

State of California – Department of Financial Protection and Innovation

1 CLOTHILDE V. HEWLETT  
Commissioner  
2 MARY ANN SMITH (State Bar No. 230943)  
Deputy Commissioner  
3 SEAN M. ROONEY (State Bar No. 188843)  
Assistant Chief Counsel  
4 JOHNNY O. VUONG (State Bar No. 249570)  
Senior Counsel  
5 FRANCIS N. SCOLLAN (State Bar No. 186262)  
Senior Counsel  
6 Department of Financial Protection and Innovation  
320 West 4th Street, Suite 750  
7 Los Angeles, California 90013  
Telephone: (213) 503-4164  
8 Facsimile: (213) 576-7181  
Email: Johnny.Vuong@dfpi.ca.gov  
9 Email: Frank.Scollan@dfpi.ca.gov  
10

**FILING FEE EXEMPT PER  
GOVT. CODE § 6103**

11 Attorneys for Defendant  
12 CLOTHILDE HEWLETT, in her official  
capacity as Commissioner of Financial  
13 Protection and Innovation

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

16 OPPORTUNITY FINANCIAL, LLC ) Case No. 22STCV08163

17 Plaintiff,

18 v.

) ANSWER

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

) Assigned to: Hon. Timothy P. Dillon  
Department: 73

22 Defendant.

23  
24 Defendant CLOTHILDE HEWLETT, in her official capacity as Commissioner of Financial  
25 Protection and Innovation (named in the Complaint as Clothilde Hewlett, in her official capacity as  
26 Commissioner of the Department of Financial Protection and Innovation for the State of California)  
27 (Commissioner) files this Answer to the Complaint (Complaint) of Plaintiff Opportunity Financial,  
28 LLC (Plaintiff).

ANSWER

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

**GENERAL DENIAL**

1. Pursuant to Code of Civil Procedure section 431.30, subdivision (d), the Commissioner denies each material allegation in the Complaint.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

(Failure to Exhaust Administrative Remedies)

2. Plaintiff failed to exhaust all available administrative procedures and remedies. Based upon that failure, this Court lacks jurisdiction to consider Plaintiff’s claims. The Legislature has entrusted and charged the Commissioner with responsibility for enforcing the California Financing Law (CFL) (Fin. Code, § 22100 *et seq.*) and the California Consumer Financial Protection Law (CCFPL) ( Fin. Code, § 90000 *et seq.*). The Commissioner is authorized to conduct investigations and make inquiries concerning the CFL and CCFPL. Moreover, the Commissioner has the authority to institute administrative actions before the Office of Administrative Hearings (OAH) regarding violations of the CFL and CCFPL under the Administrative Procedure Act. Here, Plaintiff has not been the subject of an administrative action brought before the OAH regarding any alleged conduct or the subject of a final administrative decision adopted by the Commissioner. As such, Plaintiff has not exhausted its administrative remedies prior to the filing of the instant action. Based upon that failure, this Court lacks jurisdiction to consider Plaintiff’s claims.

**Second Affirmative Defense**

(Primary Jurisdiction)

3. The primary jurisdiction doctrine bars or requires suspension of the adjudication of the Complaint. Matters of consumer lending and the regulation thereof are within the field of competence and expertise of the Commissioner and the Department of Financial Protection and Innovation (Department). Plaintiff has filed this declaratory relief action to evade the Commissioner’s primary jurisdiction over the CFL and CCFPL.

**Third Affirmative Defense**

(Abstention)

4. The abstention doctrine bars or requires suspension of the adjudication of the Complaint. The Legislature has entrusted and charged the Commissioner with responsibility for enforcing the CFL and the CCFPL. Matters of consumer lending and the regulation thereof are within the particular field of competence and expertise of the Commissioner and Department. Plaintiff has filed this declaratory relief action to evade the Commissioner’s jurisdiction over the CFL and CCFPL.

**Fourth Affirmative Defense**

(Failure to State a Claim)

5. Plaintiff fails to allege facts sufficient to support any claim for relief.

**Fifth Affirmative Defense**

(Ripeness)

6. The claims alleged in the Complaint do not present a justiciable controversy ripe for determination by this Court. Plaintiff alleges only that a conversation with the Department took place regarding the charging of interest rates and fails to allege that the Commissioner has taken any adverse action of any kind against Plaintiff as to interest rates, or as to any other violation of California law, that the Complaint’s prayer for relief may implicitly seek though not pled. Plaintiff has rushed to court to in an effort to secure its preferred forum based on nothing more than Plaintiff’s characterization of the claims the Commissioner could or might assert. The Complaint improperly seeks an advisory opinion.

**Sixth Affirmative Defense**

(Improper Basis for Declaratory Relief)

7. Plaintiff’s Complaint and its cause of action for declaratory relief are barred because Plaintiff seeks an advisory opinion from the Court.

**Seventh Affirmative Defense**

(Adequate Remedy at Law)

8. Plaintiff’s Complaint and its causes of action for declaratory and injunctive relief are

1 barred because Plaintiff has an adequate remedy at law.

2 **Eighth Affirmative Defense**

3 (Lawful Exercise of Discretion)

4 9. The Commissioner properly exercised her discretion in the events pled in the  
5 Complaint.

6 **Ninth Affirmative Defense**

7 (Unclean Hands)

8 10. Plaintiff’s Complaint and its causes of action for declaratory and injunctive relief are  
9 barred because Plaintiff comes to this Court with unclean hands. When the California Legislature  
10 and Governor sought to protect California consumers by putting into place reasonable interest rate  
11 limitations, Plaintiff made every effort to evade the law and continue its predatory lending practices  
12 including by issuing loans with interest rates up to 160%. When the Commissioner through counsel  
13 attempted to engage in good faith discussions with Plaintiff about its practices, Plaintiff requested a  
14 follow-up call to further discuss the matter, a request the Department honored. However, Plaintiff  
15 then filed this action, without any further discussion, as part of its efforts to continue evading the  
16 law and ensnare California borrowers in loans that bear injurious and abusive terms including  
17 interest at rates up to 160%.

18 **REQUEST FOR RELIEF**

19 The Commissioner requests that the Court enter judgment as follows:

- 20 1. Denying all relief requested in the Complaint.
- 21 2. Awarding the Commissioner her costs in this action.
- 22 3. Awarding the Commissioner all further relief that the Court deems just and proper.

23  
24 Dated: April 8, 2022

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

25  
26 By: \_\_\_\_\_  
27 JOHNNY O. VUONG  
28 Senior Counsel  
Enforcement Division