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Attorneys for Plaintiff and Cross-Defendant
9 Opportunity Financial, LLC

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 OPPORTUNITY FINANCIAL, LLC,

13 Plaintiff,

14 v.

15 CLOTHILDE HEWLETT, in her official
capacity as Commissioner of Financial
16 Protection and Innovation for the State of
California,

17 Defendant,

Case No. 22STCV08163

Assigned for All Purposes to:
Hon. Timothy P. Dillon, Dept. 73

**OPPORTUNITY FINANCIAL, LLC'S
ANSWER TO THE CROSS-COMPLAINT**

Action Filed: March 7, 2022
Trial Date: N/A

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19 And Related Cross-Action.
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1 Cross-Defendant Opportunity Financial, LLC (“OppFi”) hereby files its Answer and
2 Affirmative Defenses to the unverified Cross-Complaint (“Cross-Complaint”) of Cross-Complainant
3 Clothilde Hewlett in her official capacity as Commissioner of the California Department of Financial
4 Protection and Innovation (“Cross-Complainant” or “Commissioner”) as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure section 431.30(d), OppFi denies each and
7 every allegation of the Commissioner’s Cross-Complaint and in the whole of each and every cause of
8 action therein. In addition, OppFi denies that the Cross-Complainant has been injured or damaged by
9 OppFi in any sum or amount whatsoever.

10 **AFFIRMATIVE DEFENSES**

11 OppFi asserts the following affirmative defenses to the causes of action listed in the Cross-
12 Complaint. In alleging the following affirmative defenses, OppFi is not admitting, conceding, or
13 otherwise stating that OppFi bears the burden of production or persuasion with respect to each of
14 the affirmative defenses raised below or any element thereof.

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Cause of Action)**

17 1. The Cross-Complaint, and some or all of each cause of action therein, fails to state a
18 cause of action against OppFi.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Preemption)**

21 2. The Cross-Complaint, and some or all of each cause of action therein, are preempted
22 by the Supremacy Clause of the United States Constitution and by federal laws, including Section 27
23 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831d.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Statutes of Limitation)**

26 3. Cross-Complainant’s causes of action are barred, in whole or in part, by applicable
27 statutes of limitations, Fin. Code § 90014; Code Civ. Pro. §§ 338, 340.

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FOURTH AFFIRMATIVE DEFENSE

(Constitutionality, Due Process)

4. Cross-Complainant’s causes of action are barred, in whole or in part, because the statutes referenced in the Cross-Complaint are insufficiently definite and/or unduly vague to provide adequate or fair notice of the conduct proscribed and permit retroactive random, arbitrary, and capricious punishment that serves no legitimate governmental interest, in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7, of the Constitution of the State of California.

FIFTH AFFIRMATIVE DEFENSE

(Constitutionality, Dormant Commerce Clause)

5. Cross-Complainant’s causes of action are barred, in whole or in part, because they improperly discriminate against out-of-state commerce, unduly interfere with interstate commerce, or regulate commerce occurring entirely outside of California, in violation of the Dormant Commerce Clause component of Article I, Section 8, of the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

(Underground Regulation)

6. Cross-Complainant’s causes of action are barred, in whole or in part, because the Department of Financial Protection and Innovation’s adoption of the so-called “true lender doctrine” (and its alleged constituent factors, including the so-called “predominant economic interest” test) to determine the lender of a loan for purposes of applying the interest rate caps in California’s Financing Law—as set forth in paragraphs 18-28 of the Cross-Complaint—violates Government Code Section 11340.5, subd. (a).

SEVENTH AFFIRMATIVE DEFENSE

(Constitutional Limitations on Damages)

7. Cross-Complainant’s prayer for relief would result in excessive fines and penalties in violation of the Excessive Fines Clause and the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7, of the Constitution of the State of California.

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EIGHTH AFFIRMATIVE DEFENSE

(Compliance with Law)

8. Cross-Complainant’s causes of action are barred, in whole or in part, because OppFi, in good faith, acted in compliance or substantial compliance with all applicable laws, statutes, and regulations.

NINTH AFFIRMATIVE DEFENSE

(Conduct Authorized by Agreement)

9. Cross-Complainant’s causes of action are barred, in whole or in part, because the rates of interest on the loans that Cross-Complainant claims to be “illegal” are expressly authorized by the agreements creating the debt that consumers freely and voluntarily entered into with FinWise Bank.

TENTH AFFIRMATIVE DEFENSE

(Equitable Relief)

10. Cross-Complainant’s claims for equitable relief are barred because Cross-Complainant cannot establish that she lacks an adequate remedy at law.

ELEVENTH AFFIRMATIVE DEFENSE

(Individual Defenses)

11. Cross-Complainant’s prayer for restitution for borrowers and disgorgement of borrowers’ payments of interest and other charges are barred, in whole or in part, by any defenses that would be available if any such individual asserted such a request in an individual action, including under the voluntary payment, unjust enrichment, laches, acquiescence, waiver, or estoppel doctrines, as a set-off, or as an offset.

TWELFTH AFFIRMATIVE DEFENSE

(Utah Law Applies)

12. Cross-Complainant’s causes of action are barred, in whole or in part, because the loans at issue are governed by the laws of the State of Utah and are legal thereunder.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Exemptions Under California Law)

13. To the extent that California law applies, Cross-Complainant’s causes of action are barred, in whole or in part, because the loans at issue here were issued by a bank exempt from California’s usury laws, Section 1 of Article XV of the California Constitution; the California Financing Law, Cal. Fin. Code § 22000 *et seq.*; and the California Consumer Financial Protection Law, Cal Fin. Code § 90000 *et seq.*

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Join a Necessary or Indispensable Party)

14. Cross-Complainant’s causes of action are barred, in whole or in part, on the ground that Plaintiff failed to name and join indispensable and/or necessary parties.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lawful Conduct)

15. OppFi asserts that its conduct and that of its respective employees and/or agents were at all times reasonable and lawful.

SIXTEENTH AFFIRMATIVE DEFENSE

(Consent; Ratification)

16. Cross-Complainant’s causes of action are barred, in whole or in part, by virtue of borrowers’ consent to and/or ratification of the alleged acts in the Cross-Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Acting in Good Faith; No Violation of Law)

17. OppFi asserts that it, its respective employees, and/or its respective agents acted in good faith and without malice, and neither directly nor indirectly performed any acts whatsoever which would constitute a violation of any laws or regulations or a violation of any right, contractual or otherwise, or any duty owed to borrowers.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Acquiescence)**

3 18. The Cross-Complaint is barred, in whole or in part, by the doctrine of
4 acquiescence.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 **(No Right to Attorney’s Fees)**

7 19. The Cross-Complainant has no right to recover attorneys’ fees in this action.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 **(Other Defenses Reserved)**

10 20. OppFi has not yet completed the investigation or discovery of all facts and
11 circumstances of the subject matter of this action, and accordingly reserves the right to amend,
12 modify, revise, or supplement this Answer, and to plead such further defense and to take such
13 further action as OppFi may deem proper and necessary in defense of this action.

14 **PRAYER FOR RELIEF**

15 1. That the Cross-Complainant take nothing by reason of her Cross-Complaint and
16 that the Cross-Complaint be dismissed in its entirety, with prejudice;

17 2. That the Court enter judgment in favor of OppFi;

18 3. That responsibility, if any, for the Cross-Complainant’s injuries and damages, if
19 any, be allocated among other persons, firms, corporations, and public and private entities other
20 than OppFi, whose act or omissions legally caused or contributed to the Cross-Complainant’s
21 injuries and damages, if any;

22 4. That OppFi be awarded costs of suit and attorneys’ fees; and

23 5. That OppFi be awarded such other and further relief as the Court deems just and
24 proper.

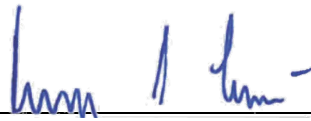
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DATED: October 17, 2022

BUCKLEY LLP

By: 

Fredrick S. Le in, Esq.
Ali M. Abugheida, Esq.
Attorneys for Plaintiff and Cross-Defendant
Opportunity Financial, LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 100 Wilshire Boulevard, Suite 1000, Santa Monica, CA 90401.

On October 17, 2022, I served true copies of the following document(s) described as **OPPORTUNITY FINANCIAL, LLC'S ANSWER TO THE CROSS-COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 17, 2022, at Carlsbad, California.


Kathleen McFarland-Ramirez

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SERVICE LIST
Opportunity Financial, LLC v. Clothilde Hewlett
22stcv08163

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