

State of California – Department of Financial Protection and Innovation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLOTHILDE V. HEWLETT
Commissioner
MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
JOHNNY O. VUONG (State Bar No. 249570)
Senior Counsel
FRANCIS N. SCOLLAN (State Bar No. 186262)
Senior Counsel
ALLARD C CHU (State Bar No. 328121)
Senior Counsel
Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 503-4164
Facsimile: (213) 576-7181
Email: Johnny.Vuong@dfpi.ca.gov
Email: Frank.Scollan@dfpi.ca.gov
Email: Allard.Chu@dfpi.ca.gov

**EXEMPT FROM FILING FEES
(Gov. Code, § 6103)**

Attorneys for Defendant and Cross-Complainant CLOTHILDE V. HEWLETT, in her official capacity as Commissioner 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,)
v.	) COMMISSIONER CLOTHILDE HEWLETT’S
	) NOTICE OF MOTION AND MOTION FOR
	) PRELIMINARY INJUNCTION
)
CLOTHILDE HEWLETT, in her official	) Assigned to: Hon. Timothy P. Dillon
capacity as Commissioner of the Department)
of Financial Protection and Innovation for the)
State of California,	) Date: March 16, 2022
	) Time: 8:30 a.m.
Defendant.	) Dept: 73
)
	) Reservation No.: 490327796700
)
	) Action Filed: March 7, 2022
)
)
And Related Cross-Actions)
)

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

2 **PLEASE TAKE NOTICE** that on March 16, 2023, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 73 of the above-entitled Court, located at 111 N. Hill Street, Los
4 Angeles, California, the Honorable Timothy P. Dillon presiding, Cross-Complainant Commissioner
5 Clothilde Hewlett, in her official capacity as Commissioner of Financial Protection and Innovation,
6 (Commissioner) will and hereby does move the Court pursuant to California Financial Code section
7 22713 and California Code of Civil Procedure section 527 for an order granting a preliminary
8 injunction to enjoin Plaintiff, Cross-Defendant, and Cross-Complainant Opportunity Financial
9 (OppFi) from (i) marketing, offering, making, collecting on, and/or servicing new consumer loans
10 under its OppLoans program to California residents that have interest rates in excess of the interest
11 rate caps defined in the California Financing Law (CFL) and California usury law, (ii) purchasing
12 loans or receivables of loans made to California residents under OppFi’s OppLoans program that
13 have interest rates in excess of the interest rate caps defined in the CFL and California usury law,
14 and (iii) providing applications from California residents to FinWise for the issuance of loans with
15 interest rates in excess of the interest rate caps defined in the CFL and California usury law.

16 Under the sought injunction, OppFi can still operate in California and can still collect interest
17 up to the CFL allowable interest rates. The Commissioner does not seek to enjoin OppFi from
18 collecting on existing loans issued to California consumers where it has already purchased loan
19 receivables. Enjoining OppFi from issuing additional high interest loans merely preserves the status
20 quo by preventing ensnaring of additional California consumers.

21 The present litigation stems from OppFi’s claim that loans issued through its OppLoans
22 program (OppLoans) are exempt from California usury interest rate caps because it routes the loans
23 through an out-of-state-bank straw lender, FinWise Bank (FinWise). But this fundamentally
24 ignores bedrock California law that potentially usurious transactions must be evaluated for their
25 substance rather than the mere form of the lender identified on paperwork.

26 Here, the substance of the transactions point to OppFi as the actual lender of money. OppFi
27 owns the OppLoans website. The logo on the landing page for OppLoans even says “OppLoans by
28 OppFi.” OppFi provides the underwriting criteria for OppLoans. Critically, OppLoans are funded

1 by FinWise pursuant to a prearrangement wherein OppFi is required to maintain sufficient collateral
2 and purchases nearly all of the loan receivables within days of funding. All the hallmarks of the
3 actual lender of money point to OppFi. As an exempt lender, FinWise serves one purpose, to make
4 loans at over 150 percent interest when the CFL caps these loans at 36 percent.

5 As a government entity, the standard for evaluating the Commissioner’s motion for a
6 preliminary injunction is whether she is reasonably probable to succeed on the merits as there is a
7 rebuttable presumption that the potential harm to the public outweighs the potential harm to a cross-
8 defendant.

9 California courts have long recognized that the real beneficiary of a loan is the actual lender
10 of money, or true lender, when it prearranges for a straw lender to fund a loan in order to provide
11 the appearance of legality. In the instant case, the evidence uncovered thus far demonstrates a
12 reasonable probability that the Commissioner will establish that OppFi is the true lender and that
13 the exorbitant interest rates of OppLoans constitute violations of the California Financing Law.

14 Said motion will be based upon this notice and motion; the memorandum of points and
15 authorities in support hereof file together with this notice; the declaration of Kenneth Wu in support
16 hereof and the exhibits attached thereto; the papers and files in this action; such further papers as
17 may be filed in support hereof; and such argument as may be presented to the court on this matter.

18 Respectfully submitted,

19 Dated: January 30, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

20
21 By: Allard Chu
Allard C Chu
22 Senior Counsel
23 Enforcement Division
24
25
26
27
28



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: Motion for Preliminary Injunction	Status: RESERVED
Filing Party: Clothilde Hewlett (Cross-Complainant)	Location: Stanley Mosk Courthouse - Department 73
Date/Time: 03/16/2023 8:30 AM	Number of Motions: 1
Reservation ID: 490327796700	Confirmation Code: CR-MFEDDDCSBKMLFM7D9

Fees

Description	Fee	Qty	Amount
Motion for Preliminary Injunction *** Fees Exempted by Gov Code 6103.1 ***	60.00	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](#)

