

State of California - Department of Financial Protection and Innovation

1 CLOTHILDE V. HEWLETT
 Commissioner
 2 MARY ANN SMITH (State Bar No. 230943)
 Deputy Commissioner
 3 SEAN M. ROONEY (State Bar No. 188843)
 Assistant Chief Counsel
 4 JOHNNY O. VUONG (State Bar No. 249570)
 Senior Counsel
 5 FRANCIS N. SCOLLAN (State Bar No. 186262)
 Senior Counsel
 6 Department of Financial Protection and Innovation
 7 320 W. 4th Street, Suite 750
 8 Los Angeles, California 90013-2344
 9 Telephone: (213) 503-4164
 Facsimile: (213) 576-7181
 10 Email: Johnny.Vuong@dfpi.ca.gov
 11 Email: Frank.Scollan@dfpi.ca.gov
 12 Attorneys for Defendant and
 Cross-Complainant

**FILING FEE EXEMPT PER
GOVT. CODE § 6103**

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 FOR THE COUNTY OF LOS ANGELES, CENTRAL DIVISION

| | | | |
|----|--|---|--|
| 15 | OPPORTUNITY FINANCIAL, LLC |) | Case No. 22STCV08163 |
| 16 | Plaintiff, |) | CROSS-COMPLAINT FOR: |
| 17 | v. |) | (1) Violation of the California Financing Law; |
| 18 | CLOTHILDE HEWLETT, in her official |) | (2) Violation of the California Consumer |
| 19 | capacity as Commissioner of the Department |) | Financial Protection Law |
| 20 | of Financial Protection and Innovation for the |) | |
| 21 | State of California |) | Assigned for All Purposes to: |
| 22 | Defendant. |) | Hon. Timothy P. Dillon |
| 23 | _____ |) | Department: 73 |
| 24 | CLOTHILDE HEWLETT, in her official |) | |
| 25 | capacity as Commissioner of Financial |) | |
| 26 | Protection and Innovation for the State of |) | |
| 27 | California |) | |
| 28 | Cross-Complainant. |) | |
| | v. |) | |
| | OPPORTUNITY FINANCIAL, LLC, and |) | |
| | DOES 1-100, |) | |
| | _____ |) | |
| | Cross-Defendants. |) | |

1 Defendant CLOTHILDE HEWLETT, in her official capacity as Commissioner of Financial
2 Protection and Innovation (named in the Complaint as Clothilde Hewlett, in her official capacity as
3 Commissioner of the Department of Financial Protection and Innovation for the State of California)
4 (Commissioner) and in the name of the People of the State of California, acting to protect the public
5 from unlawful lending practices, brings this action in the public interest. The Commissioner alleges
6 on information and belief as follows:

7 **INTRODUCTION**

8 1. Predatory lending is a national problem causing consumers to become trapped in a
9 cycle of debt due to high interest installment loans that are difficult to pay off. To address this issue,
10 approximately 45 states have passed laws capping the interest rates that lenders can charge on
11 consumer loans. In 2019, the State of California passed Assembly Bill 539 (Limón), capping interest
12 rates on most consumer loans at 36%. In response, non-bank lending companies are partnering with
13 various state-chartered banks located in the few remaining states without interest rate caps in an effort
14 to benefit from the exemption that state-chartered banks have under federal law from other states'
15 interest rate cap laws, also known as usury laws.

16 2. These "rent-a-bank" partnerships are typically structured so that a state-chartered bank
17 in a state without interest rate caps appears on paper to be the "lender" on high interest loans to
18 consumers in another state where rates are capped while the non-bank lending company (barred from
19 making such loans) performs the actual duties of a real lender such as marketing, underwriting, and
20 servicing. Although the state-chartered bank purports to originate the exorbitant-interest loan, it
21 immediately sells to the non-bank lending company the loan or the bulk of the receivables (meaning
22 the right to interest and principal payments). From this point forward, the state-chartered bank has no
23 financial stake in the performance of the loan and the non-bank lending company, the "true lender,"
24 reaps the economic benefits of the loan. Because a state-chartered bank is the "lender" on paper, the
25 non-bank lending company purports to "rent" the state-chartered bank's exemption and charge
26 consumers interest rates that are exorbitantly higher than those legally permitted in the consumer's
27 state.

28 3. Opportunity Financial, LLC (OppFi) is a publicly traded company that originates

1 consumer installment loans called “OppLoans” through its website, www.OppLoans.com. OppFi is
2 not a bank. Consumers apply for a loan on OppFi’s website, and OppFi uses an automated
3 underwriting model where loans can be instantly approved or denied with most funds available the
4 next business day.

5 4. FinWise is a Utah-chartered bank that has essentially “rented” its charter to OppFi for
6 the purpose of charging higher interest rates to consumers through the “OppLoans” product. State-
7 chartered banks that are federally insured are exempt under Section 27 of the Federal Deposit
8 Insurance Act from state interest rate caps. Under Section 27, state-chartered banks can charge out-of-
9 state borrowers the interest rate allowed in its home state, even if the out-of-state borrowers live in a
10 state that has an interest rate cap. The State of Utah does not have a state interest cap, making its
11 state-chartered banks attractive to non-bank lenders like OppFi.¹

12 5. There is no question that OppFi, a non-bank lending company, is subject to
13 California’s interest rate caps while FinWise, a federally insured state-chartered bank, is not. Under
14 the OppFi-FinWise partnership model, FinWise funds the OppLoans as the putative “lender” while
15 OppFi is responsible for the marketing, underwriting, and servicing of the OppLoans. Within days
16 after FinWise funds an OppLoan, OppFi purchases upwards of 95 percent of a loan’s receivables
17 from FinWise, resulting in OppFi, not FinWise, collecting nearly all the profits from the loans.
18 Through this rent-a-bank ruse, OppFi uses FinWise as a straw-lender in a gambit to circumvent
19 interest rate limits that the State of California deemed reasonable and necessary to curb the abuses of
20 predatory lending. Regardless of which entity the loan documents proffer as the purported “lender,”
21 OppFi is the *true lender* of the OppLoans, and the loans OppFi makes are illegal in California.

22 6. OppFi presents itself in a more favorable light, claiming that it is merely a “leading
23 financial technology platform that powers banks to offer accessible products” to “everyday
24
25
26

27 ¹ On its website, FinWise Bank’s parent company touts that, with only a single branch location, FinWise “leverages
28 strategic relationships with third-party loan origination platforms... to deliver superior rates of growth and profitability.”
(See <https://investors.finwisebankcorp.com/>). In its prospectus filed with the SEC, FinWise’s holding company disclosed
that over 90 percent of FinWise’s 2020 “originations” were through “Strategic Programs” and that almost half of its 2020
revenues derived from “Strategic Program” loans with annual interest rates in excess of 36%.

1 consumers.”² OppFi fails to acknowledge that the unconscionably high interest rates it charges are
2 precisely what drive these “everyday consumers” into an endless cycle of debt. Although OppFi
3 entices borrowers with promises of building a credit history, it expects that a vast number of its loans
4 will default. In fact, OppFi’s public filings reflect that, in 2021, OppFi had a default rate over 37
5 percent. OppFi’s business model is premised on the assumption that although a significant number of
6 borrowers will default on their loans, the high interest rates charged will ensure that a profit is
7 generated so long as a minimum number of borrowers scrape together enough money to make
8 payments. Not only are these lending practices predatory, they violate the consumer protection laws
9 that the California legislature enacted to prevent this exact activity.

10 7. In enacting a 36% interest rate cap on consumer loans between \$2,500 and \$9,999,
11 California has made a public policy determination as to the appropriate balance between affording
12 consumers fair access to credit and protection of its most vulnerable citizens. Far from an effort to
13 remove financial barriers for underserved communities, OppFi’s predatory “rent-a-bank” ruse is an
14 overt attempt to evade the state interest rate cap and must be recognized as an illegal sham that has no
15 place in California’s innovative financial marketplace.

16 8. By this action, the Commissioner seeks to enjoin OppFi’s unlawful predatory lending
17 scheme, provide restitution to exploited borrowers, and impose penalties of at least \$100 million
18 against OppFi, and those acting in concert, for the financial harm inflicted on at least 38,000
19 California borrowers.³

20 **CROSS-DEFENDANTS**

21 9. Cross-Defendant OppFi is a Delaware limited liability company headquartered in
22 Chicago, Illinois.

23 10. Cross-Defendants Does 1 through 100, inclusive, are participants in OppFi’s scheme
24 to violate California law. The true names or capacities, whether individual, corporate, associate, or
25

26
27 ² See “OppFi Files Complaint for Declaratory and Injunctive Relief Against Commissioner of the California Department
28 of Financial Protection and Innovation,” Mar. 8, 2022, (<https://www.oppfi.com/press-release/oppfi-files-complaint-for-declaratory-and-injunctive-relief-against-the-commissioner-of-the-california-department-of-financial-protection-and-innovation>).

³ Although not sought in this complaint, Financial Code section 22753 authorizes imposition of criminal penalties, including fines and imprisonment, for any person who willfully violates any provision of the CFL.

1 otherwise, of cross-defendants Does 1 through 100, inclusive, being unknown, Cross-Complainant
2 sues these defendants by these fictitious names and will amend or seek leave to amend its Cross-
3 Complaint to show their true names and capacities when they are ascertained.

4 **JURISDICTION AND VENUE**

5 11. The Commissioner is authorized to administer and enforce provisions of the California
6 Financing Law (CFL) (Fin. Code, § 22000 *et seq.*) and the rules and regulations promulgated
7 thereunder, which regulate consumer lending in California. Additionally, OppFi holds a CFL license
8 issued by the Commissioner.

9 12. The Commissioner is authorized to administer and enforce provisions of the California
10 Consumer Financial Protection Law (CCFPL) (Fin. Code, § 90000 *et seq.*) and the rules and
11 regulations promulgated thereunder, which regulate persons engaged in offering or providing a
12 consumer financial product or service in California and their affiliated service providers.

13 13. This Court has jurisdiction over the parties and subject matter of this action. OppFi
14 offers, provides, makes, services, and advertises loans through its public website,
15 www.OppLoans.com, to California residents. Venue as to all matters between the parties relating to
16 this action is proper in this court as OppFi's lending products are accessed by and directed to
17 residents of California, including residents of the County of Los Angeles.

18 **STATEMENT OF FACTS**

19 14. Since 1995, loans made in California under \$2,500 have been subject to a tiered
20 interest rate cap, with 30% as the highest Annual Percentage Rate (APR) that can be charged. The
21 high level of default rates on consumer loans above \$2,500 with triple-digit interest rates prompted
22 several legislative attempts in California since 2017 to impose an interest rate cap on loans between
23 \$2,500 and \$9,999 to ensure that lenders are offering loans that consumers can repay. In 2019,
24 Governor Gavin Newsom signed AB 539, which went into effect on January 1, 2020, and imposed an
25 interest rate cap of 36% plus the Federal Funds Rate⁴ on consumer loans between \$2,500 and \$9,999.

26 15. Since 2014, OppFi has held a CFL lender license issued by the Commissioner and
27 _____

28 ⁴ Federal Funds Rate is the interest rate set by the Federal Reserve that banks charge each other to borrow reserves overnight and as of March 2022 ranges between 0.25 to 0.50%.

1 directly originated loans to California residents through its website, www.OppLoans.com. In 2016,
2 for example, the OppLoans website offered California consumers direct loans above \$2,500 with an
3 interest rate of 160%, expressly made under OppFi’s CFL license. However, with interest rate caps on
4 the horizon in California, OppFi abandoned making loans in its own name and pivoted to a rent-a-
5 bank ruse in an illegal effort to continue making high-interest loans to California consumers.

6 16. In late 2017, OppFi entered into a partnership with FinWise. Under the partnership,
7 OppFi marketed, made, and serviced loans to California residents through a website that it owns and
8 maintains. The OppLoans website offers “personal loans” for uses such as car repair, home repair,
9 rent, unanticipated medical expenses, debt consolidation, and travel. The loans offered by OppFi in
10 partnership with FinWise are called OppLoans. OppLoans typically range between \$500 and \$4,000
11 and carry an APR between 59% and 160%.

12 17. Since 2020, OppFi has provided OppLoans to over 38,000 California consumers with
13 principal amounts between \$500 and \$4,000 and with an average APR of 153%, far above the rates
14 authorized by AB 539 (codified in part at Financial Code section 22304.5) for loans of \$2,500 or
15 above and the rates for loans under \$2,500 in Financial Code sections 22303 and 22304.

16 18. OppFi is the true lender of OppLoans. Under the true lender doctrine, the question is
17 whether the entity named as the “lender” in the loan documents is in fact the true lender or if another
18 entity—here, OppFi-- should be viewed as the de facto lender. The substance of the transaction
19 controls, not the form, and courts consider the totality of the circumstances.⁵ The primary factor is
20 which entity --bank or non-bank-- has the predominant economic interest in the transaction. The
21 totality of circumstances also includes which entity actually performs lender roles, such as marketing
22

23 _____
24 ⁵ See e.g. *Ubaldi v. SLM Corp.*, 852 F. Supp. 2d 1190, 1200 (N.D. Cal. 2012) [“where a plaintiff has alleged that a
25 national bank is the lender in name only, courts have generally looked to the real nature of the loan to determine whether
26 a non-bank entity is the de facto lender”]; *D.C. v. Elevate Credit, Inc.*, No. CV 20-1809 (EGS), 2021 WL 2982143, at *9
27 (D.D.C. July 15, 2021) [complaint properly alleged that non-bank entity Elevate was the true lender, not FinWise Bank,
28 in asserting that Elevate, which also provided the website, marketing, analytics, software, underwriting model, and
servicing, “has the predominant economic interest in the loans it provides to District consumers via FinWise” through
Elevate’s purchase of 96% of loan receivables]; *People ex rel. Spitzer v. Cty. Bank of Rehoboth Beach, Del.*, 846
N.Y.S.2d 436, 439 (N.Y. App. Div. 2007) [“It strikes us that we must look to the reality of the arrangement and not the
written characterization that the parties seek to give it, . . . an examination of the totality of the circumstances surrounding
this type of business association must be used to determine who is the ‘true lender,’ with the key factor being ‘who had
the predominant economic interest’ in the transactions.”)].

1 and servicing. When the non-bank lending company is the true lender, the loans it is, in all reality,
2 making are not exempt from state interest rate caps.⁶

3 19. Here, it is OppFi, not FinWise, that holds the predominant economic interest in
4 OppLoans, bears the risk of poor loan performance, and performs all the functions of a traditional
5 lender with minimal, if any, downside to FinWise. OppFi is the true lender, and its loans are illegal.

6 20. OppFi holds the predominant economic interest in the OppLoans. OppFi purchases
7 between 95 to 98 percent of the receivable for each loan originated from its “rent-a-bank” ruse with
8 FinWise. A receivable is the right to the interest and principal payments for a loan. On average,
9 OppFi purchases these receivables from FinWise within three days after FinWise funds the loan and
10 before any initial payments on the loans are made to FinWise.

11 21. OppFi further holds the predominant economic interest because its funds, not FinWise
12 funds, are at risk. OppFi insulates FinWise from essentially any credit risk by creating a guaranteed
13 secondary market that FinWise can “sell” its loans in order to recoup its funds. OppFi accomplishes
14 this through fully owned subsidiaries created solely to purchase receivables from bank partners such
15 as FinWise. Additionally, OppFi’s Loan Receivables Sale Agreement with FinWise provides that
16 FinWise is only obligated to fund loans if OppFi’s purchasing subsidiary maintains a minimum
17 amount of security, consisting of a cash collateral account, an alternative collateral account, and
18 letters of credit for the benefit of FinWise.⁷ OppFi also pays FinWise a guaranteed monthly “Bank
19 Program Fee” based on a percentage of the principal amount of loans “originated” by FinWise each
20 month, not only further mitigating any actual credit risk for FinWise but literally providing the bank
21 partner loan volume-based rent for its charter. OppFi paid FinWise for the startup costs of this
22 partnership and is also responsible for paying FinWise’s expenses related to this partnership.

23 22. FinWise’s exposure to risk in OppLoans is minimal while OppFi, through its
24 ownership of upwards of 95 percent of all the rights to the loan payments and purchasing of the loan
25

26
27 ⁶ The FDIC has also weighed in to support the true lender doctrine, stating “it will view unfavorably entities that partner
28 State(s).” 85 Fed. Reg. 44,146, 44,146-44,147 (July 22, 2020).

⁷ “In the event that Purchaser fails to maintain the Required Balance, Seller's obligation to fund Loans shall immediately
cease until the amount in the Loan Account is at least equal to the Required Balance.”

1 receivables from FinWise, bears the entire monetary burden and risk of loss of OppLoans and is the
2 true lender of OppLoans.

3 23. In addition to holding the predominant economic interest, OppFi also performs all the
4 functions of a traditional lender, not FinWise. OppLoans are only available through OppLoans.com,
5 which is controlled by OppFi. Borrowers cannot obtain an OppLoan through FinWise’s website. In
6 fact, FinWise’s website has a link that takes borrowers directly to OppLoans.com and contains a
7 disclaimer titled “Third Party Site Disclaimer” that warns the applicant that they are leaving the
8 FinWise website and will no longer be subject to or protected by FinWise’s privacy policies.

9 24. OppFi is responsible for all marketing in association with OppLoans, including the use
10 of search engine optimization, email remarketing, and referrals. OppFi’s annual marketing costs
11 associated with its loan program averages in the tens of millions of dollars according to its public
12 filings with the Securities and Exchange Commission. Conversely, FinWise’s expenses associated
13 with OppLoans are capped at \$10,000 each year and paid by OppFi pursuant to their agreement.

14 25. Consumers who apply for OppLoans through OppLoans.com are underwritten by
15 OppFi through the use of proprietary software. OppFi has the exclusive license to use the information
16 provided by an OppLoan applicant in any manner while FinWise is prohibited from using or selling
17 any customer lists without OppFi’s approval. The underwriting criteria of OppLoans are determined
18 by OppFi with nominal, if any, input by FinWise. In fact, OppFi, in its public filings, admits that the
19 underwriting criteria for the bank partnership loans are supplied by OppFi to the bank partners.

20 26. OppFi’s underwriting is heavily automated with approximately 82 percent of
21 OppLoans being instantly underwritten through its software, with most loans funded the next
22 business day. OppFi owns all the intellectual property rights regarding the underwriting criteria of
23 OppLoans, not FinWise. OppFi is also responsible for pulling the credit reports for the applicants,
24 verifying the identities of the applicants, sending adverse action notices if an applicant is denied an
25 OppLoan, and retaining all applicant records.

26 27. OppFi also undertakes the servicing obligations of OppLoans, including: collecting all
27 interest and principal payments made on OppLoans; setting up the collection account for borrower
28 payments; responding to borrower inquiries; modifying a consumer’s loan for loss mitigation

1 purposes with minimal input from FinWise; and, writing off loans and transferring the written-off
2 loans to a collection agency.

3 28. OppFi’s website markets OppLoans in California as carrying a maximum annual
4 interest rate of 160% but the website does not contain any statements indicating that California
5 imposes an interest rate cap on consumer loans of 36% plus the Federal Fund Rate. OppFi’s omission
6 of any statements concerning the California rate caps creates the false impression that OppFi can
7 legally charge California consumers 160% APR on OppLoans when, in fact, OppFi, as the true lender
8 of OppLoans, is subject to California interest rate caps.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF THE CALIFORNIA FINANCING LAW**

11 **(Fin. Code, § 22000 *et seq.*)**

12 **(Against All Cross-Defendants)**

13 29. The Commissioner realleges and incorporates by reference Paragraphs 1 through 28
14 above as though fully set forth herein.

15 **A. The Consumer Protection Provisions of the CFL Regulate OppFi and the Consumer**
16 **Loans It Makes to Californians**

17 30. OppFi and its OppLoans consumer loans made to California consumers are subject to
18 the CFL.

19 31. The CFL provides that the division shall be liberally construed and applied to “protect
20 borrowers against unfair practices by some lenders, having due regard for the interests of legitimate
21 and scrupulous lenders.” (Fin. Code, § 22001, subd. (a)(4)).

22 32. OppFi is a “finance lender” under the CFL. OppFi is a “person who is engaged in the
23 business of making consumer loans or making commercial loans” which “may include lending
24 money.” (Fin. Code, § 22009.) OppFi is not an exempt person under Financial Code section 22050 or
25 any other provision of the CFL. OppFi is the true lender of OppLoans — consumer loans that are
26 nominally and deceptively made in the name of FinWise. Accordingly, OppFi and its loans are
27 subject to the CFL.

28 33. OppLoans are “consumer loans” under the CFL because the loan proceeds are

1 intended by the borrower for use primarily for personal, family, or household purposes. (Fin. Code, §
2 22203.)

3 **B. The Commissioner is Empowered to Bring an Action Enjoining OppFi’s Violations of**
4 **the CFL and to Remedy Consumer Harm**

5 34. Pursuant to Financial Code section 22713, the Commissioner is authorized to bring a
6 civil action against a person whenever she believes, on evidence satisfactory to the Commissioner,
7 that the person has violated or is about to violate a provision of the CFL or a provision of any order,
8 license, decision, demand, requirement, or any CFL regulation, to enjoin that person from continuing
9 the violation or doing any act in furtherance of the violation.

10 35. Financial Code section 22713 further authorizes the Commissioner, if she determines
11 it is in the public interest, to include in such an action a claim for ancillary relief, including, but not
12 limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the
13 act or practice constituting the subject matter of the action.

14 36. Financial Code section 22713 further provides, “Any person who willfully violates
15 any provisions of this division, or who willfully violates any rule or order adopted pursuant to this
16 division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500)
17 for each violation....”

18 37. The willful charging, contracting for, or receiving of excess interest, or other willful
19 violation of the CFL in making or collecting a loan, **voids the loan**. Financial Code section 22750
20 provides:

21 (a) If any amount other than, or in excess of, the charges permitted by this
22 division is willfully charged, contracted for, or received, the contract of
23 loan is void, and no person has any right to collect or receive any
24 principal, charges, or recompense in connection with the transaction.

25 (b) If any provision of this division is willfully violated in the making or
26 collection of a loan, whether by a licensee or by an unlicensed person
27 subject to this division, the contract of loan is void, and no person has any
28 right to collect or receive any principal, charges, or recompense in
connection with the transaction.

1 **C. OppFi is Violating the CFL by Making Consumer Loans in Excess of the Interest Rate**
2 **Caps**

3 38. OppFi is violating the CFL by making consumer loans that far exceed the permissible
4 rates of interest under the CFL.

5 39. Financial Code sections 22303 and 22304 impose interest rate limits on consumer
6 loans under \$2,500. Interest on such loans is subject to a tiered interest-rate cap based on the loan
7 amount, but the highest possible interest charge is approximately 30% APR. OppFi has made, and on
8 information and belief continues to make, consumer loans to California borrowers that exceed the
9 rate limits of sections 22303 and 22304, at as much as 160% APR.

10 40. Financial Code section 22304.5 imposes interest rate limitations on consumer loans
11 between \$2,500 and \$10,000. ⁸ Interest on such loans shall not exceed an annual simple interest rate
12 of 36 percent per annum plus the Federal Funds Rate. OppFi has made, and on information and belief
13 continues to make, consumer loans to California borrowers that exceed the rate limits of section
14 22304.5, at as much as 160% APR.

15 41. Financial Code Section 22306 provides:

16 No amount in excess of that allowed by this article shall be directly or
17 indirectly charged, contracted for, or received by any person, and the total
18 charges of the finance lender and broker and any other person in the
19 aggregate shall not exceed the maximum rate provided for in this article.

20 By directly or indirectly charging, contracting for, or receiving excess charges including interest from
21 OppLoans that exceed Financial Code sections 22303, 22304, and 22304.5 of the CFL, OppFi is also
22 violating section 22306.

23 42. By employing its rent-a-bank ruse to evade the CFL and illegally charge California
24 consumers higher rates on OppLoans, OppFi has also violated Financial Code section 22326, which
25 applies to “any person, who by any device, subterfuge, or pretense charges, contracts for, or receives
26 greater interest, consideration, or charges than is authorized by this division for any loan....”

27 43. Additionally, by negotiating, in California, for loans to California consumers to
28

⁸ The interest rate caps of AB 539 were codified, in part, in Financial Code section 22304.5.

1 purportedly be made in Utah, in order to evade and avoid the provisions of the CFL, OppFi has also
2 violated Financial Code section 22324, which prohibits “contract[ing] for or negotiat[ing] in this state
3 a loan to be made outside the state for the purpose of evading or avoiding” California lending law.

4 44. Financial Code section 22302 makes Civil Code section 1670.5, addressing
5 unconscionable contracts, applicable to loans under the CFL. Section 22302 provides that “[a] loan
6 found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in
7 violation” of the CFL and subject to CFL remedies. OppFi has made, and on information and belief
8 continues to make, consumer loans to California borrowers that are unconscionable, in violation of
9 California law.

10 45. Financial Code section 22161 prohibits a person from making material
11 misrepresentations about the terms or conditions of a loan or publishing any statement including the
12 rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or
13 that omits material information that is necessary to make the statements not false, misleading, or
14 deceptive. OppFi violates Financial Code section 22161 by advertising OppLoans on its website with
15 an APR of up to 160%, implying that OppFi could lawfully make such loans in California, despite
16 California law prohibiting finance lenders from charging interest rates in excess of the statutory rate
17 caps.

18 **D. OppFi’s Failure to Ensure That Borrowers Have the Ability to Repay Their Loans**
19 **Violates the CFL**

20 46. In “determining the size and duration” of a CFL loan, lenders must ensure that
21 borrowers have the “financial ability” to “reasonably . . . repay” the loan “in the time and manner
22 provided in the loan contracts.” (Cal. Code Regs., title 10, § 1452; *see also* Fin. Code, § 22714, subd.
23 (a)(4).) As OppFi publicly reports, a sizeable percentage of its borrowers (over 37 percent, according
24 to its 2021 annual report) default on their OppFi loans. Based on information disclosed during her
25 investigation, the Commissioner believes that OppFi fails to ensure that borrowers have the ability to
26 repay the OppFi loans.

27 47. The staggering interest that OppFi charges makes high rates of loan defaults an
28 acceptable cost of doing business for OppFi. California, however, in enacting rate caps and requiring

1 lenders to consider borrowers' ability to repay, has determined that OppFi's predatory model is not an
2 acceptable cost for California's lending market and its consumers.

3 48. Notwithstanding OppFi's marketing of its loans as an opportunity to "build credit
4 history," OppFi's reporting to credit bureaus of the rampant defaults *it admittedly expects to occur*
5 further injures California consumers by damaging their credit, perpetuating—indeed worsening—the
6 debt cycle for California's most vulnerable borrowers.

7 **E. OppFi's Violations Require Permanently Enjoining OppFi's Predatory Conduct and**
8 **Awarding Ancillary Relief and Penalties**

9 49. Based on the foregoing, the Commissioner believes that OppFi has violated, and
10 unless enjoined will continue to violate, the CFL. The Commissioner seeks, as authorized by the
11 CFL, an order and judgment:

- 12 a. Permanently enjoining OppFi, directly or indirectly, alone or in concert, from
13 marketing, offering, making, collecting on, and/or servicing consumer loans in
14 California that violate the CFL as alleged herein;
- 15 b. Declaring that, by operation of law, all OppFi consumer loans made in
16 violation of the CFL are void and that no person has any right to collect or
17 receive any principal, charges, or recompense in connection with such
18 transactions;
- 19 c. Ordering OppFi to make restitution to all borrowers under OppFi consumer
20 loans in California that violate the CFL;
- 21 d. Ordering disgorgement of payments of interest and other charges received by
22 OppFi from any and all California borrowers under OppLoans consumer loans
23 that violate the CFL;
- 24 e. Ordering OppFi to cause the removal of any negative credit reporting for any
25 and all California borrowers under OppLoans consumer loans that violate the
26 CFL; and,
- 27 f. Imposing penalties of \$2,500 for each and every violation of the CFL, in an
28 amount of at least \$100 million.

SECOND CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW

(Fin. Code, § 90000 *et seq.*)

(Against All Cross-Defendants)

50. The Commissioner realleges and incorporates by reference Paragraphs 1 through 49 above as though fully set forth herein.

A. Operating (or Purporting to Operate) Outside of Its CFL License, OppFi’s Offering and Provision of Consumer Financial Products Subjects OppFi to the Consumer Protections of the CCFPL

51. The purpose of the CCFPL “shall be to promote consumer welfare, fair competition, and wealth creation in this state” including “[p]romoting nondiscriminatory access to responsible, affordable credit on terms that reasonably reflect consumers' ability to repay.” (Fin. Code, § 90000, subd. (4).)

52. The OppLoans personal loans are a “consumer financial product or service” under the CCFPL because the loans are a “financial product or service that is delivered, offered, or provided for use by consumers primarily for personal, family, or household purposes.” (Fin. Code, § 90005, subd. (e).) The OppLoans website offers “personal loans” for uses such as car repair, home repair, rent, unanticipated medical expenses, and travel.

53. OppFi offers and provides financial products and services, as defined in section 90005, subdivision (k), of the CCFPL, by doing the following:

- a. Engaging in “extending credit and servicing extensions of credit, including acquiring, purchasing, selling, brokering extensions of credit,” by extending credit as the true lender under the OppLoans consumer loans, exclusively servicing such loans, and purporting to acquire and purchase the receivables of such loans;
- b. “Providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payment

1 system or networks used for processing payment data, including payments
2 made through an online banking system or mobile telecommunications
3 network,” including by OppFi’s use of automated payments and remotely
4 created checks that rely on consumer banking data, payment systems and
5 networks, and online banking systems to receive payments from consumers on
6 the OppLoans;

7 c. “Providing financial advisory services... to consumers on individual financial
8 matters or relating to proprietary financial products or services” by promoting
9 and recommending OppLoans personal loans as a way to “build credit history,”
10 purporting to provide services to assist a consumer with debt management or
11 debt settlement by promoting and recommending its OppLoans personal loans
12 as a means of consolidating debt, and regarding OppFi’s proprietary loans and
13 services; and,

14 d. “Collecting debt related to any consumer financial product or service,” by
15 receiving payments under the OppLoans personal loans, sending all payment
16 and loan related notices, and other collection activities related to the loans.

17 54. OppFi is a “covered person” under the CCFPL, as it engages in offering or providing a
18 consumer financial product or service to residents of California. (Fin. Code, § 90005, subd. (f).)
19 Under OppFi’s rent-a-bank ruse, it would also be a “service provider” under the CCFPL. The CCFPL
20 provides that it does not apply to a CFL licensee “to the extent that person or employee is acting
21 under the authority” of such license; OppFi has affirmatively disclaimed that it is conducting any of
22 its activities under its CFL license. Therefore, to the extent that OppFi is not offering OppLoans
23 under the authority of its CFL license, OppFi’s conduct is subject to the CCFPL.

24 **B. The Commissioner is Empowered to Bring an Action Enjoining OppFi’s Violations of**
25 **the CCFPL and to Remedy Consumer Harm**

26 55. Pursuant to Financial Code section 90012, the Commissioner may take any action
27 authorized by the CCFPL against a covered person or service provider who engages, has engaged, or
28 proposes to engage in unfair, deceptive, or abusive practices with respect to consumer financial

1 products or services.

2 56. Pursuant to Financial Code section 90013, the Commissioner is authorized to bring a
3 civil action against a person violating a provision of the CCFPL to enjoin the acts or practices and
4 enforce compliance.

5 57. Financial Code section 90013 further authorizes the Commissioner, if she determines
6 it is in the public interest, to include in such an action a claim for ancillary relief, including, but not
7 limited to, those listed in section 90012. Such ancillary relief includes but it not limited to:

- 8 a. Rescission or reformation of contracts;
- 9 b. Refund of moneys;
- 10 c. Restitution;
- 11 d. Disgorgement or compensation for unjust enrichment, with any disgorged
12 amounts returned to the affected consumers, to the extent practicable;
- 13 e. Payment of damages or other monetary relief;
- 14 f. Public notification regarding the violation, including the costs of notification;
- 15 g. Limits on the activities or functions of the person; and,
- 16 h. Monetary penalties as set forth in section 90012, subdivision (c).

17 **C. OppFi’s Activities with Regard to OppLoans Violate the CCFPL**

18 58. Financial Code section 90003, subdivision (a), provides:

19 (a) It is unlawful for a covered person or service provider, as defined in
20 subdivision (f) of Section 90005, to do any of the following:

21 (1) Engage, have engaged, or propose to engage in any unlawful, unfair,
22 deceptive, or abusive act or practice with respect to consumer financial
products or services.

23 (2) Offer or provide to a consumer any financial product or service not in
24 conformity with any consumer financial law or otherwise commit any act
or omission in violation of a consumer financial law.

25 59. OppFi has engaged in unlawful and deceptive practices with respect to a consumer
26 financial product by offering and collecting interest on OppLoans at rates that exceed that permitted
27 under the CFL, failing to take borrowers’ ability to repay into consideration in offering OppLoans,
28 misrepresenting to California residents the ability of OppFi to charge interest rates of up to 160%

1 APR on its website despite the interest rate caps under the CFL, and entering into this bank
2 partnership for the purpose of evading interest rate caps under the CFL. These practices are both
3 *unlawful* as they violate Financial Code sections 22161, 22302, 22303, 22304, 22304.5, 22306,
4 22326, and 22324 and California Code of Regulations, title 10, section 1452 and *deceptive* because
5 OppFi's website, statements, and practices mislead borrowers into believing they must repay money
6 that legally they do not owe. OppFi's conduct has caused grave financial injury to California
7 residents who have paid OppFi more interest than OppFi is entitled to collect under California law.
8 OppFi's brazenly unlawful acts violate Financial Code section 90003, subdivision (a)(1).

9 60. OppFi's unlawful marketing, offering, and servicing of OppLoans, as summarized
10 herein, also violates Financial Code section 90003, subdivision (a)(2), because OppFi is not offering
11 and servicing OppLoans in conformity with the CFL.

12 61. The Commissioner seeks, as authorized by the CCFPL, an order and judgment:

- 13 a. Permanently enjoining OppFi, directly or indirectly, alone or in concert, from:
- 14 i. Marketing, offering, making, collecting on, and/or servicing consumer
15 loans in California that exceed permissible charges including rates of
16 interest, are unconscionable, or otherwise violate California law;
- 17 ii. Making use of automated payments and remotely created checks that
18 rely on consumer banking data, payment systems and networks, and
19 online banking systems to receive payments on unlawful OppLoans
20 consumer loans;
- 21 iii. Promoting and recommending unlawful OppLoans personal loans as a
22 way to "build credit history" and purporting to provide services to
23 assist a consumer with debt management or debt settlement by
24 promoting and recommending its OppLoans personal loans as a means
25 of consolidating debt;
- 26 iv. Collecting, analyzing, maintaining, or providing consumer report
27 information or other account information, including information
28

1 relating to the credit history of consumers, for any use in relation to
2 credit decisions for unlawful OppFi loans; and,

3 v. Collecting debt related to any consumer financial product or service, by
4 receiving payments under the OppLoans personal loans.

5 b. Declaring that, by operation of law, all OppFi loans made in violation of
6 California law are void, or otherwise rescinding all unlawful OppLoans
7 consumer loans in California or reforming such contracts to charge only a
8 lawful interest rate;

9 c. Ordering OppFi to make restitution to all California OppLoan borrowers;

10 d. Ordering disgorgement of payments of interest and other charges received by
11 OppFi from any and all California borrowers under the unlawful OppFi
12 consumer loans;

13 e. Ordering OppFi to cause the removal any negative credit reporting it has
14 caused for any and all California borrowers under OppFi's consumer loans;

15 f. Ordering OppFi to give notice to all of its California borrowers of its violations
16 of California law; and,

17 g. Imposing penalties for OppFi's violation of the CCFPL.

18 **REQUEST FOR RELIEF**

19 The Commissioner requests that the Court enter judgment as follows:

20 1. Permanently enjoining Cross-Defendants, directly or indirectly, alone or in concert,
21 from marketing, offering, making, collecting on, and/or servicing consumer loans in California that
22 violate California law;

23 2. Declaring that, by operation of law, all OppFi consumer loans made in violation of
24 California law are void, and that no person has any right to collect or receive any principal, charges,
25 or recompense in connection with such transactions;

26 3. Ordering Cross-Defendants to make restitution to all borrowers under OppFi
27 consumer loans made in violation of California law;

28

1 4. Ordering disgorgement of payments of interest and other charges received by Cross-
2 Defendants from any and all California borrowers in connection with OppLoans consumer loans
3 made in violation of California law;

4 5. Ordering Cross-Defendants to cause the removal of any negative credit reporting for
5 any and all California borrowers in connection with OppLoans consumer loans made in violation of
6 California law;

7 6. Permanently enjoining Cross-Defendants, directly or indirectly, alone or in concert,
8 from:

- 9 a. Making use of automated payments and remotely created checks that rely on
10 consumer banking data, payment systems and networks, and online banking
11 systems to receive payments on unlawful OppLoans consumer loans;
- 12 b. Promoting and recommending unlawful OppLoans personal loans as a way to
13 “build credit history” and purporting to provide services to assist a consumer
14 with debt management or debt settlement by promoting and recommending its
15 OppLoans personal loans as a means of consolidating debt;
- 16 c. Collecting debt related to any consumer financial product or service, by
17 receiving payments under the OppLoans personal loans.

18 7. Ordering OppFi to give notice to all of its California borrowers of Cross-Defendants’
19 violations of California law.

20 8. Imposing penalties for each and every of Cross-Defendants’ violations of California
21 law in an amount of at least \$100 million.

22 9. Awarding the Commissioner her costs in this action.

23 10. Awarding the Commissioner any and all further relief that the Court deems just and
24 proper.

25 Dated: April 8, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

27 By: _____
JOHNNY O. VUONG
Senior Counsel
Enforcement Division