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

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 Complainant CLOTHILDE V.
 HEWLETT, in her official capacity as
 13 Commissioner of Financial Protection
 and Innovation
 14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES, CENTRAL DIVISION

17 OPPORTUNITY FINANCIAL, LLC
 18 Plaintiff,

19 v.

20 CLOTHILDE HEWLETT, in her official
 21 capacity as Commissioner of the Department
 of Financial Protection and Innovation for the
 22 State of California,
 23 Defendant.

) **PUBLIC-REDACTS MATERIALS FROM**
) **CONDITIONALLY SEALED RECORD**

) Case No. 22STCV08163

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF CROSS-
) COMPLAINANT’S MOTION FOR
) PRELIMINARY INJUNCTION

) Assigned to: Hon. Timothy P. Dillon

) Date: March 16, 2023
) Time: 8:30 a.m.
) Dept: 73

) Reservation No.: 490327796700

) Action Filed: March 7, 2022

27 And Related Cross-Actions
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Cross-Complainant Commissioner Clothilde Hewlett, in her official capacity as
3 Commissioner of Financial Protection and Innovation, (Commissioner) hereby respectfully submits
4 the following memorandum of points and authorities in support of her motion for a preliminary
5 injunction to enjoin Plaintiff and Cross-Defendant Opportunity Financial (OppFi) from (i)
6 marketing, offering, making, collecting on, and/or servicing new consumer loans under its OppLoans
7 program to California residents that have interest rates in excess of the interest rate caps defined in
8 the California Financing Law (CFL) and California usury law, (ii) purchasing loans or receivables of
9 loans made to California residents under OppFi's OppLoans program that have interest rates in
10 excess of the interest rate caps defined in the CFL and California usury law, and (iii) providing
11 applications from California residents to FinWise for the issuance of loans with interest rates in
12 excess of the interest rate caps defined in the CFL and California usury law.

13 **I. INTRODUCTION**

14 The Commissioner is responsible for enforcing the CFL to protect California borrowers,
15 which includes regulating interest rates in California consumer loans. Carrying out that
16 responsibility, the Commissioner initiated an investigation into licensee OppFi's high-interest
17 consumer loan product, issued through its OppLoans program (OppLoans). Informed of the
18 Commissioner's position that, based on the available information, OppFi was potentially violating
19 the CFL as the actual lender of the OppLoans product, OppFi rushed to court seeking to prevent the
20 Commissioner from enforcing the CFL. The gravamen of OppFi's Complaint in this matter is that its
21 consumer loans with over 150% annual interest rates are exempt from California usury interest rate
22 caps because it routes the loans through an out-of-state-bank straw lender, FinWise Bank (FinWise),
23 and therefore OppFi is not subject to the CFL's consumer protections.

24 OppFi's preemptive lawsuit did not deter the Commissioner's pursuit of consumer protection.
25 The Commissioner filed her cross-complaint against OppFi, asserting that because the substance of
26 the transaction controls, not the form, OppFi is the actual maker of exorbitant-interest loans to
27 California borrowers and, as the lender, is violating the CFL. The Commissioner now seeks
28 appropriate injunctive relief as authorized by the CFL and requested in the Cross-Complaint in order

1 to protect California consumers from OppFi’s loan products with excessive interest rates while this
2 litigation is pending.

3 OppFi’s Complaint ignores the tenet of California law that requires potentially usurious
4 transactions to be evaluated for their substance rather than the mere form of the lender identified on
5 paperwork. The Commissioner’s Cross-Complaint seeks enforcement of the CFL and the California
6 Consumer Financial Protection Law (CCFPL) with a finding that OppFi is the actual lender of
7 money, or true lender, for OppLoans.

8 Here, evaluating the substance of these transactions over their form, OppFi is the actual
9 lender. OppFi takes almost all the risk from the loans made, and does everything except put its name
10 on the formal loan document as Lender. In the instant case, OppFi owns the OppLoans website. The
11 logo on the landing page for OppLoans even says “OppLoans by OppFi.” OppFi is referenced
12 multiple times on the landing page, including as a lender. Upon application, OppFi provides the
13 underwriting for OppLoans. Critically, OppLoans are funded in California by lending partners like
14 FinWise pursuant to a prearrangement wherein OppFi maintains sufficient collateral and takes over
15 nearly all of the receivables of a loan within days of FinWise funding the loan. If OppFi does not
16 maintain adequate collateral, FinWise is not obligated to issue any loans.

17 After FinWise funds the loans, OppFi purchases between 95 to 98 percent of the
18 receivable—the right to the interest and principal payments—for each loan originated with FinWise.
19 On average, OppFi purchases these receivables from FinWise within three days after FinWise funds
20 the loan.

21 All the hallmarks of the actual lender of money point to OppFi. OppFi and FinWise are not
22 engaged in arm’s-length loan sales on the secondary market. Rather, they have carefully and
23 systematically structured a business relationship designed to ensure that the lending transaction
24 starts and ends with OppFi. FinWise, as an exempt lender, does precisely the one thing OppFi
25 cannot do itself – make loans at over 36 percent interest.

26 California courts have long recognized that the real beneficiary of a loan is the “true lender”
27 when it prearranges for a straw lender to “make” a loan and immediately sell the loan receivables
28 back to a nonexempt entity in order to circumvent state usury laws. In such cases, the court should

1 “examine the substance of the transaction, consider the assignee as the **true lender**, and not permit
 2 the assignee to hide behind the assignor’s exemption.” 11 Harry D. Miller & Marvin B. Starr,
 3 California Real Estate § 37:39 (4th ed. 2015) (emphasis added).

4 Yet, OppFi continues to operate OppLoans in California, exacting interest rates of over
 5 150% from Californians. Said another way, after a year, consumers owe more in interest than the
 6 amount of money they borrowed through OppLoans.¹ This when the CFL interest rate cap for
 7 consumer loans between \$2,500 and \$9,999—a range into which many OppLoans fall—is 36% plus
 8 the Federal Funds Rate.^{2 3}

9 OppFi’s actions and its continued issuance of loans with interest rates several fold greater
 10 than the CFL interest rate caps are violations of the CFL and the CCFPL. Violations of these
 11 statutory provisions are *prima facie* signs of activity that is contrary to the public interest and that
 12 will result in significant public harm. Here, **these exceedingly high interest rate loans for subprime**
 13 **credit consumers are a threat to the financial well-being of Californians.** The follow-on risks of
 14 inability to pay, harm to credit scores, and default on other financial obligations are far-reaching and
 15 significant.

16 Accordingly, for the reasons set forth below in more detail, the Commissioner requests that
 17 this Court issue a preliminary injunction enjoining OppFi from (i) marketing such loans to
 18 California residents, (ii) purchasing both loans or receivables of loans made to California residents
 19 that have interest rates in excess of California law, and (iii) providing applications from California
 20 residents to FinWise subject to a loan receivables sale agreement for the issuance of loans with
 21 interest rates in excess of California interest rate caps. The Commissioner does not seek to enjoin
 22 OppFi from collecting on existing loans issued to California consumers where it has already
 23

24 ¹ The OppLoans website provides an exemplar offer in California, a \$3,000 loan for 12
 25 months at 160% APR interest. This loan requires 12 payments of \$514.60, or total payments of
 26 \$6,175.20 within a year. <https://www.opploans.com/rates-and-terms/california/>

27 ² See Cal. Fin. Code § 22304.5. Federal Funds Rate is the interest rate set by the Federal
 Reserve that banks charge each other to borrow reserves overnight and as of October 2022 ranges
 28 between 3.00 to 3.25%.

³ While interest on loans of amounts between \$2,500 and \$9,999 are capped at 36% plus the
 Federal Funds Rate (Cal. Fin. Code § 22304.5), loans of less than \$2,500 are progressively capped at
 various amounts with interest rates less than 36% (Cal. Fin. Code § 22303).

1 purchased loan receivables.

2 **II. RELEVANT FACTUAL BACKGROUND**

3 **A. OppFi Has a Prearrangement to Purchase OppLoans Loan Receivables**

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED] OppFi further has fully
11 owned subsidiaries that purchase the receivables from the OppLoans funded by FinWise. [Wu
12 Decl., ¶¶ 7-9, Exs [REDACTED] H].

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 **B. OppFi Owns the OppLoans Website**

17 OppFi offers the OppLoans loan product to consumers through the website OppLoans.com.
18 [Wu Decl., ¶ 12]. The OppLoans website itself states that it is owned and operated by OppFi. [Wu
19 Decl., ¶ 12, Ex. I]. “OPPLOANS” is a federally registered trademark owned by “Opportunity
20 Financial LLC”. [Wu Decl., ¶ 13, Ex. J]. The original applicant for the trademark and owner has
21 always been “Opportunity Financial LLC”. [Wu Decl., ¶ 13, Ex. K]. Borrowers cannot obtain an
22 OppLoan directly through FinWise’s website. [Wu Decl., ¶ 14]. FinWise’s website has a link that
23 takes borrowers directly to OppLoans.com and contains a disclaimer titled “Third Party Site
24 Disclaimer” that warns the applicant that they are leaving the FinWise website and will no longer be
25 subject to or protected by FinWise’s privacy policies. [Wu Decl., ¶ 14, Ex. L].

26 The landing page for the OppLoans website markets OppLoans as “OppLoans by OppFi.”
27 [Wu Decl., ¶ 15, Ex. M]. “OppFi” or “Opportunity Financial, LLC” are mentioned at least five
28 times on the landing page for OppLoans. [Id.]. FinWise is not referenced on the landing page. [Id.].

1 The landing page mentions that loan applications may be originated by “one of several lenders”
2 including OppFi or a lending partner. [*Id.*]. The landing page states that “[a]ll loans originated by
3 our lending partners will be serviced by OppLoans.” [*Id.*]. The landing page directs consumers with
4 questions or concerns to the “Opportunity Financial Customer Support Team.” [*Id.*].

5 **C. OppFi Controls the Underwriting Process**

6 OppFi explains that consumers who apply for OppLoans through OppLoans.com are
7 underwritten by OppFi through the use of proprietary software. [Wu Decl., ¶ 16, Ex. H]. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED] The underwriting criteria of OppLoans are determined by OppFi. [Wu Decl., ¶ 16, Ex.
11 H]. In its public filings, OppFi states that the underwriting criteria for the bank partnership loans are
12 supplied by OppFi to the bank partners. [*Id.*].

13 OppFi’s underwriting is heavily automated with approximately 82 percent of OppLoans
14 being instantly underwritten through its software, with most loans funded the next business day.
15 [Wu Decl., ¶ 17, Ex. H]. [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 **D. OppFi Purchases Over 90 Percent of the Receivables**

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 By way of background, OppFi has held a CFL lender license issued by the Commissioner
26 since 2014. [Wu Decl., ¶ 35]. With its CFL license, OppFi used to directly originate loans to
27 California residents through its website, www.OppLoans.com, without the involvement of an out-
28

⁴ A receivable is the right to the interest and principal payments for a loan.

1 of-state bank. [*Id.*]. In 2016, for example, OppFi reported that it originated, under its CFL license
2 authority, at least 3,000 consumer loans through its website and all the originated loans were above
3 \$2,500. [Wu Decl., ¶ 35].

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Following enactment of California Assembly
7 Bill 539, which instituted the interest rate caps in question into the CFL, OppFi ceased directly
8 funding OppLoans in California. Instead, OppLoans issued through the same OppLoans.com
9 website were funded by FinWise. [Wu Decl., ¶ 36]. According to OppFi, OppLoans funded through
10 FinWise typically range between \$500 and \$4,000 and carry an APR between 59% and 160%. [Wu
11 Decl., ¶ 36, Ex. P].

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 **E. FinWise Does Not Carry the Financial Risk**

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 OppFi’s annual marketing costs associated with its loan program averages in the tens of millions of
25 dollars according to its public filings with the Securities and Exchange Commission. [Wu Decl., ¶
26 27, Ex. H]. [REDACTED]
27 [REDACTED]

28 OppFi represents on its website that FinWise also does not service OppLoans. [Wu Decl., ¶

1 28, Ex. M]. OppFi undertakes the servicing obligations of OppLoans. [*Id.*].

2 **III. LEGAL STANDARD**

3 A preliminary injunction may be granted at any time before judgment. Cal. Code Civ. Proc.
4 § 527.

5 The California Supreme Court has held that the standard for a government entity to enjoin
6 violations of a statutory scheme which expressly authorizes injunctive relief is whether it is
7 **reasonably probable** the government entity will prevail on the merits. *IT Corp. v. County of*
8 *Imperial*, 35 Cal. 3d 63, 72 (1983). There is a presumption that the potential harm to the public
9 outweighs the potential harm to the defendant. *Id.* Thus, California law provides the Commissioner,
10 in her official role, with a different standard for seeking a preliminary injunction than that for private
11 litigants.

12 Furthermore, where the statute authorizes an injunction to protect the public interest (as in
13 the CFL at Financial Code section 22713), it is unnecessary to allege or prove the usual equitable
14 considerations, such as irreparable harm and balancing of interests, as they are irrelevant. *IT Corp. v.*
15 *Cnty. of Imperial*, 35 Cal. 3d\

16 t 70–71. Instead, “where an injunction is authorized by statute, a violation thereof is good and
17 sufficient cause for its issuance.” *Paul v. Wadler*, 209 Cal. App. 2d 615, 625 (1962); *Porter v. Fiske*,
18 74 Cal. App. 2d 332, 338 (1946) (“[w]here an injunction is authorized by statute it is enough that the
19 statutory conditions are satisfied.”).

20 **IV. ARGUMENT**

21 In the instant case, the evidence uncovered thus far demonstrates a reasonable probability
22 that the Commissioner will prevail on the merits. There is substantial evidence that OppFi’s
23 prearrangement with FinWise Bank establishes that OppFi is the actual lender of money under
24 California law, and that OppFi is therefore lending money at interest rates that exceed the caps of the
25 CFL. *See* Cal. Fin. Code §§ 22303, 22304, and 22304.5.

26 **A. It is Reasonably Probable the Commissioner Will Succeed on the Merits**

27 As a government entity, the standard for evaluating the Commissioner’s motion for a
28 preliminary injunction is whether it is reasonably probable that she will succeed on the merits. *IT*

1 *Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 70–71 (affirming grant of a preliminary injunction to stop
2 operation of a waste disposal facility). Where a government entity has a statutory right to seek
3 injunctive relief, there is a rebuttable presumption that the potential harm to the public outweighs the
4 potential harm to a cross-defendant. *See, e.g., IT Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 70–71;
5 *Water Replenishment Dist. of Southern Calif. v. City of Cerritos*, 220 Cal. App. 4th 1450, 1461, 1464
6 (2013); *People v. FXS Mgmt., Inc.*, 2 Cal. App. 5th 1154, 1158-1159 (2016); *People v. Uber Techs.,*
7 *Inc.*, 56 Cal. App. 5th 266, 283-286 (2020). The legislature’s enactment of interest rate caps in the
8 CFL and provision of injunctive relief in both the CFL and CCFPL evidence a determination that
9 excessive interest rates are contrary to the public interest and will result in significant harm such that
10 injunctive relief is appropriate. *See IT Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 70 (enactment of a
11 statute prohibiting certain activities demonstrates the legislature has already determined that such
12 activity is contrary to the public interest).

13 In the present case, OppFi is not an exempt lender under the CFL or the California
14 Constitution. Loans issued by OppFi are subject to the CFL’s interest rate caps. Thus, the core issue
15 here is whether FinWise is the true lender for purposes of an exemption, or whether it is merely a
16 straw lender for OppFi.

17 For nearly a century, California law has recognized the principle of looking at substance
18 over form in evaluating potentially usurious transactions. *Terry Trading Corp. v. Barsky*, 210 Cal.
19 428, 432 (1930) (“it is always permissible to show that a transaction, ostensibly lawful, actually
20 constituted a usurious loan and was made with intent to evade [usury laws]”).

21 Application of substance over form requires looking beyond the proffered lender to identify
22 who the actual lender of money is, not just who is proffered on the face of loan documents. One
23 cannot hide a usurious transaction simply by routing a loan through an intermediary lender and then
24 purchasing the loan to create a façade of legality. *See Janisse v. Winston Inv. Co.*, 154 Cal. App. 2d
25 580, 586–87 (1957); *Anderson v. Lee*, 103 Cal. App. 2d 24, 26 (1951).

26 In *Janisse*, the named lender of record served the role of dummy in an arrangement designed
27 to conceal a usurious transaction by a later “assignee” of the loan. *Janisse*, 154 Cal. App. 2d at 587.
28 Like OppFi here, the “assignee” determined whether a loan should be made to plaintiffs and further

1 determined the monetary amounts for the loan. *Id.* In an act of subterfuge in the *Janisse* case, the
2 named lender was put on the note as an intermediary assignor instead of the **true lender assignee**
3 because “to sell the note it had to be made to a third party.” *Id.* at 585. The *Janisse* court found the
4 assignee to be the true lender, with the named lender serving as a straw lender to conceal usury.

5 Similarly, in *Anderson*, the court saw through a misleading paper arrangement where the
6 loan documents identified Mrs. Stout as the lender, finding the loan and its sale were a sham
7 designed to hide a usurious transaction by the real lender. *Anderson*, 103 Cal. App. 2d at 27-28.

8 The longstanding recognition of this principle in California law is encapsulated in a well-
9 respected treatise:

10 [An] exemption [for transactions exceeding usury limits] should not pass with
11 the note if the public purpose is not served and the transaction is structured with
12 the intent to evade the Usury Law. For example, **if the nonexempt assignee**
13 **negotiates to make a loan at a usurious rate and thereafter arranges for the loan**
14 **to be made by an exempt lender with the prior agreement that it will be assigned**
15 **to the assignee,** the exempt lender is merely acting as the agent for the
16 nonexempt lender. **In such cases, the court should examine the substance of**
17 **the transaction, consider the assignee as the true lender, and not permit the**
18 **assignee to hide behind the assignor's exemption.**

19 Harry D. Miller & Marvin B. Starr, California Real Estate § 37:39 (4th ed. 2015) (emphasis
20 added).

21 In the instant case, the various procedures in the OppLoans process point to OppFi as the
22 actual lender of money. This ranges from control of the website to how underwriting is conducted to
23 OppFi’s collateral guarantee and, finally, to OppFi’s taking over of nearly all OppLoans receivables
24 within days of the loans funding and reaping the majority of their economic benefit.

25 Here, OppFi owns the OppLoans website, <https://www.opploans.com>, not FinWise. [Wu
26 Decl., ¶ 12]. The **landing page** for the OppLoans website markets OppLoans as “OppLoans by
27 OppFi.” [Wu Decl., ¶ 15, Ex. M]. “OppFi” or “Opportunity Financial, LLC” are mentioned at least
28 five times on the landing page for OppLoans. [*Id.*]. **FinWise is not mentioned even once on the**
landing page. [*Id.*]. To the extent that OppFi mentions that loans may be originated by “one of
several lenders” including OppFi or a lending partner, the landing page states that “[a]ll loans
originated by our lending partners will be serviced by OppLoans.” [*Id.*]. For consumers with

1 questions or concerns, they are directed to the “Opportunity Financial Customer Support Team.”
2 [*Id.*].

3 Next, OppFi provides the underwriting criteria for OppLoans to FinWise. [Wu Decl., ¶ 16].

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 The OppLoans website
17 continues to operate, marketing such personal loans to California consumers. [Wu Decl., ¶ 38, Ex.
18 R].

19 All of the hallmarks of the actual lender of money point to OppFi. The usage of FinWise as
20 a lender on paper is simply a ruse designed to circumvent the CFL’s interest-rate caps. OppFi and
21 FinWise are not engaged in arm’s-length loan sales on the secondary market. Rather, they have
22 carefully and systematically structured a business relationship designed to ensure that the lending
23 transaction starts and ends with OppFi. FinWise, as an exempt lender, does precisely the one thing
24 OppFi cannot do itself – make loans at over 36 percent interest.

25 Accordingly, with a presumption of harm to the public, the Commissioner is reasonably
26 probable to success on the merits of her motion for preliminary injunction and the Court should issue
27 a preliminary injunction.

28 **B. Enforcement Injunctions Do Not Require a Weighing of Equitable
Considerations or a Balancing of Interests**

1 It is well-settled law in California state and federal courts that statutory injunctive relief
 2 sought by a government entity, including preliminary injunctions, can be properly granted without
 3 needing to consider equitable considerations or balancing of potential or actual harm. *See, e.g., IT*
 4 *Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 70–71; *People v. Pacific Land Research Co.*, 20 Cal. 3d 10,
 5 21–23 (1977); *City of Los Angeles v. Silver*, 98 Cal. App. 3d 745, 750–751 (1979); *Paul v. Wadler*,
 6 209 Cal. App. 2d at 625; *Porter v. Fiske*, 74 Cal. App. 2d at 338; *American Fruit Growers v. United*
 7 *States*, 105 F.2d 722, 725 (9th Cir. 1939); *Securities and Exchange Commission v. Torr*, 87 F.2d 446,
 8 450 (2d Cir. 1937).

9 Where a governmental entity seeks to enjoin violation of statutes which specifically provide
 10 for injunctive relief and establishes that it is reasonably probable to prevail on the merits, a
 11 rebuttable presumption arises that potential harm to the public outweighs potential harm to the
 12 defendant. *IT Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 72. To overcome this presumption and look
 13 beyond the reasonable probability of success, the burden is on OppFi to prove that it would suffer
 14 “grave or irreparable harm” from issuance of the preliminary injunction. *Id.* at 69. OppFi’s mere
 15 reduction of profits from reduced interest rates on its loans is not “grave or irreparable harm.”
 16 Regardless, Section IV(C)(ii) below explains why the balance of harms decidedly weighs in favor of
 17 protecting Californians from the potential harm to the public.

18 In the instant litigation, OppFi is violating statutory provisions of the CFL relating to the
 19 interest rate cap of loans. The CFL expressly provides for injunctive relief, including preliminary
 20 injunction. Cal. Fin. Code § 22713.

21 Thus, the above showing of reasonable probability of prevailing on the merits establishes the
 22 propriety of the Commissioner’s request for preliminary injunction.

23 C. Even a Balancing of Harms Favors Issuance of a Preliminary Injunction

24 Notwithstanding that the standard for a preliminary injunction by the Commissioner in her
 25 official capacity is establishing reasonable probability for success on the merits, the present
 26 situation shows that a balancing of harms weighs in favor of issuance of a preliminary injunction.
 27 Even if OppFi alleges that it would suffer grave or irreparable harm from reduced revenue, the
 28 balancing of harms still weighs in favor of issuing the preliminary injunction to protect consumers.

1 **1. The balance of hardships weighs in favor of injunctive relief**

2 The harm that OppFi would suffer if an injunction issues is significantly less than the
3 potential harm to California consumers if an injunction is not issued. The Commissioner seeks a
4 narrowly tailored preliminary injunction that only limits the interest rate of future OppLoans to the
5 same limit that all CFL licensed lenders abide by. The Commissioner is not seeking to stop OppFi
6 from its business of lending nor seeking to modify the terms of already-issued loans. The
7 Commissioner is not seeking to bar OppFi from profiting by collecting interest payments. Merely,
8 the Commissioner seeks to have OppFi abide by the interest rate cap in the CFL for potential loans
9 that are not yet originated as if OppFi is the lender of record. As such, even consideration of this
10 unnecessary factor favors issuance of the preliminary injunction.

11 For OppFi, issuance of a preliminary injunction requiring it to comply with the CFL's
12 interest rate limitation will cause limited hardship. OppFi offers OppLoans in at least 34 states
13 according to its own disclosures. [Wu Decl., ¶ 38, Ex. R]. Such an order would only lessen the
14 profitability of an individual loan made to a California consumer while the preliminary injunction is
15 in effect. But injunction is appropriate to stop the improper obtaining of funds in this case where
16 OppFi as an entity is subject to the CFL interest rate caps. *See* Cal. Fin. Code § 22713 ("Upon a
17 proper showing, a permanent or preliminary injunction...shall be granted" to enjoin violation of the
18 CFL). Under the sought injunction, OppFi can still operate in California and can still collect interest
19 up to the CFL allowable interest rates. Moreover, there are numerous factors—including the
20 consumers targeted, the underwriting criteria, and perceived risk levels—that OppFi could adjust
21 with regards to its business model to account for any changes in risk associated with the preliminary
22 injunction. Ultimately, OppFi's harm would be that of temporarily lessened economic profitability
23 for the loans it issues to consumers in California.

24 In contrast, denial of a preliminary injunction **leaves additional California consumers at risk**
25 **of being ensnared by usurious loans where they will owe more in interest in a year than the**
26 **principal amount they borrowed.** A preliminary injunction is justified where there is threatened
27 harm and there is no need to wait until the suffering of actual harm. *See Costa Mesa City Employees*
28 *Assn. v. City of Costa Mesa*, 209 Cal. App. 4th 298, 305 (2012). The follow-on risks of inability to

1 pay, harm to credit scores⁵, and default on other financial obligations by new California consumers
 2 are substantial.⁶ Notably, OppFi’s own reports for the third quarter of 2022 showed that net charge-
 3 offs as a percentage of accounts receivable were approximately 66%—meaning that, in the
 4 aggregate, OppFi’s customers are unable to make payments on over half of their outstanding
 5 balances.⁷ [Wu Decl., ¶ 37, Ex. Q]. The distinction between the threat of widespread harm to
 6 California consumers versus mere reduced economic profits for OppFi weighs in favor of the
 7 Commissioner. *See IT Corp. v. Cnty. of Imperial*, 35 Cal. 3d at 73 (the ultimate goal for deciding on
 8 a preliminary injunction “is to minimize the harm which an erroneous interim decision may
 9 cause.”).

10 Consequently, even if the Commissioner’s right as a government entity to seek a preliminary
 11 injunction on the basis of reasonable probability of success on the merits is ignored, the
 12 Commissioner has established all of the bases needed to obtain a preliminary injunction under the
 13 balance-of-hardships approach.

14 **2. The public interest will be served by enjoining OppFi and it will preserve**
 15 **the status quo**

16 **Although not a required factor in California**, the public interest will also be served by
 17 granting the Commissioner’s request for a preliminary injunction. *See, e.g., Loy v. Kenney*, 85 Cal.
 18 App. 5th 403 (2022), reh’g denied (Dec. 2, 2022) (contemplating that “public interest favored grant
 19 of preliminary injunction”). Enjoining OppFi from ensnaring additional California consumers
 20 **preserves the status quo by giving full effect to the interest-rate cap** established in the CFL to which
 21 all non-exempt lenders of money are subject.

22 The public’s interest here in safeguarding consumers from predatory lending and usury are
 23

24 ⁵ OppFi reports “consumers’ payment histories to all three major credit bureaus.” [Wu Decl.,
 25 ¶ 39, Ex. S].

26 ⁶ *See, e.g., Karen Axelson, What Happens if You Don’t Pay Back a Personal Loan?*, ASK
 27 EXPERIAN (Jan. 29, 2023, 4:27 PM), <https://www.experian.com/blogs/ask-experian/what-happens-if-you-dont-pay-back-personal-loan/>

28 ⁷ A charge-off is a debt that is deemed unlikely to be collected by the creditor. OppFi
 determines charge offs at “the earlier of the time when accounts reach 90 days past due on a recency
 basis, when OppFi receives notification of a customer bankruptcy or is otherwise deemed
 uncollectible.” [Wu Decl., ¶ 37, Ex. Q].

1 well-established. *See Janisse v. Winston Inv. Co.*, 154 Cal. App. 2d 580, 586 (1957) (finding the
2 public interest would be served by exposing in full an illegal attempt to collect a usurious rate of
3 interest).

4 By enacting the interest rate cap of the CFL and the prohibition of unlawful conduct under
5 the CCFPL, the legislature has already determined that such usurious transactions are contrary to
6 the public interest and will result in significant public harm. *See IT Corp. v. Cnty. of Imperial*, 35
7 Cal. 3d at 70 (“Where a legislative body has enacted a statutory provision proscribing a certain
8 activity, it has already determined that such activity is contrary to the public interest. Further, where
9 the legislative body has specifically authorized injunctive relief against the violation of such a law,
10 it has already determined (1) that significant public harm will result from the proscribed activity,
11 and (2) that injunctive relief may be the most appropriate way to protect against that harm.”)

12 Here, the gravamen of the litigation relates precisely to whether OppFi is the actual lender
13 of money for OppLoans and in violation of the interest rate cap of the CFL. Stopping lenders from
14 originating exorbitantly high interest loans is precisely the conduct that California courts have
15 found to be issues of public interest. Enjoining OppFi from ensnaring additional California
16 consumer with predatory loans, with an average interest rate of *approximately four times* the CFL
17 cap, vastly outweighs limiting the economic profits of such activity by having OppFi temporarily
18 limit the interest rates of its California loans. The public interest weighs significantly in favor of
19 granting the Commissioner’s motion.

20 More importantly, enjoining OppFi from issuing additional high interest loans to
21 Californians maintains the status quo. OppFi has always been required to comply with the CFL
22 interest rate caps and therefore no extra rights are being granted or taken away through this
23 injunction. At the same time, OppFi is not stopped from conducting its business. Again, the only
24 limitation on OppFi is a reduction in the interest payments it collects to match that which is
25 collected by other compliant CFL license holders. Finally, the Commissioner’s preliminary
26 injunction maintains the potential pool of victims at a set number and does not allow it to grow
27 further.

28 In sum, the facts in the present case justify the granting of a preliminary injunction.

1 Fundamentally, the Commissioner has established the reasonable probability needed for granting of
2 a preliminary injunction requested by a government entity. That alone is enough.

3 **V. THE COMMISSIONER IS EXEMPT FROM A BOND REQUIREMENT**

4 The Commissioner, in her official capacity, is exempt from any requirement of a bond. For
5 private litigants, Code of Civil Procedure section 529, subdivision (a) provides that “[o]n granting an
6 injunction, the court or judge must require an undertaking [or bond] on the part of the applicant.”
7 However, Code of Civil Procedure section 995.220 provides that certain public entities and officers
8 “are not required to give the bond and shall have the same rights, remedies, and benefits as if the
9 bond were given.” Cal. Code Civ. Proc. § 995.220. The exempt entities include “[t]he State of
10 California or the people of the state, a state agency, department, division, commission, board, or
11 other entity of the state, or a state officer in an official capacity or on behalf of the state.” Cal. Code
12 Civ. Proc. § 995.220(a).

13 The present action only has the Commissioner as a party in her official capacity on behalf of
14 the state and the people of California. In light of this, the Commissioner is not required to give a
15 bond and should be treated as if a bond was given.

16 **VI. CONCLUSION**

17 For the foregoing reasons, Defendant and Cross-Complainant Commissioner respectfully
18 requests that this court issue a preliminary injunction enjoining OppFi from offering OppLoans with
19 interest rates that exceed the California Financing Law interest rate caps.

20 Respectfully submitted,

21 Dated: January 30, 2023

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

22
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