

FEB 24 2026

David W. Slayton, Executive Officer/Clerk of Court

By: M. Carino, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

OPPORTUNITY FINANCIAL, LLC,)

CASE NO.: 22STCV08163

Plaintiff,)

TENTATIVE DECISION RE:
OPPORTUNITY FINANCIAL, LLC'S
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE,
SUMMARY ADJUDICATION

vs.)

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

Dept. 73
8:30 a.m.
January 29, 2025

Defendant.)

AND RELATED CROSS-ACTION.

I. INTRODUCTION

On March 7, 2022, Plaintiff Opportunity Financial, LLC ("OppFi") filed this action against Clothilde V. Hewlett in her official capacity as Commissioner of California's Department of Financial Protection and Innovation (the "Commissioner"), alleging causes of action for (1) Declaratory Judgment and (2) Injunctive Relief.

On April 8, 2022, the Commissioner filed a Cross-Complaint against OppFi, asserting causes of action for (1) Violation of the California Financing Law and (2) Violation of the California Consumer Financial Protection Law.

On October 17, 2022, OppFi filed a Cross-Complaint against the Commissioner and California's Department of Financial Protection and Innovation ("DFPI"), asserting causes of action for (1) Writ of Mandate, Code of Civil Procedure § 1085(a) -- Violation of the California

02/24/2026

1 Administrative Procedure Act, Gov't Code § 11340 et seq. and (2) Declaratory Relief, Code Civ.
2 Proc. § 1060; Gov't Code § 11350— Violation of the California Administrative Procedure Act,
3 Gov't Code § 11340 et seq.

4 Allegations in OppFi's Complaint

5 OppFi is a leading financial technology platform and service provider focused on helping
6 middle-income, credit-challenged consumers build a better financial path. (Compl., ¶ 14.)

7 Specifically, OppFi's platform allows banks to provide access to simple short-term
8 lending products for consumers whom traditional lenders may otherwise turn away in light of
9 their credit profile. (Compl., ¶ 15.) In this regard, OppFi plays a critical, federally recognized,
10 and approved market: enabling consumers to be shut out of traditional credit markets to obtain
11 access to credit. (Compl., ¶ 15.) Moreover, access to credit is a critical asset to individuals
12 seeking to build a better economic future. (Compl., ¶ 15.)

13 Lenders such as FinWise Bank (the "Bank" or "FinWise"), a federally-insured state-
14 chartered bank located in Utah, have developed loan products that provide credit to this
15 population in light of their high credit risk. (Compl., ¶ 17.) The loan products offered by the
16 Bank provide transparent pricing, have no origination or late fees, are fully amortizing with no
17 balloon payments, and allow borrowers to prepay at any time with no penalty. (*Ibid.*)

18 However, in light of the high credit risk posed by this population, the interest rates
19 charged on these loans are often higher than traditional loans because the borrowers have no
20 collateral to use as security and default at a high rate. (*Ibid.*) Borrowers understand that high
21 interest rates are necessary in light of their credit status. (*Ibid.*)

Because charging higher interest rates is necessary to make small-dollar lending to
higher-risk borrowers economically viable, many national and state-chartered banks that engage

1 in such lending lawfully incorporate and locate themselves in states that do not set low-interest
2 rate caps relative to credit risk. (Compl., ¶ 18.) These states understand that if the legal small-
3 dollar lending market is terminated, it will not end low-income borrowers' need for credit, but
4 instead will lead to something more pernicious: increased reliance on "payday lending" and,
5 even worse, black-market lending by persons and entities who operate wholly outside of the law.
(Compl., ¶ 18.)

6 The Bank uses OppFi's platform to provide loan products to consumers throughout the
7 United States. (Compl., ¶ 19.)

8 This action arises from the Commissioner of California's Department of Financial
9 Protection and Innovation's (the "Commissioner") threatened enforcement of the Fair Access to
10 Credit Act ("AB 539") against OppFi. (Compl., ¶ 1.)

11 AB 539, which became effective on January 1, 2020, amended the California Financing
12 Law ("CFL") to cap interest rates to 36% for covered loans between \$2,500 and \$10,000 made
13 by "financial lenders." (Compl., ¶ 1.) The Commissioner accuses OppFi of originating consumer
14 loans with interest rates above those allowed by AB 539. (Compl., ¶ 1.)

15 However, the loans in question originated from the Bank, not OppFi. (Compl., ¶ 1.)
16 OppFi only provides the Bank with technology and other services under a contractual
17 arrangement (the "Program"). (Compl., ¶ 1.)

18 Moreover, the interest rate caps in the CFL should not apply to loans originated under the
19 Program ("Program Loans") for the following reasons: First, Program Loans are constitutionally
20 and statutorily exempt from California's maximum interest rate caps because the loans are made
21 by the Bank, a state-chartered bank located in Utah. Second, OppFi does not make loans under
the Program in California. As such, it is not a "finance lender" under the CFL with respect to its

1 Program-related activities and, therefore, is not subject to the interest rate caps established by AB
2 539 for those activities. Third, even if AB 539 could arguably apply to OppFi, Section 27 of the
3 Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. § 1831d (hereinafter “Section 27”) preempts
4 the application of AB 539 to Program Loans. (Compl., ¶ 2.)

5 The inapplicability of the CFL’s interest rate caps to the Program is not controversial or
6 new, but rooted in long-existing constitutional and statutory exemptions under California law for
7 loans made by state-chartered banks and decades of well-settled federal law. (Compl., ¶ 3.)

8 Federal law permits state-chartered banks to export the interest rates allowed in their chartering
9 state to any other state in the country. (Compl., ¶ 3.) Federal law also preempts any efforts by
10 state legislatures to apply their state’s interest rate caps to loans made by state-chartered banks in
11 other states. Indeed, in passing AB 539, the Legislature expressly acknowledged what is obvious:
12 AB 539 does not apply to “nondepositories that partner with banks,” like OppFi. (Compl., ¶ 3.)

13 The Commissioner is well aware of these settled principles. (Compl., ¶ 4.) Indeed, before AB
14 539, the Bank originated Program Loans that would have been subject to the interest caps under
15 AB 539, but the Commissioner and her predecessors never objected to those loans. (Compl., ¶
16 4.)

Allegations in the Commissioner’s Cross-Complaint

17 OppFi is not a bank, but a publicly traded company that originates consumer installment
18 loans called “OppLoans” through its website. (Commissioner’s XC, ¶ 3.) Consumers apply for a
19 loan on OppFi’s website, and OppFi uses an automated underwriting model where loans can be
20 instantly approved or denied with most funds available the next business day. (Commissioner’s
21 XC, ¶ 3.)

02/24/2016

1 The Bank is a Utah-chartered bank that has essentially “rented” its charter to OppFi to
2 charge higher interest rates to consumers through the “OppLoans” product. (Commissioner’s
3 XC, ¶ 4.) State-chartered banks that are federally insured are exempt under Section 27 from state
4 interest rate caps. (Commissioner’s XC, ¶ 4.) The State of Utah does not have a state interest cap,
5 making its state-chartered banks attractive to non-bank lenders like OppFi. (Commissioner’s XC,
6 ¶ 4.)

7 To address predatory lending (a national problem causing consumers to become trapped
8 in a cycle of debt due to high interest installment loans that are difficult to pay off),
9 approximately 45 states passed laws capping the interest rates lenders can charge on consumer
10 loans. (Commissioner’s XC, ¶ 1.) In 2019, California passed AB 539, capping interest rates on
11 most consumer loans at 36%. (Commissioner’s XC, ¶ 1.)

12 In response, non-bank lending companies partner with various state-chartered banks in
13 the few remaining states without interest rate caps to benefit from the exemption that the state-
14 chartered banks have under federal law from other states’ interest rate cap laws (also known as
15 usury laws). (Commissioner’s XC, ¶ 1.)

16 These “rent-a-bank” partnerships, like the one between OppFi and the Bank, are typically
17 structured so that a state-chartered bank (here, the Bank) in a state without interest rate caps
18 appears on paper to be the “lender” on high interest loans to consumers in another state where
19 rates are capped, while the non-bank lending company (here, OppFi) performs the actual duties
20 of a real lender such as marketing, underwriting, and servicing. (Commissioner’s XC, ¶¶ 2, 5.)
21 Although the state-chartered bank purports to originate the exorbitant interest loan, it
immediately sells the loan to the non-bank lending company or the bulk of the receivables
(meaning the right to interest and principal payments). (Commissioner’s XC, ¶ 2.) From this

02/24/2026

1 point forward, the state-chartered bank has no financial stake in the performance of the loan, and
2 the non-bank lending company, the “true lender,” reaps the economic benefits of the loan.

3 (Commissioner’s XC, ¶ 2.) Because a state-chartered bank is the “lender” on paper, the non-bank
4 lending company purports to “rent” the state-chartered bank’s exemption and charge consumers
5 interest rates exorbitantly higher than those legally permitted in the consumer’s state.

6 (Commissioner’s XC, ¶ 2.)

7 In enacting a 36% interest rate cap on consumer loans between \$2,500 and \$9,999,
8 California has made a public policy determination regarding the appropriate balance between
9 affording consumers fair access to credit and the protection of its most vulnerable citizens.

10 (Commissioner’s XC, ¶ 7.) Far from an effort to remove financial barriers for underserved
11 communities, OppFi’s predatory “rent-a-bank” ruse is an overt attempt to evade the state interest
12 rate cap and must be recognized as an illegal sham that has no place in California’s innovative
13 financial marketplace. (Commissioner’s XC, ¶ 5.)

14 Through this rent-a-bank ruse, OppFi uses the Bank as a straw lender in a gambit to
15 circumvent interest rate limits that the State of California deemed reasonable and necessary to
16 curb predatory lending abuses. (Commissioner’s XC, ¶ 5.)

17 However, regardless of which entity the loan documents proffer as the purported
18 “lender,” OppFi is the true lender of the OppLoans, and the loans OppFi makes are illegal in
19 California. (Commissioner’s XC, ¶ 5.)

20 Therefore, the Commissioner filed the Cross Complaint seeking to enjoin OppFi’s
21 unlawful predatory lending scheme, provide restitution to exploited borrowers, and impose
penalties of at least \$100 million against OppFi, and those acting in concert, for the financial
harm inflicted on at least 38,000 California borrowers. (Commissioner’s XC, ¶ 8.)

1 Allegations in OppFi's Cross-Complaint

2 The DFPI is an agency of the State of California that is legally charged to execute any
3 laws relating to finance lenders. (OppFi's XC, ¶ 10.)

4 OppFi's Cross-Complaint against the Commissioner and DFPI (collectively, "Cross-
5 Defendants") challenges DFPI's adoption of the so-called "true lender doctrine" to determine the
6 applicability of the interest rate caps under the CFL. (OppFi's XC, ¶ 1.)

7 As outlined in OppFi's Complaint, the Commissioner threatened to enforce AB 539's
8 interest cap against OppFi for loans originated by the "Bank." (OppFi's XC, ¶ 3.) However, the
9 CFL's interest rate caps only apply to "finance lenders," which does not include state-chartered
10 banks like the Bank. (OppFi's XC, ¶ 3.) Nonetheless, the Commissioner has sued OppFi for
11 violating those interest rate caps. (OppFi's XC, ¶ 3.)

12 The DFPI's underground adoption of its "true lender doctrine" is a significant departure
13 from Cross-Respondents' enforcement of the CFL's interest rate caps before AB 539. (OppFi's
14 XC, ¶ 6.)

15 In addition, the Administrative Procedure Act ("APA"), Gov't Code § 11340 et seq. was
16 designed to provide regulated entities notice of a regulation's requirements so that they could
17 conform their activities accordingly and, if necessary, test the authority of the agency to
18 implement such a rule beforehand. (OppFi's XC, ¶ 7.)

19 Therefore, the true lender doctrine is subject to the notice and comment rulemaking
20 procedures of the APA because it is intended to "apply generally, rather than in a specific case,"
21 and "implement[s], interpret[s], or make[s] specific the law enforced or administered by" Cross-
Respondents. (OppFi's XC, ¶ 6, citing Tidewater Marine Western, Inc. v. Bradshaw (1996) 14
Cal.4th 557, 566, 571 in a footnote.)

02/14/2016

1 Instead of complying with the APA, DFPI adopted the true lender doctrine without any
2 formal notice at all, much less fair or adequate notice, and without complying with the APA.
3 (OppFi’s XC, ¶ 7.) As a result, service providers like OppFi now face an existential threat to
4 their businesses and significant monetary penalties based on an interpretation of the CFL adopted
5 by the DFPI without complying with the APA. (OppFi’s XC, ¶ 7.) They also face the challenge
6 of complying with a vague and amorphous test that leaves the applicability of the CFL’s interest
7 rate cap to the regulator’s discretion. (OppFi’s XC, ¶ 7.) At base, this renders the CFL’s
8 exemption for state-chartered banks meaningless. (OppFi’s XC, ¶ 7.) The APA’s rulemaking
9 procedures are intended to prevent these unfair results. (OppFi’s XC, ¶ 7.)

9 Therefore, because DFPI did not submit its “true lender doctrine” to the APA’s rule-
10 making process, it is invalid as an “underground regulation” and cannot be enforced. (OppFi’s
11 XC, ¶ 8.)

12 On September 29, 2025, OppFi filed the instant motion for summary judgment, or in the
13 alternative, summary adjudication as to the Commissioner’s cross-complaint.

14 On December 19, 2025, the Commissioner filed an opposition.

15 On December 26, 2025, OppFi filed a reply.

16 On January 29, 2026 the Court heard oral argument and took the matter under
17 submission. Having taken the matter under submission on that date, the Court hereby renders its
18 tentative decision pursuant to California Code of Civil Procedure Section 632 and California
19 Rule of Court 3.1590(a), granting Plaintiff’s motion for summary judgment. Plaintiff is ordered
20 to prepare a proposed statement of decision pursuant to California Rule of Court 3.1590(c)(3). In
21 doing so, Plaintiff may expand on this tentative decision with additional evidence and law
consistent with this tentative decision, including as laid out in its briefs. As required in

02/24/2026

1 California Rule of Court 3.1590(f), Plaintiff is ordered to file and serve the proposed statement
2 of decision, along with a proposed judgment, within 30 days of service of this tentative decision

3 **II. LEGAL STANDARD**

4 In reviewing a motion for summary judgment, courts must apply a three-step analysis:
5 “(1) identify the issues framed by the pleadings; (2) determine whether the moving party has
6 negated the opponent’s claims; and (3) determine whether the opposition has demonstrated the
7 existence of a triable, material factual issue.” (*Hinesley v. Oakshade Town Center* (2005) 135
8 Cal.App.4th 289, 294.)

9 “A party may move for summary adjudication as to one or more causes of action within
10 an action, one or more affirmative defenses, one or more claims for damages, or one or more
11 issues of duty, if that party contends that the cause of action has no merit or that there is no
12 affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of
13 action, or both, or that there is no merit to a claim for damages . . . or that one or more
14 defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary
15 adjudication shall be granted only if it completely disposes of a cause of action, an affirmative
16 defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c, subd. (f)(1).) A
17 motion for summary adjudication shall proceed in all procedural respects as a motion for
18 summary judgment. (Code Civ. Proc., § 437c, subd. (f)(2).)

19 “[T]he initial burden is always on the moving party to make a prima facia showing that
20 there are no triable issues of material fact.” (*Scalf v. D. B. Log Homes, Inc.* (2005) 128
21 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or summary adjudication
“has met his or her burden of showing that a cause of action has no merit if the party has shown
that one or more elements of the cause of action . . . cannot be established, or that there is a

1 complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).) A moving
2 defendant need not conclusively negate an element of plaintiff’s cause of action. (*Aguilar v.*
3 *Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.)

4 To meet this burden of showing a cause of action cannot be established, a defendant must
5 show not only “that the plaintiff *does not possess* needed evidence” but also that “the plaintiff
6 *cannot reasonably obtain* needed evidence.” (*Aguilar, supra*, 25 Cal.4th at p. 854.) It is
7 insufficient for the defendant to merely point out the absence of evidence. (*Gaggero v. Yura*
8 (2003) 108 Cal.App.4th 884, 891.) The defendant “must also produce evidence that the plaintiff
9 cannot reasonably obtain evidence to support his or her claim.” (*Ibid.*) The supporting evidence
10 can be in the form of affidavits, declarations, admissions, depositions, answers to interrogatories,
and matters of which judicial notice may be taken. (*Aguilar, supra*, 25 Cal.4th at p. 855.)

11 “Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show
12 that a triable issue of one or more material facts exists as to the cause of action or a defense
13 thereto.” (Code Civ. Proc., § 437c, subd. (p)(2).) The plaintiff may not merely rely on
14 allegations or denials of its pleadings to show that a triable issue of material fact exists, but
15 instead, “shall set forth the specific facts showing that a triable issue of material fact exists as to
16 the cause of action.” (*Ibid.*) “If the plaintiff cannot do so, summary judgment should be
granted.” (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467.)

17 The court must “liberally construe the evidence in support of the party opposing
18 summary judgment and resolve all doubts concerning the evidence in favor of that party,”
19 including “all inferences reasonably drawn therefrom.” (*Yanowitz v. L’Oreal USA, Inc.* (2005)
20 36 Cal.4th 1028, 1037; *Aguilar, supra*, 25 Cal.4th at pp. 844-45.) “On a summary judgment
21 motion, the court must therefore consider what inferences favoring the opposing party a

02/24/2026

1 factfinder could reasonably draw from the evidence. While viewing the evidence in this manner,
2 the court must bear in mind that its primary function is to identify issues rather than to determine
3 issues. [Citation.] Only when the inferences are indisputable may the court decide the issues as
4 a matter of law. If the evidence is in conflict, the factual issues must be resolved by
5 trial.” (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839.)

6 Further, “the trial court may not weigh the evidence in the manner of a factfinder to determine
7 whose version is more likely true. [Citation.] Nor may the trial court grant summary judgment
8 based on the court’s evaluation of credibility. [Citation.]” (*Id.* at p. 840; see also *Weiss v.*
9 *People ex rel. Department of Transportation* (2020) 9 Cal.5th 840, 864 [“Courts deciding
10 motions for summary judgment or summary adjudication may not weigh the evidence but must
11 instead view it in the light most favorable to the opposing party and draw all reasonable
12 inferences in favor of that party”].)

12 **III. EVIDENTIARY OBJECTIONS**

13 OppFi objects to certain portions of the Declaration of Kenneth Wu submitted in
14 opposition to the instant motion. The Court rules as follows.

- 15 - Overruled: Nos. 1, 2, 3, 4, 6, 14.
- 16 - Sustained: Nos. 5, 7, 8, 9, 10, 11, 12, 13, 15.

17 OppFi objects to certain portions of the Declaration of Allard Chu submitted in
18 opposition to the instant motion. The Court rules as follows.

- 19 - Overruled: Nos. 1, 2, 3.

20 **IV. DISCUSSION**

21 OppFi moves for summary judgment, or in the alternative, summary adjudication as to
both causes of action alleged in the Commissioner’s cross-complaint: Violation of the California

1 Financing Law (“CFL”) (Fin. Code, § 22000 *et seq.*) and Violation of the California Consumer
2 Financial Protection Law (“CCFPL”) (Fin. Code § 90000 *et seq.*). OppFi argues that the
3 Commissioner’s cross-complaint fails for three independent reasons: (1) FinWise’s loans are
4 exempt from the CFL, (2) OppFi is not acting as a “finance lender” under the CFL with respect
5 to FinWise loans, and (3) the Commissioner cannot meet her burden to demonstrate that FinWise
6 is “merely a dummy” lender. Both sides agreed at the hearing that the granting of this Motion
7 would dispose of the entire case. For the reasons discussed below, the motion is granted based
8 on the third reason; it is therefore unnecessary for the Court to analyze the remaining reasons
9 proffered by OppFi.

9 **A. Reason No. 3: Whether FinWise is “merely a dummy” Lender**

10 OppFi argues that that the entirety of the Commissioner’s cross-complaint fails
11 because the Commissioner cannot meet her burden in demonstrating that FinWise is “merely a
12 dummy” lender. OppFi claims that the Commissioner cannot seriously dispute that (1) FinWise
13 controls the application process, underwriting criteria, and independently underwrites the
14 program loan, (2) FinWise funds the Program Loans and retains ownership over them, (3)
15 FinWise is exposed to substantial risk and benefits from the Program Loans, (4) FinWise
16 controls the marketing for the Program Loans, and (5) FinWise oversees the Program Loans and
17 is responsible for legal compliance. However, “[i]f the trial court finds a single issue of fact, it is
18 powerless to proceed further and must allow such issue to be tried.” (*Orlando v. Berkeley* (1963)
19 220 Cal.App.2d 224, 227.)

20 “It is a question of fact as to whether a particular transaction is or is not usurious.
21 (Citation.) Where the form of the transaction makes it appear to be nonusurious, it is for the trier
of the fact to determine whether the intent of the contracting parties was that disclosed by the

1 form adopted, or whether such form was a mere sham and subterfuge to cover up a usurious
2 transaction. (Citations.) The trial court may look beyond the form of the transaction and ascertain
3 its substance. (Citation.)" (*Forte v. Nolfi* (1972) 25 Cal.App.3d 656, 678, citing among other
4 cases, *Janisse v. Winston Investment Co.* (1957) 154 Cal.App.2d 580 (*Janisse*)). "[W]hen the
5 facts indicate that the purchaser of a security had knowledge of an infirmity, or a grave suspicion
6 thereof, his transaction is closely scrutinized to find the requisite good faith. It is the substance,
7 not the form, that is controlling." (*Anderson v. Lee* (1951) 103 Cal.App.2d 24, 26 (*Anderson*)).

8 However, in 1932, the California Supreme Court considered the following question:
9 "What is the period to be considered when testing a transaction for the presence of usury?"
10 (*Sharp v. Mortgage Sec. Corp. of America* (1932) 215 Cal. 287, 290 (*Sharp*)). After discussing
11 some cases (including those from other jurisdictions), the California Supreme Court reached this
12 conclusion: "It is . . . elementary that the contract must in its inception require a payment of
13 usury or it will not be held a violation of the statute" (*Ibid.*)

14 In other words, "[t]o be usurious [under California law], a contract [also] 'must in its
15 inception require a payment of usury'; subsequent events do not render a legal contract usurious."
16 (*WRI Opportunity Loans II, LLC v. Cooper* (2007) 154 Cal.App.4th 525, 533; (*O'Connor v.*
17 *Televideo System, Inc.* (1990) 218 Cal.App.3d 709, 714 (*O'Connor*) ["a debtor by voluntary act
18 cannot render an otherwise valid transaction usurious. '[A] debtor cannot bring his creditor to the
19 penalties of the Usury Law by his voluntary default in respect to the obligation involved where
20 no violation of law is present at the inception of the contract.' [Citation]"].) "[A] contract, not
21 usurious in its inception, does not become usurious by subsequent events." (*Strike v. Trans-W.*
Disc. Corp. (1979) 92 Cal.App.3d 735, 745 ["No authority is cited for the proposition that the
assignee of an exempt lender becomes thereby a usurer unable to collect any interest."]);

1 *Montgomery v. GCFS, Inc.* (2015) 237 Cal.App.4th 724, 732 (*Montgomery*), [“The California
2 Constitution exempts from its usury restrictions ‘persons authorized by statute;—such as finance
3 lenders (§ 22002)—and ‘any successor in interest to any loan or forbearance exempted under this
4 article.’ (Cal. Const. art. XV, § 1.) The Constitution does not require successors in interest to be
5 independently exempt from usury restrictions.”].)

6 i. *OppFi’s Evidence*

7 There is no question that OppFi has met its burden in demonstrating that the Program
8 Loans were not usurious at inception or that FinWise was a mere dummy. (*Janisse, supra*, 154
9 Cal.App.2d at p. 582 [“But if the payee was, in fact, a dummy, and if, in fact, the form of the
10 transaction was a sham and subterfuge to cover up the fact that defendants actually loaned the
11 money to plaintiffs, as found by the trial court, then the ‘discount’ was in fact interest and the
12 transaction obviously usurious.”].)

13 In support, as stated above, OppFi provides that FinWise (i) is identified as the Lender on
14 the face of each promissory note, (ii) controls the application and underwriting processes,
15 independently underwrites the loans, and oversees OppFi’s proprietary credit models; (iii) uses
16 its own funds to originate the loans; (iv) retains title to and ownership of the loans; (v) gains a
17 financial benefit from the loans; (vi) has material risk of loss from the loans; (vii) controls the
18 marketing of the loans; and (viii) oversees legal compliance of the loans.

19 First, OppFi proffers that the evidence establishes that FinWise controls the application
20 process for the FinWise Loans and approves all the application disclosures provided to
21 consumers. (Darchis Decl. ¶ 22 [“the application process is subject to the Bank’s sole control.
Accordingly, the Bank may require changes to the application screens in its sole discretion”].)
Additionally, FinWise controls the underwriting criteria and independently underwrites all of the

1 Program Loans. (See McKay Decl., ¶ 10, Ex. A [loan program agreement (“LPA”)], Schedule 1-
2 5 at 33 [“‘Underwriting Requirements’ means the underwriting requirements of **Bank** as set
3 forth in the Program Guidelines.”] (emphasis added); *id.* at § 3.2 [“Bank shall, from its offices in
4 Utah (i) perform the final underwriting on each Application; (ii) accept or reject Applications in
5 accordance with the Program Guidelines; and (ii) if an Application is accepted, originate and
6 fund the corresponding Loan in accordance with this Agreement.”].) Thus, FinWise is the
7 ultimate decision maker with respect to underwriting criteria and loan terms, including interest
8 rate. (McKay Decl. ¶ 10a [“FinWise employs its own team to review any changes to the
9 underwriting criteria before implementation. FinWise often takes between a week to several
10 months to review and approve a single change to the underwriting criteria. This process regularly
11 involves several FinWise employees and multiple calls with OppFi and FinWise to discuss
12 proposed changes, which I attend from time to time”]; Darchis Decl. ¶ 13-20 [“The Bank has
13 ultimate authority over whether to approve a loan it makes.”].) OppFi also provides that FinWise
14 dependently underwrites each loan. (McKay Decl. ¶ 9, LPA § 3.2(c) [“Bank shall ‘perform the
15 final underwriting on each Application,’ and, if accepted shall ‘originate and fund the
16 corresponding Loan”]; Darchis Decl. ¶¶ 16-19.) So, a loan cannot be funded absent FinWise’s
17 express direction based on its independent underwriting determination. (Darchis Decl., ¶ 19
18 [“OppFi is not allowed, under any circumstances, to make changes to the underwriting criteria on
19 its own in connection with Program loans”].)

20
21
02/24/2025
Second, OppFi provides that FinWise funds the Program Loans with its own money, and
retains ownership over the loans. According to OppFi, it does not provide these funds to
FinWise, nor does it provide FinWise with the initial capital to fund the loans. (McKay Decl.,
¶ 9b [after FinWise completes the underwriting process and approves a loan, “it initiates an ACH

1 transfer for the loan amount to the borrower’s bank account. OppFi does not provide these funds
2 to FinWise, and it did not provide FinWise with the initial capital used to fund loans. Put simply,
3 FinWise funds Program Loans using money that belongs to FinWise, from accounts controlled
4 solely by FinWise, and uses funds in which OppFi has neither a possessory nor a beneficial
5 interest”].) Borrowers who obtain a loan through the OppLoans platform enter into a Promissory
6 Note in which they acknowledge and agree that FinWise is their Lender. (McKay Decl. ¶ 9a;
7 Darchis ¶ 14.) The Commissioner does dispute that FinWise funds and retains title to the
8 Program Loans. (See UMF 32.)

9 Third, OppFi provides that FinWise is exposed substantial risk and benefits from the
10 Program Loans, given that at origination, FinWise is exposed to 100% of the risk of loss on
11 every loan up until the time it sells a receivable interest to OppWin (OppFi’s subsidiary).
12 (Darchis Decl. ¶ 34; Levin Decl., Ex. H (Declaration of Duross O’Bryan), ¶¶ 17, 41.) FinWise
13 retains title to and a 5% interest in the receivables for each FinWise Loan. (McKay Decl. ¶ 14a;
14 Darchis Decl. ¶¶ 31-32 [“The Bank only sells part of the potential future loan proceeds, but
15 always retains the title of the loan.”].) This interest is held by FinWise throughout the lifecycle of
16 the loan and exposes FinWise to the risk of loss for that 5% as well as entitles FinWise to 5% of
17 the funds collected on every loan. (McKay Decl. ¶ 14a [“FinWise retains a 5% interest in each
18 receivable offered for sale to OppWin. This interest is held by FinWise throughout the lifecycle
19 of the loan and entitles FinWise to 5% of the funds collected on every loan. Since 2020, FinWise
20 has likewise retained between 2 % and 5 % of each Program receivable”]; Levin Decl., Ex. H
21 (James Decl.) ¶ 16; Levin Decl., Ex. H (O’Bryan Decl.) ¶ 41.) In addition to its 5% receivable
interest, FinWise is entitled to a fee, which is a percentage of the total volume of loans funded.
(McKay Decl. ¶ 14b; Darchis Decl. ¶ 34 [“On an annual basis, these fees, in combination, are

1 significant (in excess of \$1,000,000 across the Program), and are a further economic interest that
2 FinWise maintains in the Program as a whole and with respect to the individual Program
3 loans”].) FinWise is also entitled to a servicing fee. (McKay Decl. ¶ 14b; Darchis Decl. ¶ 34.)

4 Fourth, OppFi provides that FinWise controls the marketing for the Program Loans.
5 (McKay Decl. ¶ 11; Darchis Decl. ¶ 24.) FinWise independently reviews and approves the
6 content of all consumer-facing marketing materials, including any changes to the content of the
7 OppLoans website and platform, consumer facing emails, direct mail campaigns, and online
8 advertisings. (McKay Decl. ¶ 11a [“For example, to change a word or two in the subject line of a
9 consumer facing email, FinWise would need to approve the revision. At the same time, FinWise
10 would also need to review and approve a layout change for a direct mail campaign, even if the
11 content otherwise stayed the same”]; Darchis Decl. ¶ 24.) FinWise’s approval is also needed to
12 implement a new marketing channel (e.g., radio or television), to work with a new channel
13 partner (e.g., Credit Karma, LendingTree), to make changes to credit policy (e.g., how potential
14 borrowers are identified), and to work with new vendors, reflecting FinWise’s control over
15 marketing strategy as well. (McKay Decl. ¶ 11c [“for the new same day funding feature alone, it
16 took approximately two months to obtain all of the necessary FinWise approvals to implement
17 the feature, which ultimately reflected FinWise’s input and direction. As with marketing content
18 changes, each of these changes is similarly documented with a Bank Approval Request Form
19 executed by the appropriate FinWise personnel.”].)

20 Fifth, OppFi provides that FinWise performs daily, monthly, quarterly, and annual
21 reviews and audits of OppFi, FinWise Loans, and the loan program generally. For example,
FinWise requires that OppFi participate in weekly calls to discuss the program. (McKay Decl. ¶
12b [“These calls often have more than fifteen participants from each of OppFi and FinWise,

1 covering all aspects of their respective business, including legal, compliance, underwriting,
2 marketing, operations, and IT”].) It also performs quarterly testing of OppFi. (Darchis ¶ 27g.)
3 FinWise also reports to its Board on OppFi’s performance, requires OppFi to submit any changes
4 to policies and procedures relevant to the FinWise Loans to the Bank for approval before
5 implementation, and requires annual review of existing policies and procedures. (Darchis Decl. ¶
6 27.) FinWise requires OppFi to maintain a customer complaint log according to its specifications
7 that it receives and reviews monthly. (Darchis Decl. ¶ 27g Ex. E [Compliance Testing Report,
8 which demonstrates that FinWise “oversees OppFi’s handling of complaints, including that
9 complaints are handled in a timely manner with proper investigation and documentation”].)
10 FinWise also performs monitoring of the credit models used for underwriting Program Loans
11 and monitors delinquencies to ensure its underwriting does not lead to inappropriate levels of
12 delinquencies. (Darchis Decl. ¶ 30.) OppFi also provides that FinWise controls the servicing of
13 all Loans and maintains control over OppFi’s vendor management. (*Id.* ¶ 39; *id.* ¶ 44 [“OppFi is
14 not authorized to add new vendors without the Bank’s approval; OppFi’s vendor management
15 policy and procedure is reviewed and approved by the Bank whenever changes are made, and at
16 least annually; the Bank ensures that OppFi’s policies and procedures are fit to assess risk
17 presented by potential vendors and ensure that vendors undergo appropriate levels of review
18 commensurate with any potential risks; the Bank requires OppFi to conduct a thorough due
19 diligence on all potential vendors, and the Bank makes its own assessment of the vendor . . .”].)

18 OppFi has sufficiently demonstrated that there exists no issue of fact that FinWise is not
19 merely a dummy lender and its relationship with OppFi is not a mere sham. OppFi has produced
20 evidence that “preclude a reasonable trier of fact from finding that it was more likely than not
21

1 that” FinWise is the lender of the Program Loans. (*Kahn v. East Side Union High School Dist.*
2 (2003) 31 Cal.4th 990, 1002-1003.) The burden shifts.

3 ii. *The Commissioner’s Evidence*

4 To show that there exists a triable issue of material fact regarding the
5 Commissioner’s contention that OppFi is the actual lender of the Program Loans, the
6 Commissioner focuses on three tenets: (1) Receivables, (2) Title, and (3) Underwriting.

7 First, in terms of Receivables, the Commissioner proffers the original version of the Loan
8 Receivables Sale Agreement (“LRSA”) between OppFi and FinWise, which allowed OppFi to
9 purchase 100% of the loan receivables. (See Levin Decl., Ex. B, pp. 210-213.) In the LRSA,
10 there is a provision stating that FinWise does not have an obligation to retain any of the
11 receivables. (Chu Decl. Ex B. LRSA § 8.1.) This version of the LRSA which allowed the
12 complete sale of the loan receivables to OppFi was in effect for the first two years of the
13 program. (See Levin Decl., Ex. B, pp. 210-213.) This arrangement continued until the First
14 Amendment to the LRSA, wherein FinWise would retain up to 5% of the receivables of future
15 loans. (*Ibid.*)

15 On this evidence, the Commissioner does not create an issue of fact. As the Court stated
16 above, California’s “[u]sury restrictions do not restrict the assignment of loans.” (*Montgomery,*
17 *supra*, 237 Cal.App.4th at p. 732.) The California Constitution also exempts “any successor in
18 interest to any loan... exempted under [the Constitution].” (Cal. Const. art. XV, § 1; see also
19 *Strike, supra*, 92 Cal.App.3d at p. 745 [“Finally, Strikes contend error in that the judgment
20 allows TransWest to receive 11 percent interest on the Barclays Bank note, inasmuch as Trans-
21 West does not enjoy the exemption from the usury law as did its assignor Barclays Bank. **No
authority is cited for the proposition that the assignee of an exempt lender becomes thereby**

1 **a usurer unable to collect any interest.** The California Constitution, article XV, section 1,
2 exempts certain institutions, such as banks, from the usury laws. Strikes' contention would in
3 effect prohibit make uneconomic the assignment or sale by banks of their commercial property to
4 a secondary market. This would be disastrous in terms of bank operations and not conformable to
5 the public policy exempting banks in the first instance. Further, **a contract, not usurious in its
inception, does not become usurious by subsequent events.**"] (emphasis added).)

6 The Court addressed this argument and this evidence at length in its ruling denying the
7 Commissioner's motion for preliminary injunction, (See Oct. 30, 2023 Order at pp. 57-64.) The
8 Court's position remains the same. "[T]o the extent 'FinWise-originated' [Program Loans] had
9 permissible interest rates at the time the loans were made, the fact that the bank sold, assigned, or
10 otherwise transferred the loans to OppFi should not make the loans usurious." (*Id.* at pp. 63-64.)
11 The Court came to this conclusion after thoroughly addressing Section 27 of the Federal Deposit
12 Insurance's Act (FDIA), and the fact that it allows FinWise to charge interest rates allowed by
13 the state it is located in, Utah. (*Id.* at p. 58; see also 2 C.F.R. § 331.4, subd. (e) ["Whether interest
14 on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined as
15 of the date the loan was made. Interest on a loan that is permissible under section 27 of the
16 Federal Deposit Insurance Act shall not be affected by a change in State law, a change in the
17 relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer
18 of the loan, in whole or in part."]; *Durnford v. MusclePharm Corp.* (9th Cir. 2018) 907 F.3d 595,
19 602 ["Regulations promulgated by federal administrative agencies "have the same preemptive
20 effect as a statute, [citation]...".]) The Commissioner has not explained nor provided any
21 authority to support that the introduction of the same evidence on the instant motion would yield
a different result. (See *Krispin v. May Dep't Stores Co.* (8th Cir. 2000) 218 F.3d 919, 924 [state

1 law usury claims preempted where bank sold 100 percent of receivables to non-bank in a
2 prearranged transaction].)

3 Second, as to Title, the Commissioner contends that OppFi has “actual control” over the
4 loan title. The Commissioner argues that “FinWise holds the title unless and until OppFi decides
5 to exercise the ability to take ownership of the loan titles” because “OppFi and its warehouse
6 lines of credit can exercise a ‘Collateral Agent Call’ forcing FinWise to transfer the title of the
7 loans.” (Opposition, p 14.) This argument and its accompanying evidence fail for the same
8 reasons as stated above. “If the court were to interpret the CFL to mean that FinWise was not a
9 ‘true lender’ for exemption purposes because the bank decided to assign, sell, or otherwise
10 transfer [the entire loan], that ruling may stand as an obstacle to the full purposes and objectives
11 of Congress[.]” (Oct. 30, 2023 Order at pp. 64-65.) Regardless, the Commissioner has not
12 disputed that “FinWise has retained title to and ownership of the at-issue loans, including the
13 servicing rights.” (UMF 32, 100.) The Commissioner’s hypothetical scenario wherein OppFi’s
14 “warehouse line of credit *can* force [FinWise] to transfer title of the loans on demand,” an action
15 that FinWise is legally permitted to do, does not create an issue of fact. (Opposition, p. 15.)

16 Next, the Commissioner shifts to funding. The Commissioner claims that FinWise does
17 not have contractually have to fund the loans if OppFi does not maintain liquidity in a collateral
18 account used as Proof of Funds. The Commissioner proffers the LRSA, which displays that
19 OppFi has agreed to provide a showing of collateral, or minimum security, for the financial
20 ability to purchase loan receivables. (Chu Decl., Ex. B, LRSA § 4.1.) The LRSA essentially
21 reflects that OppFi is to maintain a certain amount of funds necessary to purchase the receivables
for the loans FinWise is to fund. The Commissioner is basically implying that because OppFi is
to maintain these funds, which are routed to FinWise after funding the loan, OppFi is essentially

1 the ones funding the loan. While creative, the Commissioner has not proffered any direct
2 evidence that is the case. The LRSA provision does not establish that that OppFi's money was
3 ever used to fund FinWise loans, especially in contrast to OppFi's evidence that the collateral
4 account was almost always insufficient – by millions – to cover FinWise's funding obligations.
5 (Darchis Decl. ¶ 35 [“the security that OppWin currently provides is significantly less than
6 FinWise's typical funding obligations, often by several multiples. In any event, the collateral
7 OppWin provides merely secures its obligation to purchase receivables; that collateral is not used
8 by FinWise to fund Program loans”].) Absent speculation, there is no evidence establishing a
9 firm link between OppFi's collateral account and FinWise's funding used for the loans.

10 Next, the Commissioner asserts that OppFi, not FinWise, controls the underwriting
11 process. The Commissioner argues: “[t]he facts of the purported two stages of underwriting are
12 in dispute because it appears that the underwriting models are in fact the intellectual property of
13 OppFi and not shared with FinWise.” Specifically, OppFi represented the following to the
14 Securities and Exchange Commission (SEC) and OppFi's investors in SEC filings:

15 Under the terms and conditions of the agreement, the Banks originate finance receivables
16 based on criteria provided by OppFi-LLC” “Banks originate finance receivables based on
17 criteria provided by OppFi-LLC” “82% of OppFi's underwriting decisions are
18 automated, with next business day funding”

19 (Wu Decl., Ex. F, 7, 103, 105).

20 Furthermore, the Commissioner provides that under the LPA between OppFi and
21 FinWise, OppFi is required “process Applications on [FinWise's] behalf from Applicants
submitted to [FinWise][,]” as well as to perform “the marketing, administration, and
subservicing services” for the program.” (McKay Decl., Ex. A, LPA § 3.1(c).)

1 This evidence also does not create an issue of fact. That OppFi owns the intellectual
2 property to its credit model creates no triable issue of fact because it does not contradict that
3 FinWise, not OppFi, approves the credit criteria and controls loan approval. The Commissioner's
4 citation to the testimony of Susan Musgrove, form Chief Risk Officer of FinWise, does not
5 support the Commissioner's arguments. In the cited passage, Ms. Musgrove testified that when
6 reviewing loans recommended for approval, FinWise received and reviewed the "loan file" and
7 used its technology to "to make sure that [the loans] matched the criteria that was approved by
8 [FinWise and the partner]." (Levin Decl., Ex C, at 82:12-84:10 ["When loans came in, they had
9 to -- they would go through a filter of sorts to make sure that the -- that they matched the criteria
10 that was approved by both -- by both FinWise and the partner. . . We received our data from
11 OppFi."].) She also testified that FinWise *rejected* loans recommended for approval by OppFi,
12 disproving the Commissioner's assertion that FinWise's underwriting is a "rubber stamp" of
13 approval. (*Id.* at 85:9-86:17 ["it would reject if it did not meet the pre-approved thresholds . . . If
14 it could be -- it would be accepted or rejected on the FinWise Side . . . But there was -- there was
15 a time where the data would come in, anything that didn't meet would reject and was -- would go
16 to a queue that was reviewed by multiple people, generally program management. But there
17 would be -- there could be risk involvement or compliance involvement depending on what
18 might have rejected."].) The Commissioner has produced simply no evidence that OppFi
19 controls the underwriting process.

20 Lastly, the Commissioner asserts that the product brand marketed toward consumers
21 (OppLoans) is a product of OppFi and is not exclusive to FinWise as a funder. But the LPA
provides that OppFi will "prepar[e] Advertising Materials and the Program Materials to be used
in connection with the Program **for Bank's review and approval** [OppFi] shall submit all

1 Advertising Materials and Program Materials to Bank for its approval prior to Service Agent's
2 use thereof . . . Bank shall have the right to reject in its reasonable discretion all proposed
3 changes by Service Agent to the Advertising Materials and Program Materials, or further
4 modifications thereof.” (McKay Decl., Ex. A, LPA § 4.3(a)-(b).) Additionally, the
5 Commissioner’s emphasis on consumer-facing marketing falls short in explaining how its
6 connected to whether OppFi is the actual lender of the loans. (See (Levin Decl., Ex. H, James
7 Decl. ¶ 30 [“State-chartered banks commonly rely on third parties, including fintech firms, to
8 provide certain services such as marketing and screening applicants as well as third parties
9 providing a source of funding, both of which mitigate lending risk.”].)

10 The Commissioner has not sufficiently shown an issue of fact as to whether OppF and
11 FinWise’s relationship is a mere sham and subterfuge to cover up a usurious transaction. The
12 Commissioner also has not provided *any* evidence that demonstrates that the loans were usurious
13 at inception.

14 **V. CONCLUSION**

15 Based on the foregoing, OppFi’s motion for summary judgment is GRANTED. .

16 Dated this 23rd day February 2026

17
18
19
20
21


Hon. Gary D. Roberts
Judge of the Superior Court