June 30, 2022

Commissioner of Financial Protection and Innovation
Attn: Sandra Sandoval, Regulations Coordinator
300 South Spring Street, 15th Floor
Los Angeles, CA 90013

Sent: *By e-mail to regulations@dfpi.ca.gov*

Re: Invitation for Comments on Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints (Pro 03-21)

Dear Ms. Sandoval,

Moneytree, Inc. ("Moneytree") is a family-run, privately held financial services company, headquartered in Renton, WA. Moneytree operates retail branches in the state of California and offers deferred deposit loans online. Moneytree is licensed under the California Deferred Deposit Transaction Law ("CDDTL"), the California Finance Lenders Law ("CFL"), and a pending licensee under the California Debt Collector's Licensing Act ("DCLA").

Moneytree appreciates this opportunity to comment on the Department of Financial Protection and Innovation's (the "Department") Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints issued on May 20, 2022 (the "Proposed Rule").

As an initial matter, Moneytree supports the comments submitted to the Department by Mr. Paul Soter and Ms. Eileen Newhall and would like to join in their objections to and suggestions for the Proposed Rule. In addition, Moneytree submits the following comments.

1. **Summary:**

A. The complaint and inquiry processes outlined in the Proposed Rule are unnecessary.

The Consumer Financial Protection Bureau (the "CFPB") requires supervised entities, like Moneytree, to maintain robust complaint tracking systems in order to detect and correct errors and failures that may lead to consumer harm. See 201708 cfpb compliance-management-review supervision-and-examination-manual.pdf (consumerfinance.gov). Among other things, the CFPB examines supervised entities to determine"

> [whether] [p]rocesses and procedures for addressing consumer complaints are appropriate, [that] complaint investigations and responses are reasonable, [that] complaints and inquiries regardless of the channel through which they are submitted are appropriately recorded and categorized, [that] complaints and inquiries, whether regarding the entity or its service providers, are addressed and

> resolved promptly, [that ...] complaints that raise legal issues involving potential consumer harm from unfair treatment or discrimination ... are appropriately categorized and escalated, [that ... appropriate] corrective action [is taken, and whether] the nature or number of substantive complaints from consumers indicates that potential weaknesses in the CMS exist.

CFPB Examination Manual CMR, pp. 13-14.

As is already required nationwide by the CFPB, supervised entities like Moneytree already maintain robust well-functioning complaint tracking and resolution systems that effectively collect, investigate and resolve consumer complaints . Thus, the Proposed Rule is unnecessary and creates different criteria, processes and standards that add administrative cost and burden without commensurate regulatory or consumer benefits. The Proposed Rule provides no added value andshould be withdrawn.

B. The complaint and inquiry processes outlined in the Proposed Rule are excessive and punitive.

The Proposed Rule is a minutely prescriptive and painfully over-worked approach that presumes non-compliance. The level to which covered persons will be required to implement processes, the frequency of reporting, and the long retention periods contained in the Proposed Rule are simply not reasonable. Instead, the Proposed Rule requirements are akin to a "corrective plan" that one would only expect in response to serious findings discovered in a significant regulatory exam or as part of an enforcement process.

The fact of the matter is that data from the CFPB's complaint database, as well as annual reports published by states, demonstrate that companies like Moneytree generate very few complaints and are, in general, compliant and well-regulated businesses. The Proposed Rule would treat these companies like bad actors forcing them to implement costly and overbearing systems and processes to address a "problem" where none exists.

The Department should go back to the drawing board and design a reasonable complaint process that engages and encourages participation rather than treating lawful businesses like outlaws.

C. The complaint and inquiry processes required by the Proposed Rule are extreme and will impose excessive burdens and costs on covered persons.

Not even the CFPB (nor any state) has rules that are as prescriptive and locked down as the Proposed Rule. The Proposed Rule sets forth, in unreasonable detail, how covered entities must define, categorize, track, and report consumer complaints. It requires an unreasonable frequency of monitoring and reporting. It requires collection of voluminous data (some of which has nothing to do with discovering and correcting conditions that may result in consumer harm) and unreasonably long retention periods. Contrary to the Department's belief, the Proposed Rule will impose **significant** costs on covered persons who must now develop and implement highly complex complaint processes (*e.g.* automated "tracking numbers", voice mail systems, 24-hour turn-around responses, etc.).

Not only will the Proposed Rule impose huge costs, it fails to take into account the fact that it is reasonable for different businesses to have different approaches and complaint systems that best collect and report on complaints resulting from their unique operations. The Proposed Rule does

not provide any flexibility for different businesses with different levels of operational complexity, resources, and systems. There is simply no "one size fits all" approach to complaint tracking and processing.

For all of these reasons, the Proposed Rule should be withdrawn.

D. The legitimacy of the Proposed Rule is undermined by the fact that covered persons do not need to investigate a "complaint" if fees are refunded.

Section 1072(c) of the Proposed Rule provides that covered persons do not need to investigate a complaint if it makes "a full and prompt refund to the complainant of the amount at issue or a full and prompt cancellation or adjustment of the debt at issue." In contrast to the CFPB's view[1] that a complaint system helps companies discover and fix potential weaknesses in their systems through an engagement processes that fosters continual improvement, the Proposed Rule promotes a "free money"/reparations result over authentic attempts to discover what, if anything, went wrong and how a process can be improved.

The exemption from investigation will also result in perverted consumer behavior once it becomes known that consumers can merely "complain" about their financial product or service (no matter how frivolous the "dissatisfaction") in order to force covered persons to refund legitimately owed fees or cancel legitimately owed debt rather than incur the significant costs necessary to comply with the Proposed Rule's onerous processes. This behavior, which is only human nature, will further have the effect of raising costs to not only providers but to their customers as providers seek to recoup those costs.

E. The Proposed Rule attempts to regulate ordinary, everyday human interactions that do not require or benefit from regulation.

The Proposed Rule ignores the fact that most human interactions do not require regulation or rise to the level of an actual "complaint." Moreover, the Proposed Rule's line between what is an "inquiry" and what is a "complaint" is blurry at best and has the potential of elevating practically *any* consumer interaction into a trackable event. Moneytree, and other companies like it, are in the "customer service" business. It is not in Moneytree's interest to have unhappy customers. And, while it is always Moneytree's goal to provide exceptional customer experiences – that is not always how the human condition works. Some interactions may involve misunderstandings that are cleared up in the course of the transaction. Some interactions may involve unreasonable consumer expectations that may include access to certain products for which the consumer does not qualify or at a price that is not available. Some interactions may simply be the result of a consumer "having a bad day" which has nothing whatsoever to do with Moneytree or its quality of products or service.

The Proposed Rule is overbroad in its definition of both a "complaint" and an "inquiry" and thereby attempts to regulate basic human interactions that do not require regulation. It fails to distinguish between the types of errors, policies and practices that may result in serious consumer harm from

[1] According to the CFPB, "Complaints afford consumers the ability to raise their issues to the attention of companies. The CFPB's complaint process is designed to give companies the opportunity to provide complete, accurate and timely responses to their customers. Responsible companies use complaints not only as an opportunity to engage with consumers, but also as an indicator of potential weaknesses in a particular product, service, function, department or vendor." *CFPB Consumer Response Annual Report*, January-December 2021, p.3.

situations that may result in mundane disgruntlement or displeasure; and as a result, the Proposed Rule imposes unreasonable and arbitrary regulatory burdens on the covered persons affected by them.

2. **Additional Comments Regarding the Proposed Rule's Complaint Process**

- **Section 1071(a)**: The definition of a "complaint" is overbroad. A "complaint" is defined in the Proposed Rule as "an expression of dissatisfaction from a complainant regarding a financial product or service, including acts, omissions, decisions, conditions, or policies of a covered person or service provider related to the financial product or service." The words "express" or "dissatisfaction" could include a whole host of benign and ordinary communications that do not rise to the level of a true "complaint" (i.e. something happened that should not have happened and that resulted in some harm or potential harm to a consumer). Moreover, a "complaint," as defined in the Proposed Rule, would also include perfectly legal and reasonable activity on the part of a covered person, such as not cashing a check that is obviously forged, not accepting counterfeit currency or turning down a loan applicant for fraud, or failure to meet legal and reasonable underwriting decisions. With regard to the last example, the Equal Credit Opportunity Act and Regulation B provide specific procedures for notifying consumers of such decisions, for consumers to obtain more information about such decisions, and for consumers to make complaints to the providers' federal regulators.
- **Section 1071(b)**: The definition of a "complainant" is overbroad and includes a "representative or other individual with authority to act on the consumer's behalf." The terms "representative or other individual with authority to act on the consumer's behalf" are undefined as to any legal standard and would leave covered persons exposed to guessing about the legitimacy and continued authority of an alleged agent to act on consumer's behalf. Covered persons should not be placed in the position where they are either not complying with the Proposed Rule or are forced to obtain overly burdensome and complex principle/agent documentation. "Agent/principal" documentation and legal documentation is extremely difficult to decipher and it is unreasonable to require covered persons to make these determinations, particularly given the potential volume of interactions contemplated by the Proposed Rule.
- **Section 1072**: Provides that "service providers and affiliates of the covered person shall not be responsible for responding to these complaints or developing and implementing these policies and procedures, unless directed by the principal party offering the financial product or service." The meaning of this statement is unclear given that it is directly contradicted by Section 1072(c)(2) of the Proposed Rule, which requires covered persons to include provisions in service provider contracts mandating service provider compliance with the Proposed Rule.
- **Section 1072(a)(2)**: Provides that a covered person is prohibited from asking a complainant for identifying information other than that set forth in subsection (a)(1). This prohibition will result in covered persons being unable to locate consumers in their POSs and/or transactions that might be associated with the complaint. For example, imagine consumer "John Smith" who does not provide a telephone number (or has changed his telephone number since providing that information to the covered person), does not provide an address (or has moved) and does not have an email address (or has a different email address). It would be very difficult for a covered person to conduct an investigation of

John's complaint (among the hundreds of John Smith's in its POS) if it is not permitted to "request additional personal identifying information."

- **Section 1072(b)**: This subsection provides that the covered person must "prominently display, at or near the top of the [main] page [of its website] a link to the complaint form ..." This requirement ignores covered entities that operate in different jurisdictions and will lead to confusion of consumers in other states for which the complaint processes in the Proposed Rule are inapplicable.
- **Section 1072(a)(5)**: This subsection provides that the covered person must respond to telephone complaints with a call back from a live representative within 24 hours of the voicemail message. This requirement is unreasonable and does not take into account the hours and staffing requirements of businesses that are not open on weekends and holidays. It also does not provide any flexibility for businesses who may be experiencing busy business volumes or businesses that may be experiencing business disruptions.
- **Section 1072(a)(6)**: This subsection requires covered persons to provide "translations of all written communications required ..., and upon request by the complainant, the provision of interpretation and translation services to assist with the complaint." This requirement does not permit flexibility when the consumer is bi-lingual. It also fails to address the situation in which the entire course of dealing between the provider and the consumer have been conducted in a language other than English, which is not uncommon.
- **Section 1072(a)(7)**: This subsection requires a covered person to permit complaints to be submitted up to four years following the occurrence of the act, omission, decision, condition or policy underlying the complaint. This time-period is unreasonable, arbitrary and overly broad and burdensome. Covered persons will be put at a disadvantage over the passage of time as documentation is archived (and rightfully destroyed under reasonable document retention policies), memories fade and people transition to other employment. This requirement will interfere with the responsible record destruction protocols that are part of a company's privacy and data integrity safeguards. Whereas a "complaint" is so broadly defined that it could entail any gripe whatsoever, the four-year period in this section puts covered persons in the position of retaining information for a longer period of time than California's statute of limitations for unwritten contracts that presume far more legally cognizable rights and responsibilities.
- **Section 1072(b)(1)**: This subsection provides that a covered person shall provide an email message confirming an electronic submission of a complaint within one day of its receipt and send a confirming "receipt" of the electronic complaint within five calendar days after receiving the complaint. These timeframes are arbitrarily short, unreasonable and burdensome. Moreover, the provision of a receipt is redundant and unnecessary after the covered person sends a confirming email.
- **Section 1072(b)(2)**: This subsection provides that a covered person shall provide a written acknowledgement within seven calendar days after a written complaint is received. This timeframe is arbitrarily short, unreasonable and burdensome. It also does not provide any flexibility for businesses experiencing busy business volumes or businesses that may be experiencing business disruptions. For example, In 2023, Christmas Day falls on a Monday. Therefore, for a complaint received on December 22, three of the next seven days are non-business days, as are six of the next 10 days.
- **Section 1072(b)(3)**: This subsection provides that for complaints received via telephone, the covered person shall orally provide the complainant with a unique tracking number and,

within seven days provide a written acknowledgement via mail. This requirement presumes that the covered person has some sort of automated complaint tracking system that would generate such a number. Moreover, this timeframe is arbitrarily short, unreasonable and burdensome. It also does not provide any flexibility for businesses who may be experiencing busy business volumes or businesses that may be experiencing business disruptions. Moreover, the requirement to send an acknowledgement via mail is not only burdensome and costly, it ignores other methods of communication that are less expensive and more preferred by consumers like text and email. In the 21st Century in California, pen-and-paper snail mail should not be the standard for communication.

- **Section 1072(c)(1)**: This subsection provides that the complaint allegations and supporting materials shall be reviewed by staff who are responsible for services and operations, which are the subject of the complaint. This requirement is arbitrary and ignores the fact that companies have experienced complaint managers who scope the investigation and obtain information from the correct company personnel in order to respond to consumer complaints. Further, it is contrary to sound management principles to have the personnel whose actions are subject to complaints to review their own actions and decisions. The requirement that operations personnel "review" all of the material involved in every single complaint appears to be aimed at disrupting well-run operations and complaint investigation processes in favor of involving as many people as possible whose jobs do not involve the routine investigation and resolution of complaints. This requirement is a good example of the Proposed Rule's generally over-worked approach. Covered persons should be given the flexibility to conduct an appropriate investigation (involving the appropriate personnel) given the facts and circumstances.
- **Section 1072(c)(2)**: This subsection requires covered persons to "require" vendors to comply with the procedures set forth in the proposed rule. This requirement ignores the fact that covered persons may have existing contracts in place with service providers that pre-date the Proposed Rule and fails to recognize that a covered person may have no ability to "require" its vendors to go through the very prescribed and locked-down processes contained in the Proposed Rule.
- **Section 1072(c)(3)(A)**: This subsection requires an officer of the covered person to review the complaint process at least monthly to "identify any emerging patterns of complaints, provide appropriate remedies to consumers that experience similar issues and take appropriate steps ..." This frequency of this requirement is completely arbitrary and overly burdensome, particularly if the purpose is trend analysis, which would benefit from a minimum review time of at least a quarter of complaint data. As does the CFPB, the Department should permit each covered person to make this determination in its judgment.
- **Section 1072(d)(3)**: This subsection provides that covered persons must provide a status update to complainants within five calendar days of an update request. This timeline is arbitrarily short, unreasonable and burdensome. It ignores weekends and holidays as well as different staffing needs. It also does not provide any flexibility for businesses that may experiencing busy business volumes or businesses that may be experiencing business disruptions. It also ignores the realities that the covered person may not be able to contact the complainant and/or are prevented from multiple attempts to contact by other state and federal laws.

- **Section 1072(e):** This subsection provides that covered persons shall provide a final decision on all issues within fifteen (15) calendar days of receiving the complaint. This timeframe is completely arbitrary and objectively too short. For example, the CFPB permits covered entities up to 60 days to investigate complaints submitted through the CFPB portal prior to providing a "final response." In contrast, the Proposed Rule provides that if the covered person needs more time that it has to provide a written update within three calendar days stating that it needs more time and thereafter, only has 45 additional days to complete its investigation. The fact that an additional 45 days is contemplated reveals the Department understands that a 15-calendar day response time is too short. Why impose the additional burden of providing a written update saying that the time is too short and that more time is needed to complete the investigation when it is objectively obvious that more time will likely be required?
- **Section 1072(e)(3):** This subsection provides that a covered person shall not take adverse action against a complainant including cancellation of the contract, in retaliation for the filing of a complaint. The fact of the matter is that many complaints are filed by consumers who, through investigation, it is determined are dissatisfied because they were discovered to have been engaged in fraudulent, illegal or suspicious behavior, such as providing fake identification, trying to cash a forged or stolen check, trying to avoid Bank Secrecy Act filing requirements, trying to use a stolen payment method, or trying to initiate a fraudulent loan. This provision places covered persons in the vulnerable position of violating the Proposed Rule by merely discovering and attempting to prevent wrongful and illegal consumer conduct.
- **Section 1072(e)(f):** This subsection provides that the covered person must keep records of the complaint file for five years and then goes on to list 15 different categories of information in the complaint file. The categories of information are excessive. Moreover, the period set forth in this section is unreasonably long and arbitrary. It exceeds even California's statute of limitations for written contracts. It puts consumer information at risk by preventing the implementation of reasonable record retention policies.
- **Section 1072(h):** This subsection provides that covered persons "shall submit to the Department a quarterly complaint report, which shall be made available to the public." The report must contain a whole litany of information including "the total number of complaints resulting in a partial or full refund (See above), the number of complaints received for each complaint type, patterns for complaints identified by the officer responsible for complaint processes and a summary of all corrective action taken by that officer to provide appropriate remedies to consumers, and a summary of any steps taken by the covered person to address discrimination that may have occurred during the complaint process on the basis of a [protected status]."

This entire section seems aimed at making covered persons look bad and subject to public self-flagellation based on raw complaint numbers that are unmoored from any context (like transactional volume information, for example). The requirements in this subsection violate covered person's rights to keep proprietary, non-public information confidential and conflict with the definitions contained in Section 1075 of the Proposed Rule. These requirements will violate the privacy of the officer certifying the report. These requirements will expose covered persons to opportunistic consumers "fishing" for a financial service provider with "high refund" numbers

looking to take advantage of the requirements of Section 1072(c). These requirements will also subject covered persons to increased litigation including class actions. The Department already has the ability to publish complaint information in an annual report in a format that avoids all of the dangers of this subsection.

3. **Additional Comments Regarding the Inquiry Process:**

- **Section 1071(e)**: This subsection defines an "Inquiry" as a "question or request for information, interpretation, or clarification submitted by an inquirer regarding a specific issue or problem with a financial product or service. This definition is so overbroad as to be completely unworkable. The words "information" or "interpretation" or "clarification" could include a whole host of questions from a consumer – questions that occur hundreds of thousands of times each day. Tracking "inquiries" as defined in the Proposed Rule would grind the operations of covered persons to a halt in many instances and would result in no consumer benefit whatsoever. Consumers with questions want their questions answered promptly and helpfully – not tracked, monitored and reported. The Proposed Rule will actually interfere with a covered person's ability to respond to consumer inquiries by imposing stifling administrative burdens.
- **Section 1071(f)**: This subsection defines an "inquirer" as a "consumer who submitted an inquiry to a covered person and is contracted with, has applied to be contracted with, or has had a debt or other obligation assigned to, the covered person. An "inquirer" includes a representative or other individual with authority to act on the consumer's behalf." The definition of an "inquirer" is overbroad and includes a "representative or other individual with authority to act on the consumer's behalf." The terms "representative or other individual with authority to act on the consumer's behalf" are undefined as to any legal standard and would leave covered persons exposed to guessing about the legitimacy and continued authority an agent to act on consumer's behalf. Covered persons should not be placed in the position where they are either not complying with the Proposed Rule or are forced to obtain overly burdensome and complex documentation about principal/agent authority. "Agent/principal" documentation and legal documentation is extremely difficult to decipher and it is unreasonable to require covered persons to make these determinations, particularly given the potential volume of communications the Proposed Rule entail given its overly broad definitions. Further, unpacking the purported authority of an "inquirer" raises significant issues for a covered person to determine how to comply with the numerous and weighty requirements to protect consumers' privacy. Therefore, in this regard, we request that the Department coordinate with the California Privacy Protection Agency.
- **Section 1073(a)**: This subsection requires covered persons to maintain a telephone number for inquiries and reply to them with a call back from a live representative within 24 hours of the voice mail message. This requirement is unreasonable and does not take into account the hours and staffing requirements of businesses that are not open on weekends and holidays. It also does not provide any flexibility for businesses that may be experiencing busy business volumes or businesses that may be experiencing business disruptions.
- **Section 1073(b)**: This subsection reiterates that "any dissatisfaction" (whether reasonable or not, whether the result of consumer wrongdoing or not) shall be treated like a complaint. This requirement is unreasonably burdensome, lacks definition and is arbitrary. See comments above.

- **Section 1074(c)**: This subsection requires covered persons to respond to inquiries within 15 days in the same format in which it was submitted. The timeframe for these responses are arbitrary and overly burdensome. Moreover, the requirement to respond to an inquiry in the same fashion as it is submitted ignores the real difficulties of contacting consumers, and prescriptive state and federal laws governing limitations on the manner and frequency in which consumer communications can be made.
- **Section 1074(d)**: This subsection requires a covered person to track the number of inquiries received for the enumerated categories, included questions regarding the "cost of the product or service ... other than fees and surcharges", "specific questions regarding fees and surcharges", "specific questions regarding how the inquirer may use the product or service, other than how to access funds, questions about how funds may be accessed, specific questions about how the inquirer may obtain or qualify for a product or service and "any other categories for which the covered person receives at least twenty-five (25) inquiries from different inquirers" in a calendar year. As stated above, these requirements will grind operations for covered persons to a halt. In any given hour, a covered person could receive thousands of questions from consumers that would qualify as "inquiries." Most of these questions are presented in-person, over the phone, or in web comments and are answered efficiently and effectively by front-line employees, or customer service employees. The Proposed Rule would require covered persons to track and retain an overwhelming amount of data about benign, every day questions that are not the "stuff" of a tracking system and for which Department has no reason to track.
- **Sections 1074(f)**: The requirement to submit an "annual report" of inquiries suffers from the same arbitrary, overbroad and business stifling flaws as set forth above.

4. **Additional Comments Regarding Processes and Procedures for Responses to the Department.**
    - All of the timeframes in the Proposed Rule are unreasonably short and fail to provide any flexibility that would account for unusual or difficult investigation circumstances, business disruptions or business volume. See comments above.

5. **Conclusion**

The Proposed Rule is seriously flawed and requires the collection and reporting of data that is not aimed at identifying and correcting true acts, practices or policies that could lead to consumer harm (i.e. something happened that should not have happened and that resulted in some harm or potential harm to a consumer). The Proposed Rule is overboard with respect to "inquiries" imposing data collection, tracking and reporting that will quite simply involve massive, everyday information for which no "issue" exists – they are simple questions that are efficiently and effectively answered day-in, day-out and both life and business moves on. There is no state or federal law that requires regulated entities to comply with similar requirements for either "complaints" or "inquires" and for good reason - the Proposed Rule is extreme, would result in huge compliance costs and, in many instances, impose unworkable requirements on businesses. Even the requirements that may serve a regulatory purpose are unreasonable in their very short response times, their onerous reporting frequency, their record retention durations, their ill-defined terms, and the unintended consequences that they will bring about. All of these things are detrimental to covered persons and serve little to no consumer or regulatory benefit – particularly given the fact that companies like

Moneytree are well regulated, generate very few legitimate complaints, and already maintain effective complaint systems.

Moneytree respectfully urges the Department to withdraw the Proposed Rule and to adopt rules that are reasonable and in-line with longstanding complaint expectations that are already clearly defined by the CFPB.

Sincerely,

[redacted]

Robin Bassford
Compliance Officer
Moneytree, Inc.