

State of California – Department of Financial Protection and Innovation

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CLOTHILDE V. HEWLETT  
Commissioner  
MARY ANN SMITH  
Deputy Commissioner  
SEAN M. ROONEY  
Assistant Chief Counsel  
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**EXEMPT FROM FILING FEES  
(Gov. Code, § 6103)**

Attorneys for Defendant, Cross-Complainant, and Cross-Defendant CLOTHILDE V. HEWLETT, in her official capacity as Commissioner of Financial Protection and Innovation and Cross-Defendant DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

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

OPPORTUNITY FINANCIAL, LLC ) Case No. 22STCV08163  
 )  
Plaintiff, ) CLOTHILDE HEWLETT AND DEPARTMENT  
 ) OF FINANCIAL PROTECTION AND  
v. ) INNOVATION’S NOTICE OF DEMURRER  
 ) AND DEMURRER TO OPPORTUNITY  
 ) FINANCIAL, LLC’S CROSS-COMPLAINT  
CLOTHILDE HEWLETT, in her official ) AND CROSS-PETITION, OR, IN THE  
 ) ALTERNATIVE, MOTION TO STRIKE  
capacity as Commissioner of the Department ) PLEADING  
of Financial Protection and Innovation for the )  
State of California, ) Assigned to: Hon. Timothy P. Dillon  
 )  
Defendant. ) Date: February 16, 2023  
 ) Time: 8:30 a.m.  
 ) Dept: 73  
 )  
 ) Reservation No.: 717481913641  
 )  
 ) Action Filed: March 7, 2022  
 )  
And Related Cross-Actions ) Trial Date: Not Set  
 )  
 )

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 16, 2023, at 8:30 A.M., or as soon thereafter as  
3 the matter may be heard, in Department 73 of the above-entitled court, located at 111 N. Hill Street,  
4 Los Angeles, California, the Honorable Timothy P. Dillon presiding, Defendant, Cross-Complainant  
5 and Cross-Defendant Commissioner Clothilde Hewlett, in her official capacity as Commissioner of  
6 Financial Protection and Innovation (Commissioner), and Cross-Defendant Department of Financial  
7 Protection and Innovation (Department, and collectively Cross-Defendants) will and hereby do  
8 demur to Plaintiff and Cross-Complainant Opportunity Financial’s (OppFi) Cross-Complaint and  
9 Cross-Petition for Writ of Mandate (Further Pleading) pursuant to section 430.10(e) of the California  
10 Code of Civil Procedure. Alternatively, Cross-Defendants move to strike the pleading pursuant to  
11 section 436 of the California Code of Civil Procedure.

12 This demurrer is made against both causes of action alleged in OppFi’s Further Pleading for  
13 failure to state facts sufficient to constitute a cause of action. OppFi’s Further Pleading asserts that  
14 the Commissioner’s examination of the substance of loan transactions under OppFi’s OppLoans  
15 program, over mere form, to determine whether OppFi or FinWise Bank is the actual lender amounts  
16 to an “underground regulation” adopted in violation of the Administrative Procedure Act’s rule-  
17 making process. But OppFi fails to allege facts showing that a regulation exists, a necessary element  
18 of OppFi’s claim. A “regulation” subject to the APA has two principal identifying characteristics: (1)  
19 it has general application, and (2) it is intended to implement or interpret a statute or other source of  
20 law. The Further Pleading fails to establish either prong.

21 California common law has long recognized the need to identify the actual lender of money,  
22 or true lender, in potentially usurious transactions by looking at substance rather than form. The  
23 allegations establish that the Commissioner is applying this long-standing California law to the  
24 specific facts of OppFi’s loan program with FinWise Bank. Interpretations or applications of law  
25 that arise in the course of case-specific adjudication are not regulations. The Commissioner’s  
26 enforcement position applying such law to OppFi’s particular lending arrangements is not a  
27 regulation, and OppFi fails to state a claim.

1           Alternatively, OppFi’s daisy-chain pleadings—filing its own cross-complaint and cross-  
2 petition, through the Further Pleading, in response to a cross-complaint against it when it is already  
3 the *Plaintiff* (which OppFi has argued is technically not prohibited)—is an inefficient demand of  
4 judicial resources and the Further Pleading should be stuck. Rather than proffer two concurrently  
5 operative complaints, the appropriate procedure would have been for OppFi to seek to amend its  
6 original Complaint. This Court has inherent authority “at any time in its discretion” to “[s]trike out  
7 all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court  
8 rule, or an order of the court” and the Cross-Defendants respectfully request that the Court strike the  
9 Further Pleading. Cal. Civ. Proc. Code § 436.

10           The demurrer and motion are based upon this notice; the attached Demurrer; the  
11 memorandum of points and authorities in support hereof filed together with this notice; the  
12 declaration of Allard Chu in support hereof and the exhibits attached thereto; the papers and files in  
13 this action; such further papers as may be filed in support hereof; and such argument as may be  
14 presented to the court on this matter.

15                                   Respectfully submitted,

16 Dated: November 18, 2022

17 CLOTHILDE V. HEWLETT,  
18 Commissioner of Financial Protection and Innovation

19 DEPARTMENT OF FINANCIAL PROTECTION AND  
20 INNOVATION

21 By: Allard Chu  
22 Allard C Chu  
23 Senior Counsel  
24 Enforcement Division  
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**DEMURRER TO CROSS-COMPLAINT AND CROSS-PETITION**

Cross-Defendant Commissioner Clothilde Hewlett, in her official capacity as Commissioner of Financial Protection and Innovation, and Cross-Defendant Department of Financial Protection and Innovation demur generally to Plaintiff, Cross-Defendant and Cross-Complainant Opportunity Financial, LLC’s Verified Cross-Complaint and Cross-Petition for Writ of Mandate on the following grounds:

1. The first cause of action fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e).

2. The second cause of action fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e).

Respectfully submitted,

Dated: November 18, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

DEPARTMENT OF FINANCIAL PROTECTION AND  
INNOVATION

By: Allard Chu  
Allard C Chu  
Senior Counsel  
Enforcement Division



## Make a Reservation

### OPPORTUNITY FINANCIAL, LLC vs CLOTHILDE HEWLETT

Case Number: 22STCV08163 Case Type: Civil Unlimited Category: Other Complaint (non-tort/non-complex)  
Date Filed: 2022-03-07 Location: Stanley Mosk Courthouse - Department 73

#### Reservation

Case Name: OPPORTUNITY FINANCIAL, LLC vs CLOTHILDE HEWLETT		Case Number: 22STCV08163	
Type: Demurrer - with Motion to Strike (CCP 430.10)		Status: RESERVED	
Filing Party: Clothilde Hewlett (Cross-Defendant)		Location: Stanley Mosk Courthouse - Department 73	
Date/Time: 02/16/2023 8:30 AM		Number of Motions: 1	
Reservation ID: 717481913641		Confirmation Code: CR-IHS2BRWBGFOB3F3K3	

#### Fees

Description	Fee	Qty	Amount
Demurrer - with Motion to Strike (CCP 430.10) *** Fees Exempted by Gov Code 6103.1 ***	120.00	1	0.00
TOTAL			\$0.00

#### Payment

Amount: \$0.00	Type: GOVT_EXEMPT
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

[Print Receipt](#)

[+ Reserve Another Hearing](#)

