Lendy's solvency and its ability to obtain full authorisation from the FCA. As at August 2018, there was a fully quantified agreement with the FCA to make remediation payments of £1.9m to investors who had been unfairly treated. These amounts represented compensation for losses already suffered and were, therefore, immediately payable. However, Lendy was unable to make immediate payment and had sought an agreement on instalments from the FCA. This in itself demonstrated that Lendy was unable to meet its liabilities as they fell due and put its going concern status in doubt.

1(c)(i) **On 30 July 2018, HMRC wrote to Lendy demanding payment of £730,868 in Corporation Tax. Lendy's 2017 accounts, as audited by the Defendant and signed-off on 3 August 2018, stated the Corporation Tax due from Lendy in respect of 2016 and 2017 as being £649,086 and £159,254 respectively, making a total for the two years of £808,340. On 31 August 2018, Mr Adam Bolger, of Lendy's tax accountants Jelliff Lamprey, reported that he had told HMRC that Lendy's Corporation Tax liability for 2016 and 2017 would be £650,000. The Claimant accordingly says that Lendy's Corporation Tax liability for 2016 and 2017 was at least £650,000. This is subject to the qualification that, on a correct treatment of the Marshall Islands Payments as directors' remuneration, as pleaded at paragraph 27.13.3 of the APOC, Lendy would have become liable for PAYE of about £5.6m and employer's national insurance of about £1.7m, which amounts would have eliminated Lendy's reported profits for 2016 and 2017. On that basis, Lendy's Corporation Tax**

liability would also have been eliminated, but replaced by a much larger liability for PAYE and NI.

1(c)(ii) **The Defendant must have understood from the accounts they audited that the Corporation Tax due from Lendy in respect of 2016 and 2017 was £649,086 and £159,254 respectively, making a total for the two years of £808,340 (albeit that the correct amount may have been £650,000). The Defendant further knew that the tax was overdue, that no tax had been paid (despite the heavy interest and penalties levied by HMRC on unpaid tax) and that Corporation Tax Returns had not been submitted. These facts, on their own, demonstrated that Lendy was either unable or unwilling to meet its liabilities as they fell due and put its going concern status in doubt.**

Request 2:

2. Investor losses [APOC/32.1]:

a. Paragraph 32.1.3 alleges: *"Model 2 lenders informed the Administrators that they had claims against Lendy for the losses suffered by them on Model 2 loans including claims for breach of contract, breach of fiduciary duty, misrepresentation, negligent misstatement and breach of statutory duty"*. In relation to this:

i. What terms of what contract(s) did the Model 2 lenders allege had been breached, how and when?

ii. What fiduciary duties did the Model 2 lenders allege had been breached, how, and when?

iii. What misrepresentations did the Model 2 lenders allege had been made to them, by whom, how and when?

b. Paragraph 32.1.3 also alleges: *"The Administrators were satisfied that Model 2 lenders would have a number of unsecured claims in the administration of Lendy, including for the causes of action specified"*. In relation to this:

i. Does the Claimant allege that Lendy was liable to all of the Model 2 investors in respect of all of the causes of action listed above? If not, what is the extent of its case in relation to these causes of action?

ii. This sentence uses the word "including". Does the Claimant allege that Lendy was liable to the Model 2 lenders, or any of them, for additional reasons? If so, what were those additional reasons?

c. In relation to the sum of £15,687,795:

i. Please give the dates and amounts of every new investment after 1 March 2018. The particulars given in the Schedule at p.60 of "SMW1" are inadequate because they only provide a total amount alleged to have been invested in respect of each loan after 1 March 2018.

ii. Please explain how the expected loss on monies invested from 1 March 2018 has been calculated. In answering this question, please state the total recoveries and the total expected loss on each loan and explain how the recoveries and loss has been allocated between the pre and post 1 March 2018 investors.

d. What is the current position under each loan made between 1 March 2018 and 24 May 2019? Please produce a spreadsheet summarising this.

Response 2:

2(a) The contracts which the Model 2 lenders alleged had been breached were the contracts made between them as investors and Lendy as their agent for the making and administration of the loans to the borrowers and as platform operator. The allegations of breach of contract, breach of fiduciary duty and misrepresentation made by the Model 2 lenders are set out at pp. 63-70 of the

letter dated 28 February 2020 from Gunnercooke LLP acting for the Lendy Action Group (LAG) which is exhibited at pp. 63-70 of the First Witness Statement of Steven Mark Wilson dated 9 June 2020.

2(b)(i) The Claimant alleges that the Administrators reasonably compromised the claims by the Model 2 lenders against Lendy on the terms of the protocol referred to at paragraph 32.1.4 of the APOC. Further, insofar as necessary, the Claimant alleges that Lendy was liable to the Model 2 lenders who made loans in or after March 2018 in respect of the causes of action listed.

2(b)(ii) The sentence quoted states the position of the Administrators as explained at paragraph 11 of the Ninth Witness Statement of Damian Webb made in the insolvency proceedings concerning Lendy and exhibited at p.71 of the First Witness Statement of Steven Mark Wilson dated 9 June 2020. The Claimant does not rely on any causes of action accruing to the Model 2 lenders in addition to those specified.

2(c)(i)-(ii) Please see the attached loan spreadsheet entitled "loss on loans workbook". As between pre and post 1 March 2018 investors, recoveries and losses have been distributed pro rata.

2(d) Please see attached spreadsheet referred to above.

Request 3:

3. Additional Interest Claim [APOC/32.1.6]: This proposed new paragraph alleges that

"Lendy's liabilities to investors includes all interest to which an investor was entitled. The best estimate which the Claimant is in a position to provide before expert

determination is an additional liability of not less than £7,000,000”. The Defendant does not accept that these are the best or adequate particulars of a proposed new claim for £7,000,000. In relation to this:

a. Please explain the basis on which it is alleged that Lendy is liable to compensate investors for interest due to them under the loan terms.

b. Please identify the contractual terms under which interest is said to have been due to investors from borrowers, explaining what interest rates applied, on what basis, and from what dates.

c. Please explain how the £7,000,000 estimate has been calculated.

Response 3:

3(a) **Under the terms of the protocol referred to at paragraph 32.1.4 of the APOC, which the Claimant says was a reasonable compromise of the M2 Lenders' claims, the Administrators agreed to admit claims from M2 Lenders in respect of the capital and interest which the M2 Lenders should have received regarding the relevant M2 Loan, if the Borrower had repaid all capital and interest in full on the date that the asset which the relevant M2 Loan secured was sold by, or on behalf of, Lendy. In the case of standard interest due under the loan terms, this was a reasonable and justifiable treatment as (i) the M2 Lenders would have had claims to interest under statute or as damages in any event; (ii) had they not invested through Lendy, the M2 Lenders would have been likely to have made interest bearing investments elsewhere; and (iii) insofar as Lendy had received such interest from borrowers and failed to account for it to lenders.**

3(b) **The Defendant is referred to its own witness statement in support of the Application and the documents exhibited in TMC1. The Defendant is also referred to 3(c) below.**

3(c) **Please see attached Estimated Interest spreadsheet. This has been prepared on the assumptions of:**

- **An interest rate of 1% per month (the lowest standard rate lenders were due to receive on loans through the Lendy platform);**

- **An interest period from the default date under the loan (ie assuming that all pre-default interest was paid to the lenders) and the date of the first repayment under the loan.**

<u>Request 4:</u>

4. "Dividend" claims [APOC/32.2, RDCC/31]:

   a. Is it alleged that Mr Brooke and Mr Gordon relied on the audited financial statements when deciding that each of the alleged dividends should be paid?
   b. In relation to the £226,000 credited to Lendy Group Limited on 23 July 2018, is it alleged that Mr Brooke and Mr Gordon would have repaid their loan accounts to this extent by some other means if this payment had not been made? If so, when?

<u>Response 4:</u>

4(a) **It is not alleged that Mr Brooke and Mr Gordon relied upon the truth of the accounts when deciding that the dividends should be paid. In view of the matters pleaded at paragraphs 32.3 of the APOC (and paragraph 27.20 there referred to), they could not have done so. However, the profits reported in the 2016 and 2017 accounts, as negligently audited and reported on by the Defendant, and the Defendant's negligent failure to comment adversely on Lendy's going concern status, enabled Mr Brooke and Mr Gordon to declare and pay the dividends with an appearance of legality. As pleaded at paragraphs 31 and 31A of the APOC, if the Defendant had not acted negligently and in breach of contract in auditing and reporting on the 2016 and 2017 accounts, Mr Brooke and Mr Gordon would not have declared and paid the dividends.**

4(b) **The Claimant's case is that, as pleaded, on payment of the dividend on 23 July 2018 Lendy thereby lost £226,000, being the value of the debts otherwise recoverable against Mr Brooke and Mr Gordon. If the dividend had not been paid and had the Defendant performed its duties, so that Lendy's business ceased in February or August 2018, the £226,000 would have been recovered and recoverable as an agreed debt. The Claimant notes that the Administrators have so far recovered over £2m from Mr Brooke and Mr Gordon in an administration which began significantly later in May 2019.**

Request 5:

5. In relation to paragraph 27 of the Particulars of Claim:

   a. Is it said that any of the alleged deficiencies in the disclosures in the financial statements or descriptions of accounting policies in the financial statements caused any of the losses claimed in paragraph 32 of the Particulars of Claim? If so, how?

   b. Is it said that any quantitative misstatement in the FY2016 or FY2017 financial statements caused Lendy to suffer any of the losses claimed in paragraph 32 of the Particulars of Claim? If so:

      i. What was the quantum of that alleged misstatement?

      ii. How is it said that it caused the loss?

Response 5:

5(a) **This request is not understood. As pleaded, the deficiencies in the accounts set out in paragraph 27 of the APOC caused the losses claimed at paragraph 32 of the APOC. To take only the most obvious example, had the Marshall Islands Payments been correctly disclosed in the 2016 accounts (as pleaded at paragraph 27.13 of the APOC), Lendy's business would have ceased forthwith (as pleaded at paragraph 31 of the APOC) and the losses claimed at paragraph 32 of the APOC would not have been sustained.**

5(b) **The response above is repeated. Further, this request appears to rest upon the premise that there is a correlation between the quantum of a misstatement in a set of accounts and the quantum of the losses caused by that misstatement. That is a misconception. For example, the Marshall Islands Payments, which were misstated, totalled £6.8m, while the dividend payments and liabilities to investors caused by that misstatement totalled £1.9 and £15.7m. Further, the quantum of the misstatements in the 2016 and 2017 accounts is a matter for expert evidence, following disclosure, including disclosure of the Defendant's audit files.**

Statement of truth

The Claimant believes that the facts stated in this Response to the Request for Further Information are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

[redacted]

Steven Mark Wilson for and on behalf of the Claimant

Dated: 08 July 2025

Served by Gateley Plc t/a Gateley Legal, One Eleven, Edmund Street, Birmingham B3 2HJ, Solicitors for the Claimant