FILED
Superior Court of California
County of Los Angeles

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David W. Slayton, Executive Officer/Clerk of Court
By: R. Mendoza, Deputy

1
2 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
3 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

4 OPPORTUNITY FINANCIAL, LLC,
5 Plaintiff,
6 v.
7 CLOTHILDE HEWLETT, in her official capacity as Commissioner of the Department
8 of Financial Protection and Innovation for the State of California,
9
Defendant,
10

11 And Related Cross-Actions.

Case No. 22STCV08163

Assigned for All Purposes to:
Hon. Gary D. Roberts, Dept. 733

**STATEMENT OF DECISION**

Action Filed: March 7, 2022

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

On January 29, 2026, the Court heard oral argument on OppFi's Motion for Summary Judgment, or, in the Alternative, Summary Adjudication, and took the matter under submission. On February 24, 2026, the Court rendered its tentative decision pursuant to California Code of Civil Procedure Section 632 and California Rule of Court 3.1590(a), granting Plaintiff's motion for summary judgment. The February 24 Order instructed OppFi to prepare, serve and file a proposed statement of decision pursuant to California Rule of Court 3.1590(c)(3) on or before March 26, 2026. After providing the DFPI an opportunity to object, the Court now enters its Statement of Decision.

Allegations in OppFi's Complaint

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

Specifically, OppFi's platform allows banks to provide access to simple short-term lending products for consumers whom traditional lenders may otherwise turn away in light of their credit profile. (Compl., ¶ 15.) In this regard, OppFi plays a critical, federally recognized, and approved

1 market: enabling consumers who may be shut out of traditional credit markets to obtain access to
2 credit. (*Ibid.*) Moreover, access to credit is a critical asset to individuals seeking to build a better
3 economic future. (*Ibid.*)

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

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

13 Because charging higher interest rates is necessary to make small-dollar lending to higher-
14 risk borrowers economically viable, many national and state-chartered banks that engage in such
15 lending lawfully incorporate and locate themselves in states that do not set low-interest rate caps
16 relative to credit risk. (Compl., ¶ 18.) These states understand that if the legal small-dollar lending
17 market is terminated, it will not end low-income borrowers' need for credit, but instead will lead to
18 something more pernicious: increased reliance on "payday lending" and, even worse, black-market
19 lending by persons and entities who operate wholly outside of the law. (*Ibid.*) The Bank uses
20 OppFi's platform to provide loan products to consumers throughout the United States. (Compl., ¶
21 19.)

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

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

However, the loans in question originated from the Bank, not OppFi. (*Id.*) OppFi only provides the Bank with technology and other services under a contractual arrangement (the "Program"). (*Id.*)

Moreover, the interest rate caps in the CFL should not apply to loans originated under the Program ("Program Loans") for the following reasons: First, Program Loans are constitutionally and statutorily exempt from California's maximum interest rate caps because the loans are made 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 Program-related activities and, therefore, is not subject to the interest rate caps established by AB 539 for those activities. Third, even if AB 539 could arguably apply to OppFi, Section 27 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1831d (hereinafter "Section 27") preempts the application of AB 539 to Program Loans. (Compl., ¶ 2.)

The inapplicability of the CFL's interest rate caps to the Program is not controversial or new, but rooted in long-existing constitutional and statutory exemptions under California law for loans made by state-chartered banks and decades of well-settled federal law. (Compl., ¶ 3.) Federal law permits state-chartered banks to export the interest rates allowed in their chartering state to any other state in the country. (*Ibid.*) Federal law also preempts any efforts by state legislatures to apply their state's interest rate caps to loans made by state-chartered banks in other states. Indeed, in passing AB 539, the Legislature expressly acknowledged what is obvious AB 539 does not apply to "nondepositories that partner with banks," like OppFi. (*Ibid.*) The Commissioner is well aware of these settled principles. (*Ibid.*)

Indeed, before AB 539, the Bank originated Program Loans that would have been subject to the interest caps under AB 539, but the Commissioner and her predecessors never objected to those loans. (Compl., ¶ 4.)

Allegations in the Commissioner's Cross-Complaint ("Commissioner's XC")

OppFi is not a bank, but a publicly traded company that originates consumer installment loans called "OppLoans" through its website. (Commissioner's XC, ¶ 3.) Consumers apply for a loan on OppFi's website, and OppFi uses an automated underwriting model where loans can be

instantly approved or denied with most funds available the next business day. (*Ibid.*)

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

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

In response, non-bank lending companies partner with various state-chartered banks in the few remaining states without interest rate caps to benefit from the exemption that the state-chartered banks have under federal law from other states' interest rate cap laws (also known as usury laws). (*Id.*)

These "rent-a-bank" partnerships, like the one between OppFi and the Bank, are typically structured so that a state-chartered bank (here, the Bank) in a state without interest rate caps appears on paper to be the "lender" on high interest loans to consumers in another state where rates are capped, while the non-bank lending company (here, OppFi) performs the actual duties of a real lender such as marketing, underwriting, and servicing. (Commissioner's XC, ¶¶ 2, 5, 24, 25, 27.) 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 point forward, the state-chartered bank has no financial stake in the performance of the loan, and the non-bank lending company, the "true lender," reaps the economic benefits of the loan. (*Ibid.*) Because a state-chartered bank is the "lender" on paper, the non-bank lending company purports to "rent" the state-chartered bank's exemption and charge consumers interest rates exorbitantly higher than those legally permitted in the consumer's state. (*Ibid.*)

1 In enacting a 36% interest rate cap on consumer loans between $2,500 and $9,999, California has made a public policy determination regarding the appropriate balance between affording consumers fair access to credit and the protection of its most vulnerable citizens. (Commissioner's XC, ¶ 7.) Far from an effort to remove financial barriers for underserved communities, OppFi's predatory "rent-a-bank" ruse is an overt attempt to evade the state interest rate cap and must be recognized as an illegal sham that has no place in California's innovative financial marketplace. (Commissioner's XC, ¶ 5.)

Through this rent-a-bank ruse, OppFi uses the Bank as a straw lender in a gambit to circumvent interest rate limits that the State of California deemed reasonable and necessary to curb predatory lending abuses. (*Id.*)

However, regardless of which entity the loan documents proffer as the purported "lender," OppFi is the true lender of the OppLoans, and the loans OppFi makes are illegal in California. (*Id.*)

Therefore, the Commissioner filed the Cross Complaint seeking to enjoin OppFi's 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.)

Allegations in OppFi's Cross-Complaint ("OppFi's XC")

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

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

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

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

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

Therefore, the true lender doctrine is subject to the notice and comment rulemaking procedures of the APA because it is intended to "apply generally, rather than in a specific case," and "implement[s], interpret[s], or make[s] specific the law enforced or administered by" Cross-Respondents. (OppFi's XC, ¶ 6 n.2, citing *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 566, 571.)

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

Therefore, because Cross-Defendants did not submit its "true lender doctrine" to the APA's rule-making process, it is invalid as an "underground regulation" and cannot be enforced. (OppFi's XC, ¶ 8.)

## II. MOTION FOR SUMMARY JUDGMENT

OppFi' Motion

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

1 points to Commissioner's admission that FinWise is a Utah state-chartered bank whose loans are
2 governed by Utah law and regulated by the Federal Deposit Insurance Corporation ("FDIC"). Both
3 federal and Utah law permit FinWise to charge any interest rate and California law exempts
4 FinWise's loans from its interest rate caps. (Mot. at 1.)

5 As framed by DFPI in its cross-complaint, its causes of action for violation of the CFL (in
6 Count I) and the CCFPL (in Count II) hinge on characterizing OppFi as the "true lender" of Program
7 Loans. This, in the DFPI's view, defeats FinWise's exemption from California's interest rate caps
8 and, presumably, avoids federal preemption.

9 To attack DFPI's two causes of action, OppFi raised three independently sufficient
10 arguments:

11 ***First***, because the Commissioner admits that FinWise was at all relevant times "doing
12 business under any law of any state or of the United States relating to banks," the CFL's exemption
13 for state banks applies to the Program Loans. (Levin Decl., Ex. D [DFPI's Am. Resp. to OppFi's
14 Reqs. for Admis. (Set Two) Nos. 16-29].) Specifically, the Commissioner admitted FinWise was
15 "doing business under any law of any state or of the United States relating to banks" when it (i)
16 entered into promissory notes with California borrowers identifying FinWise as the lender, (ii)
17 funded the loans, (iii) held the loans for a day or two days, (iv) sold a portion of the loan receivables,
18 (v) held title to any of the loans 30, 60, 180 days after they were funded, (v) held title to the loans
19 30, 60, or 180 days after they were funded, (vi) assigned a portion of loan receivables to OppWin,
20 and (vii) retained a portion of the loan receivables after funding the loan for 60 or 180 days. Given
21 these admissions, OppFi argued there is no question that the Program Loans qualify for the statutory
22 exemption. Thus, under *WRI Opportunity Loans II LLC v. Cooper* (2007) 154 Cal.App.4th 525, and
23 *Jones v. Wells Fargo Bank* (2003) 112 Cal. App. 4th 1527, OppFi argued that "a court cannot gloss
24 over the Promissory Notes, which all name FinWise as the lender, and delve into the 'substance' of
25 the relationship between FinWise and OppFi to second guess whether FinWise is the lender." (Mot.
26 at 10.) Further, since the exemption applied at the time the loans were made, it continues to apply
27 even after FinWise sells a percentage of the loan receivables to an OppFi affiliate because under
28 well-established California law, "a contract, not usurious in its inception, does not become usurious

1 by subsequent events." (*Strike v. Trans-W. Disc. Corp.* (1979) 92 Cal. App. 3d 735, 745; see also
2 *Montgomery v. GCFS, Inc.* (2015) 237 Cal.App.4th 724, 732.)

3 ***Second,*** the CFL's interest rate caps apply only to loans funded by a "finance lender" and
4 defines "finance lender" as one that lends money, but there is no evidence that OppFi funded the
5 loans. Instead, the evidence is undisputed that FinWise funds the loans with its own money, so under
6 the CFL, FinWise—not OppFi—is the finance lender, and nothing in the CFL authorizes the Court
7 to apply a non-statutory "true lender" test to determine whether OppFi was the finance lender with
8 respect to the loans.

9 ***Third***, even if the Court could apply a "true lender" test to determine who the "finance
10 lender" is with respect to the loans, the undisputed evidence demonstrates that FinWise is the
11 "finance lender" not a dummy or sham lender. In the Court's October 30, 2023 Order on the DFPI's
12 Motion for Preliminary Injunction ("the PI Order")—after thoroughly examining the DFPI's
13 authority—the court determined that the crux of the inquiry is whether the loans are "usurious at
14 inception" and whether "the OppFi-FinWise partnership was a mere sham and subterfuge to cover
15 up a usurious transaction." (PI Order, at 57.) In denying the motion for preliminary injunction, the
16 Court held that the DFPI had failed to show a likelihood of success in establishing that FinWise was
17 a "sham" or "dummy" lender for multiple reasons including that FinWise (i) controls the application
18 and underwriting processes, (ii) independently underwrites the loans, (iii) oversees OppFi's
19 proprietary credit models, (iv) uses its own funds to originate the loans; (v) retains title and
20 ownership of the loans and only sells receivables; (vi) gains a financial benefit from the loans; (vii)
21 has material risk of loss from the loans, (viii) controls the marketing of the loans, and (ix) oversees
22 legal compliance of the loans. After two years of discovery, OppFi argued that record is materially
23 unchanged and the DFPI proffers no evidence that demonstrates a triable issue of material fact in
24 support of the theory of its Cross-Complaint that that FinWise is a sham lender.

25 Commissioner 's Opposition ("Opposition")

26 On December 19, 2025, the Commissioner filed an opposition. The Commissioner argued
27 as follows: (i) this Court and the California Supreme Court have recognized the need to evaluate the
28 substance of loan transactions for usury, (ii) the CFL contemplates rooting out circumvention,

concealment, subterfuge, fraud, and dishonest dealings, (iii) OppFi too narrowly construes the definition of a "finance lender" under the CFL, (iv) OppFi has a prearrangement to purchase almost all of the receivables funded by FinWise within days, (v) OppFi has control over title to the loans, (vi) FinWise is not required to fund loans if OppFi does not maintain liquidity in a collateral account as proof of funds, (vii) while FinWise approves underwriting, OppFi owns the intellectual property to underwriting models used in the process, which intellectual property is not shared with FinWise, (viii) the loans are branded "OppLoans" and FinWise is not the only bank offering loans under the OppLoans brand (as other banks offer loans on the OppLoans platform in other states), (ix) OppFi services the loans, and (x) OppFi has failed to establish a legal basis for summary judgment.

OppFi's Reply

On December 26, 2025, OppFi filed a reply. In its reply, OppFi argues that the Commissioner's claims fail for three independent reasons: (1) the CFL's exemption for state banks applies to Program Loans under *Jones* and *WRI*; (2) there is no evidence that OppFi acted as a "finance lender" under Fin. Code § 22009 with respect to Program Loans, and (3) under the substance-over-form approach that examines whether FinWise is a "sham" or "dummy" lender, there is no triable issue of material fact because the undisputed facts show that FinWise is neither a "sham" nor a "dummy" lender.

OppFi then lays out the facts undisputed by the Commissioner :

- FinWise is exempt from the CFL.

- FinWise holds title to the Program Loans and has retained title and ownership to all loans throughout the life of the Program.

- FinWise underwrites and funds Program Loans. Among other things, it is undisputed that FinWise approves application disclosures, requires that changes to the underwriting criteria be approved by the bank and documented by a bank approval form. And FinWise has never used the funds posted as security by OppWin to fund Program loan.

- FinWise maintains and actually exercises control and supervision over OppFi. Among other things it is undisputed that FinWise employs dozens of employees who interact daily with OppFi and engage in weekly meetings on the Program. FinWise also performs regular audits

and quarterly examinations of OppFi.

- FinWise benefits financially from the Program Loans. In addition to the 5% receivable interest, FinWise is entitled to program and servicing fees from OppFi, among other sources of revenue.

- Program loans are subject to FDIC and Utah DFI Supervision. Both regulators are aware of the Program and have never raised any usury concerns with the relationship.

In response to the DFPI's legal arguments, OppFi argues as follows:

First, OppFi argued that the CFL's exemption for banks applies to Program Loans because the Commissioner has now admitted, as a factual matter, that FinWise was acting under the laws of the State of Utah when it performed all relevant lending tasks and that the Court's previous ruling was at the pleading stage.

Second, OppFi argued that the Commissioner failed to establish that its "true lender" test applied to the definition of "finance lender" under the CFL, and that under the plain text of the statute OppFi was not a "finance lender" for Program Loans.

Third, OppFi argued that Commissioner did not proffer any evidence that created a triable issue of material fact on its substance over from theory:

- Sale of Loan Receivables: OppFi argued that the pre-arranged sale of receivables and the possibility of a change in title were irrelevant to the inquiry because under federal and California law, "the sale or assignment of a loan, in whole or in party, cannot, as a matter of law, make a loan usurious."

- Underwriting: OppFi argued that its ownership of intellectual property to its credit models did not create a triable issue of material fact because it did not contradict that FinWise, not OppFi, approves the credit criteria and controls loan approval process. The statement in OppFi's 10-K that "Banks originate finance receivables based on criteria by OppFi" did not contradict Darchis's and McKay's evidence that FinWise approves the credit criteria, validates the credit models, and approves any changes thereto. Further, the Court previously considered these same arguments and evidence and found that DFPI "has not provided sufficient evidence showing that OppFi controls the underwriting process."

- Funding: OppFi argued that the Commissioner did not proffer any evidence that created a triable issue of fact on this issue. The McKay and Darchis declarations attesting to the fact that FinWise funds Program Loans with FinWise's money remain unrebutted. The fact that an OppFi affiliate purchases a receivable, does not mean that OppFi originally funded the loans; and that OppFi's expert O'Bryan attested that the receivable sales was a "material source" of revenue, funding, and assets for FinWise also did not show that FinWise used money belonging to OppFi to fund Program loans. The Commissioner has also conceded that FinWise does, in fact, fund Program Loans and that FinWise never used any funds posted as collateral to fund Program Loans. On top of that, the collateral account was almost always insufficient—by millions—to cover FinWise's funding obligations.

- Benefits and Risk: OppFi argued that the Commissioner did not dispute that the straw lenders in *Janisse* and *Anderson* did not gain anything from the transaction and that, in contrast, FinWise retained 2% to 5% of loan receivables since 2019, FinWise sells loans at par to OppWin, FinWise is entitled to volume-based fees, and servicing fees.

- Marketing: OppFi argued that the Commissioner does not dispute that all "[c]onsumer marketing efforts implemented by OppFi" are done "under the Bank's supervision and subject to the Bank's review, approval, and control." Instead, the Commissioner focuses on OppFi's ownership of the "OppLoans" trademark and website but those arguments are untethered to any principled standard and does nothing to refute OppFi's expert Christopher James who explained that it is common practice for banks to rely on third parties, including fintech firms, like OppFi to provide ancillary services such as marketing. Accordingly, the Commissioner did not create a triable issue of material fact on this issue either.

- FinWise Oversight: OppFi argued that its Motion established that FinWise oversees all aspects of the program and is responsible for legal and regulatory compliance. On this issue, almost every fact in OppFi's Motion is undisputed. DFPI only purports to dispute FinWise's control over servicing by pointing to an excerpt from OppFi's website that says "OppFi services the loans as the primary servicer." But that OppFi services loans—as a subservicer—says nothing about which entity controls servicing, and thus Darchis's testimony that "as lender and holder of all

Program [L]oan servicing rights, the Bank maintains control of the servicing of all Program [L]oans is unrebutted."

In sum, the DFPI predicates both counts of its Cross-Complaint on the erroneous premise that OppFi is the "true lender" and FinWise is merely a "dummy," but Commissioner has failed to present evidence establishing the existence of a triable issue of material fact regarding its theory. OppFi is entitled to judgment as a matter of law in its favor.

## III. LEGAL STANDARD

In reviewing a motion for summary judgment, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." (*Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294; see also Code Civ. Proc., § 437c, subd. (c).)

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

"[T]he initial burden is always on the moving party to make a prima facia showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1519; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859 (same).) A defendant moving for summary judgment or summary adjudication "has met that party's 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 complete defense to the cause of action." (Civ. Proc. Code, § 437c, subd. (p)(2).) A moving defendant need not conclusively negate an element of

plaintiff's cause of action. (*Aguilar*, *supra*, 25 Cal.4th at 854.)

To meet this burden of showing a cause of action cannot be established, a defendant must show not only "that the plaintiff does not possess needed evidence" but also that "the plaintiff cannot reasonably obtain needed evidence." (*Aguilar*, *supra*, 25 Cal.4th at 854.) It is insufficient for the defendant to merely point out the absence of evidence. (*Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 891.) The defendant "must also produce evidence that the plaintiff cannot reasonably obtain evidence to support his or her claim." (*Ibid.*) The supporting evidence 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 855.)

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

The court must "liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party," including "all of the inferences reasonably drawn therefrom." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037; *Aguilar*, *supra*, 25 Cal.4th at 844-45.) "On a summary judgment motion, the court must therefore consider what inferences favoring the opposing party a factfinder could reasonably draw from the evidence. While viewing the evidence in this manner, the court must bear in mind that its primary function is to identify issues rather than to determine issues." (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839 [internal citations omitted].) "Only when the inferences are indisputable may the court decide the issues as a matter of law. If the evidence is in conflict, the factual issues must be resolved by trial." (*Id.*)

Further, "the trial court may not weigh the evidence in the manner of a factfinder to determine whose version is more likely true. Nor may the trial court grant summary judgment based

on the court's evaluation of credibility." (*Id.* at 840 [internal citations omitted]; see also *Weiss v. People ex rel. Dep't of Transp.* (2020) 9 Cal.5th 840, 864 ["Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party."].)

## III. EVIDENTIARY OBJECTIONS

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

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

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

- Overruled: Nos. 1, 2, 3.

## IV. DISCUSSION

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 Financing Law ("CFL") (Fin. Code, § 22000 et seq.) and Violation of the California Consumer Financial Protection Law ("CCFPL") (Fin. Code, § 90000 et seq.). OppFi argues that the Commissioner's cross-complaint fails for three independent reasons: (1) FinWise's loans are exempt from the CFL, (2) OppFi is not acting as a "finance lender" under the CFL with respect to FinWise loans, and (3) the Commissioner cannot meet her burden to demonstrate that FinWise is "merely a dummy" lender under her own "substance over form approach." Both sides agreed at the hearing that the granting of this Motion would dispose of the entire case.[2] For the reasons discussed below, the motion is

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[1] Even if considered for purposes of summary judgment, none of the excluded evidence would create a triable issue of material fact for trial. (See *Khosh v. Staples Constr. Co.* (2016) 4 Cal.App.5th 712, 721 [affirming summary judgment and stating that "[w]e need not decide if the court erred in excluding this evidence because the excluded evidence does not create a triable issue of fact, and admitting the evidence would not warrant a different result."].)

[2] Hearing Tr. (January 29, 2026) at p. 24:23-28. (Court: "Do you agree with the converse of that point that, if they were -- if they were, in fact, valid at inception, then you lose?" Mr. Chu: "Yes,

granted based on the third reason; it is therefore unnecessary for the Court to analyze the remaining reasons proffered by OppFi.

**A. Reason No. 3: Whether FinWise is "merely a dummy" Lender**

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

Applying the legal framework advanced by the Commissioner, "[i]t is a question of fact as to whether a particular transaction is or is not usurious. 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 form adopted, or whether such form was a mere sham and subterfuge to cover up a usurious transaction. The trial court may look beyond the form of the transaction and ascertain its substance." (*Forte v. Nolfi* (1972) 25 Cal.App.3d 656, 678, [citing among other cases, *Janisse v. Winston Inv. Co.* (1957) 154 Cal.App.2d 580 ("*Janisse*")].) "[W]hen the facts indicate that the purchaser of a security had knowledge of an infirmity, or a grave suspicion thereof, his transaction is closely scrutinized to find the requisite good faith. It is the substance, not the form, that is controlling." (*Anderson v. Lee* (1951) 103 Cal.App.2d 24, 27-28 ["*Anderson*"]; see also *Glaire v. La Lanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 927.)

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your honor. I think we'd have to concede that one."); *see generally*, *id.*, at pp. 23:20-24:28: (conceding that DFPI loses if the Program Loans were valid at inception under *Janisse v. Winston Inv. Co.* (1957) 154 Cal.App.2d 580).

1 However, in 1932, the California Supreme Court considered the following question: "What
2 is the period to be considered when testing a transaction for the presence of usury?" (*Sharp v. Mortg.*
3 *Sec. Corp. of Am.* (1932) 215 Cal.287, 290 ["*Sharp*"].) After discussing some cases (including those
4 from other jurisdictions), the California Supreme Court reached this conclusion: "It is . . . elementary
5 that the contract must in its inception require a payment of usury or it will not be held a violation of
6 the statute . . . ." (*Ibid.*)

7 In other words, "[t]o be usurious [under California law], a contract [also] 'must in its
8 inception require a payment of usury'; subsequent events do not render a legal contract usurious."
9 (*WRI Opportunity Loans II LLC v. Cooper* (2007) 154 Cal.App.4th 525, 533; *O'Connor v. Televideo*
10 *Sys., Inc.* (1990) 218 Cal.App.3d 709, 714 ["*O'Connor*"] ["[A] debtor by voluntary act cannot
11 render an otherwise valid transaction usurious. '[A] debtor cannot bring his creditor to the penalties
12 of the Usury Law by his voluntary default in respect to the obligation involved where no violation
13 of law is present at the inception of the contract.'" (citation omitted)].) "[A] contract, not usurious
14 in its inception, does not become usurious by subsequent events." (*Strike v. Trans-W. Disc. Corp.*
15 (1979) 92 Cal.App.3d 735, 745 ["No authority is cited for the proposition that the assignee of an
16 exempt lender becomes thereby a usurer unable to collect any interest."]; *Montgomery v. GCFS,*
17 *Inc.* (2015) 237 Cal.App.4th 724, 732 ["*Montgomery*"], ["The California Constitution exempts from
18 its usury restrictions 'persons authorized by statute';—such as finance lenders (§ 22002)—and 'any
19 successor in interest to any loan or forbearance exempted under this article.' (Cal. Const. art. XV, §
20 1.) The Constitution does not require successors in interest to be independently exempt from usury
21 restrictions."].)

22 *i. OppFi's Evidence*

23 There is no question that OppFi has met its burden in demonstrating that the Program Loans
24 were not usurious at inception or that FinWise was not a mere dummy lender. (*Janisse, supra,* 154
25 Cal.App.2d at 582 ["But if the payee was, in fact, a dummy, and if, in fact, the form of the transaction
26 was a sham and subterfuge to cover up the fact that defendants actually loaned the money to
27 plaintiffs, as found by the trial court, then the 'discount' was in fact interest and the transaction
28 obviously usurious."].)

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

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

to make changes to the underwriting criteria on its own in connection with Program loans."].)

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 transfer for the loan amount to the borrower's bank account. OppFi does not provide these funds to FinWise, and it did not provide FinWise with the initial capital used to fund loans. Put simply, FinWise funds Program Loans using money that belongs to FinWise, from accounts controlled solely by FinWise, and uses funds in which OppFi has neither a possessory nor a beneficial interest."].) Borrowers who obtain a loan through the OppLoans platform enter into a Promissory Note in which they acknowledge and agree that FinWise is their Lender. (McKay Decl. ¶ 9a; Darchis Decl., ¶ 14.) The Commissioner does dispute that FinWise funds and retains title to the Program Loans. ( Commissioner's Resp. to Separate Statement, Undisputed Material Fact No. 32 ["UMF"].)

Third, OppFi provides that FinWise is exposed to substantial risk and benefits from the Program Loans, given that at origination, FinWise is exposed to 100% of the risk of loss on every loan up until the time it sells a receivable interest to OppWin (OppFi's subsidiary). (Darchis Decl., ¶ 34; Levin Decl., Ex. H [Declaration of Duross O'Bryan], ¶¶ 17, 41.) FinWise retains title to and a 5% interest in the receivables for each FinWise Loan. (McKay Decl., ¶ 14a; Darchis Decl., ¶¶ 31-32 ["The Bank only sells part of the potential future loan proceeds, but always retains the title of the loan."].) This interest is held by FinWise throughout the lifecycle of the loan and exposes FinWise to the risk of loss for that 5% as well as entitles FinWise to 5% of the funds collected on every loan. (McKay Decl., ¶ 14a ["FinWise retains a 5% interest in each receivable offered for sale to OppWin. This interest is held by FinWise throughout the lifecycle of the loan and entitles FinWise to 5% of the funds collected on every loan. Since 2020, FinWise has likewise retained between 2 % and 5 % of each Program receivable."]; Levin Decl., Ex. H [James Decl.], ¶ 16; Levin Decl., Ex. I [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 significant (in excess of $1,000,000 across the

Program), and are a further economic interest that FinWise maintains in the Program as a whole and with respect to the individual Program loans."].) FinWise is also entitled to a servicing fee. (McKay Decl., ¶ 14b; Darchis Decl., ¶ 34.)

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

Fifth, OppFi provides that FinWise performs daily, monthly, quarterly, and annual 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, covering all aspects of their respective business, including legal, compliance, underwriting, marketing, operations, and IT"].) It also performs quarterly testing of OppFi. (Darchis Decl., ¶ 27g.)

FinWise also reports to its Board on OppFi's performance, requires OppFi to submit any changes to policies and procedures relevant to the FinWise Loans to the Bank for approval before implementation, and requires annual review of existing policies and procedures. (Darchis Decl., ¶

27.) FinWise requires OppFi to maintain a customer complaint log according to its specifications that it receives and reviews monthly. (Darchis Decl., ¶ 27g, Ex. E [Compliance Testing Report, which demonstrates that FinWise "oversees OppFi's handling of complaints, including that complaints are handled in a timely manner with proper investigation and documentation"].)

FinWise also performs monitoring of the credit models used for underwriting Program Loans and monitors delinquencies to ensure its underwriting does not lead to inappropriate levels of delinquencies. (Darchis Decl., ¶ 30.) OppFi also provides that FinWise controls the servicing of all Loans and maintains control over OppFi's vendor management. (*Id.* ¶¶ 39, 44 ["OppFi is not authorized to add new vendors without the Bank's approval; OppFi's vendor management policy and procedure is reviewed and approved by the Bank whenever changes are made, and at least annually; the Bank ensures that OppFi's policies and procedures are fit to assess risk presented by potential vendors and ensure that vendors undergo appropriate levels of review commensurate with any potential risks; the Bank requires OppFi to conduct a thorough due diligence on all potential vendors, and the Bank makes its own assessment of the vendor . . . ."].)

The foregoing evidence produced by OppFi makes clear that FinWise's role in the Program Loans was nothing comparable to Mr. Gudmundsen, the dummy lender in *Janisse* – the case that DFPI concedes is outcome determinative.[3] Mr. Gudmundsen did not fund the loan at issue in that case using his own money; instead, at loan inception, "no consideration had been or would be given for said note by payee (i.e., Gudmundsen)." (*Janisse*, *supra*, 154 Cal.App.2d at 583.) Instead, at inception, the loan was funded solely by Mr. Gudmundsen's purported assignee, Winston Investment Company and its principals (collectively, "Winston"). (*Id.*) In contrast, FinWise funded every Program Loan using its own money.

Mr. Gudmundsen, the dummy lender in *Janisse*, never had an up or downside risk in the loans. (*Id.* at 585-86.) In contrast, as discussed above, FinWise retained title to every loan and obtained substantial financial benefits from the loans. Further, FinWise assumed legal and regulatory risk to the borrowers, the FDIC, and the Utah Department of Financial Institutions *for*

[3] See n.2, above.

*the life of each loan.*

Mr. Gudmundsen had no role in underwriting or approving the loan terms. (*Id.* at 584-585.) Instead, his involvement with the loan began after Winston had already set the loan terms and agreed to lend to the *Janisse* plaintiffs through a loan broker (a Mrs. Kent). (*Id.* at 585.) In contrast, before funding, FinWise itself approved every loan according to credit criteria that it had approved, and then independently confirmed were satisfied.

In *Janisse*, the loan amount stated in the promissory was <u>not</u> consistent with the loan terms that Winston agreed to with Plaintiffs. Before Mr. Gudmundsen's involvement in the loan, Winston had agreed to loan the *Janisse* plaintiffs $3,055; however, the promissory note was drawn to reflect a principal amount $4,700. (*Id.* at 582.) Winston involved Mr. Gudmundsen in the transaction specifically to sign a fraudulent promissory note containing an inflated loan amount, which Winston inserted into the promissory note specifically to exact an unlawful finance charge. (*Id.* at 583.) In contrast, FinWise funded every loan in the agreed amount. UMF ¶ 39. There was no hidden finance charge.

OppFi has sufficiently demonstrated that there exists no issue of fact that "FinWise is not merely a dummy lender and its relationship with OppFi is not a mere sham" under *Janisse.* OppFi has thus produced evidence that "preclude[s] a reasonable trier of fact from finding that it was more likely than not that" OppFi is the lender of Program Loans. (*Kahn v. E. Side Union High Sch. Dist.* (2003) 31 Cal.4th 990, 1002-03). The burden shifts.

*ii. The Commissioner's Evidence*

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

First, in terms of Receivables, the Commissioner proffers the original version of the Loan Receivables Sale Agreement ("LRSA") between OppFi and FinWise, which allowed OppFi to purchase 100% of the loan receivables. (See Levin Decl., Ex. B, pp. 210-13.) In the LRSA, there is a provision stating that FinWise does not have an obligation to retain any of the receivables. (Chu Decl., Ex B. [LRSA] § 8.1.) This version of the LRSA which allowed the complete sale of the loan

receivables to OppFi was in effect for roughly the first 18 months of the program. (See Levin Decl., Ex. B [Darchis Tr.], at pp. 210:11-213:25.) This arrangement continued until the First Amendment to the LRSA, wherein FinWise would retain up to 5% of the receivables of future loans. (*Ibid.*)

On this evidence, the Commissioner does not create a material issue of fact. As the Court stated above, California's "[u]sury restrictions do not restrict the assignment of loans." (*Montgomery*, *supra*, 237 Cal.App.4th at 732.) The California Constitution also exempts "any successor in interest to any loan . . . exempted under [the Constitution]." (Cal. Const. art. XV, § 1; see also *Strike*, *supra*, 92 Cal.App.3d at 745 ["Finally, Strike contend[s] error in that the judgment allows Trans-West to receive 11 percent interest on the Barclays Bank note, inasmuch as Trans-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 a usurer unable to collect any interest.** The California Constitution, article XV, section 1, exempts certain institutions, such as banks, from the usury laws. *Strike's* contention would in effect prohibit—make uneconomic—the assignment or sale by banks of their commercial property to a secondary market. This would be disastrous in terms of bank operations and not conformable to 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)].)

The Court addressed this argument and this evidence at length in its ruling denying the Commissioner's motion for preliminary injunction, (See PI Order, at pp. 57-64.) As explained in the October 30, 2023 PI Order, OppFi's prearrangement to purchase OppLoans loan receivables is consistent with FinWise's right under Section 27 to assign, sell, or otherwise transfer its loans to OppFi and "[California's] Constitution does not require successors in interest to be independently exempt from usury restrictions." (*Montgomery*, supra, 237 Cal.App.4th at 732.) In the PI Order, the Court stated further that if it "were to interpret the CFL to mean that FinWise was not a 'true lender' for exemption purposes because the bank decided to assign, sell, or otherwise transfer OppLoans to OppFi (whether within days of originating the loan or months, or whether in whole or in part), that ruling may stand as an obstacle to the full purposes and objectives of Congress given how courts have interpreted Section 27 and the FDIC's Interest Provision to allow banks such as FinWise to do

so." (PI Order, at pp. 64-65.) Moreover, as stated above, the CFL and the California Constitution exempt banks from California's usury restrictions. Therefore, an assignee or successor-in-interest to any loan a bank originated should also be exempted.

In her Opposition, the Commissioner does not provide the Court with any basis to reconsider its prior decision. Indeed, in opposition to summary judgment, the Commissioner offers no response to OppFi's citation to the October 30, 2023 PI Order, Section 27, or the Interest Rate Authority rule (12 C.F.R. § 331.4, subd. (e)).[4] Nor does the Commissioner dispute that, under California law, usury restrictions do not restrict the assignment of loans.

The Court's position remains the same. "[T]o the extent 'FinWise-originated' [Program Loans] had permissible interest rates at the time the loans were made, the fact that the bank sold, assigned, or otherwise transferred the loans to OppFi should not make the loans usurious." (*Id.* at pp. 63-64.) The Court came to this conclusion after thoroughly addressing Section 27 of the Federal Deposit Insurance's Act (FDIA), and the fact that it allows FinWise to charge interest rates allowed by the state it is located in, Utah. (*Id.* at p. 58; see also 2 C.F.R. § 331.4, subd. (e) ["Whether interest on a loan is permissible under section 27 of the Federal Deposit Insurance Act is determined as of the date the loan was made. Interest on a loan that is permissible under section 27 of the Federal Deposit Insurance Act shall not be affected by a change in State law, a change in the relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer of the loan, in whole or in part."]; *Durnford v. MusclePharm Corp.* (9th Cir. 2018) 907 F.3d 595, 602 [Regulations promulgated by federal administrative agencies "have the same preemptive effect as a statute" (citation omitted)].) The Commissioner has not explained nor provided any 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 law usury claims preempted where bank sold 100 percent of receivables to non-bank in a prearranged transaction].)[5]

[4] See Motion, at pp. 6-7.

[5] Numerous other decisions are in accord. See Oct. 30, 2023 Order, at pp. 13-16, 57-60.

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

Next, the Commissioner shifts to funding. The Commissioner claims that FinWise does not contractually have to fund the loans if OppFi does not maintain liquidity in a collateral account used as Proof of Funds. The Commissioner proffers the LRSA, which displays that OppFi has agreed to provide a showing of collateral, or minimum security, for the financial ability to purchase loan receivables. (Chu Decl., Ex. B [LRSA], § 4.1.) The LRSA essentially 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, OppFi is essentially the ones funding the loan. The Commissioner likewise implies that because an OppFi affiliate purchases receivables, which are sold after funding the loan, OppFi is essentially funding the loan. While creative, the Commissioner has not proffered any direct evidence that is the case. The LRSA provision does not establish that OppFi's money was ever used to fund FinWise loans, especially in contrast to OppFi's evidence that the collateral account was almost always insufficient — by millions — to cover FinWise's funding obligations. (Darchis Decl., ¶ 35 ["the security that OppWin currently provides is significantly less than FinWise's typical funding obligations, often by several multiples. In any event, the collateral OppWin provides merely secures

its obligation to purchase receivables; that collateral is not used by FinWise to fund Program loans"].) Absent speculation, there is no evidence establishing any link between OppFi's collateral account and FinWise's funding used for the loans.

Next, the Commissioner asserts that OppFi, not FinWise, controls the underwriting process. The Commissioner argues: "[t]he facts of the purported two stages of underwriting are in dispute because it appears that the underwriting models are in fact the intellectual property of OppFi and not shared with FinWise." (Opposition, at p. 17.) Specifically, OppFi represented the following to the Securities and Exchange Commission (SEC) and OppFi's investors in SEC filings:

"Under the terms and conditions of the agreement, the Banks originate finance receivables based on criteria provided by OppFi-LLC."

"Banks originate finance receivables based on criteria provided by OppFi-LLC"

"82% of OppFi's underwriting decisions are automated, with next business day funding" (Wu Decl., Ex. F, at pp. 7, 103, 105).

Furthermore, the Commissioner provides that under the LPA between OppFi and FinWise, OppFi is required to "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], §§ 2.1, 3.1(c).)

This evidence also does not create an issue of fact. That OppFi owns the intellectual property to its credit model creates no triable issue of fact because it does not contradict that FinWise, not OppFi, approves the credit criteria and controls loan approval.[6] The Commissioner's citation to the testimony of Susan Musgrove, former Chief Risk Officer of FinWise, does not support the

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[6] Moreover, the DFPI's argument fails as a matter of logic. To illustrate: it is beyond cavil that many banks, large and small, national or state-charted, use FICO scores provided by Fair Isaac Corporation as part of their underwriting process. That Fair Isaac Corporation owns the intellectual property to FICO including its predictive algorithms, models and associated trademarks does not undermine or contradict the status of the banks as the underwriters and actual lenders of loans that they make. Put simply, the banks' use of FICO does not make Fair Isaac Corp the lender. Similarly, that OppFi owns the intellectual property to the model that it uses to provide services to FinWise lacks "any tendency in reason to prove or disprove" that FinWise approves the loan credit criteria and controls loan approval of Program Loans. DFPI's evidence is thus legally irrelevant and, per force, immaterial. (Cal. Evid. Code § 210 [defining relevant evidence]; Levin Decl., Ex. B, at 128:2-22 [testimony from Simon Darchis].)

Commissioner's arguments. In the cited passage, Ms. Musgrove testified that when reviewing loans recommended for approval, FinWise received and reviewed the "loan file" and used its technology to "to make sure that [the loans] matched the criteria that was approved by [FinWise and the partner]." (Levin Decl., Ex C [Musgrove Tr.], at 82:12-84:10 ["When loans came in, they had to -- they would go through a filter of sorts to make sure that the -- that they matched the criteria that was approved by both -- by both FinWise and the partner . . . . We received our data from OppFi."].) She also testified that FinWise rejected loans recommended for approval by OppFi, disproving the Commissioner's assertion that FinWise's underwriting is a "rubber stamp" of approval. (*Id.* at 85:9-86:17 ["it would reject if it did not meet the pre-approved thresholds . . . . If it could be — it would be accepted or rejected on the FinWise side . . . . But there was -- there was a time where the data would come in, anything that didn't meet would reject and was -- would go to a queue that was reviewed by multiple people, generally program management. But there would be -- there could be risk involvement or compliance involvement depending on what might have rejected."].) The Commissioner has produced simply no evidence that OppFi controls the underwriting process. Further, that OppFi is the subservicer on Program Loans does not establish that OppFi is the lender. (See Levin Decl., Ex. H [James Decl.], ¶¶ 29-32 [explaining that it is common for banks to rely on third-parties for a variety of activities including servicing]).

Lastly, the Commissioner asserts that the product brand marketed toward consumers (OppLoans) is a product of OppFi and is not exclusive to FinWise as a funder. But that does not establish that FinWise is "dummy" or "sham" lender. For example, 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 Advertising Materials and Program Materials to Bank for its approval prior to Service Agent's use thereof . . . . Bank shall have the right to reject in its reasonable discretion all proposed changes by Service Agent to the Advertising Materials and Program Materials, or further modifications thereof." (McKay Decl., Ex. A [LPA], § 4.3(a)-(b).) Thus, the mere fact that loans are branded "OppLoans" and other banks are able to fund and make loans in other states, does not establish that FinWise is not exercising control over the marketing of loans to California residents. Additionally, the Commissioner's emphasis on

consumer-facing marketing falls short in explaining how it is connected to whether OppFi is the actual lender of the loans. (See Levin Decl., Ex. H [James Decl.], ¶ 30 ["State-chartered banks commonly rely on third parties, including fintech firms, to provide certain services such as marketing and screening applicants as well as third parties providing a source of funding, both of which mitigate lending risk."].)

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

## V. CONCLUSION

Based on the foregoing, OppFi's motion for summary judgment is GRANTED. In light of the Court's ruling that the Commissioner cannot establish that OppFi is the true lender of the Program Loans, OppFi's Complaint, and its Cross-Complaint, which challenged the Commissioner's and DFPI's ability to apply the true lender doctrine in connection with its enforcement of the CFL's interest rate restrictions, are dismissed without prejudice as moot. (See, e.g., *Barth-Wittmore Ins. v. H.R. Murphy Enters., Inc.* (1985) 169 Cal.App.3d 124, 135 [dismissing a cross-complaint as moot where, "although it initially presented an existing controversy . . . , a court decision [has] deprived the controversy of its life"]; *Van Wagner Commc'ns Inc. v. City of L.A.* (2000) 84 Cal.App.4th 499, 512 [dismissing cross-complaint for declaratory relief where court's ruling on other party's complaint rendered declaratory relief action "moot"].)

**IT IS SO ORDERED.**

DATED: 5/19, 2026

Hon. Gary D. Roberts