

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA
a municipal corporation
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001,

PLAINTIFF,

v.

OPPORTUNITY FINANCIAL, LLC
130 E. Randolph Street, Suite 3400
Chicago, IL 60601,

DEFENDANT.

Case No.:

Judge:

JURY TRIAL DEMANDED

**COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT**

Opportunity Financial, LLC (“OppFi”) is a financial technology company that markets and provides predatory, high-interest, short-term loans to individual consumers. One such loan product offered by OppFi is OppLoans. OppFi entices consumers to apply for an OppLoan through deceptive marketing that promises fast and easy cash. It misrepresents the benefits of the loans and fails to disclose important details about the loans’ cost and risk to consumers. Despite advertising OppLoans as consumer-friendly products, OppFi’s loans saddle consumers with exorbitant and unfair interest rates of up to 198% that far exceed the permissible interest allowed in the District. Indeed, OppFi knows that many consumers cannot afford its loans—up to a third of OppLoans consumers will default—and that its loans are not appropriate for consumers seeking a lending product for general everyday purposes. Yet it fails to clearly disclose these important facts to consumers. And despite providing thousands of loans in the District of Columbia, OppFi has failed to obtain a money lender license as required by District law.

OppFi's deceptive and unfair conduct violates the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901, *et seq.* At this time of heightened vulnerability for low-income consumers, the District brings this case to permanently enjoin OppFi from engaging in activities that violate the CPPA; to obtain restitution for District consumers and civil penalties as permitted by statute; and to recover the District's fees and costs. In support of its claims, the District states as follows:

JURISDICTION AND PARTIES

1. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921 and 28-3909.
2. This Court has personal jurisdiction over Defendant OppFi pursuant to D.C. Code § 13-423(a). OppFi has offered, provided, serviced, and advertised loans to District residents. OppFi operates through several websites, including opploans.com, to offer, sell, and supply loans to District residents.
3. Plaintiff District of Columbia ("District"), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's consumer protection laws, including the CPPA, pursuant to D.C. Code § 28-3909.
4. Defendant OppFi is a Delaware Limited Liability Corporation, headquartered in Chicago, Illinois.

FACTUAL ALLEGATIONS

I. OppFi's Lending Business and Structure

5. In 2012, OppFi started its business as a storefront lender, but in 2013 moved its business online with a focus on nonprime consumers.

6. Around 2017, OppFi decided to expand its business model and launch a bank-sponsored installment product. The purpose of the expansion was to reach consumers in states where it was not able to operate as a state licensed lender. In its discussions with banks, OppFi proposed a model where loans would be provided based upon an underwriting model developed by OppFi and using OppFi as the servicer for the loans.

7. In 2018, OppFi entered into a partnership with FinWise Bank ("FinWise"), a Utah-chartered bank, and started offering, providing, servicing, and advertising online loans to District residents. The loans that Defendant OppFi provides through its partnership with FinWise are called "OppLoans." Since 2018, OppFi has provided loans to over four thousand consumers in the District in amounts that typically range between \$500 and \$4000.

8. OppFi is the true lender of OppLoans. OppFi has the predominant economic interest in OppLoans, bears the risk of poor loan performance, and funds the expenses for the provision of the loans.

9. OppFi conducts its OppLoans lending business through a group of wholly owned subsidiaries. One set of subsidiaries are "special purpose vehicles," or shell companies, created by OppFi to make daily purchases of nearly all of the receivables of the loans it provides in conjunction with FinWise. Receivables are the amounts due on a loan including the repayment of interest and principal. OppFi's shell companies purchase the receivables shortly after the loan is originated in partnership with the bank.

10. OppFi also takes the risk of poorly performing OppLoans. Its accounting statements include provisions for losses on the loans (the receivables), costs related to its funding of the purchases of the receivables, and the costs of loan origination.

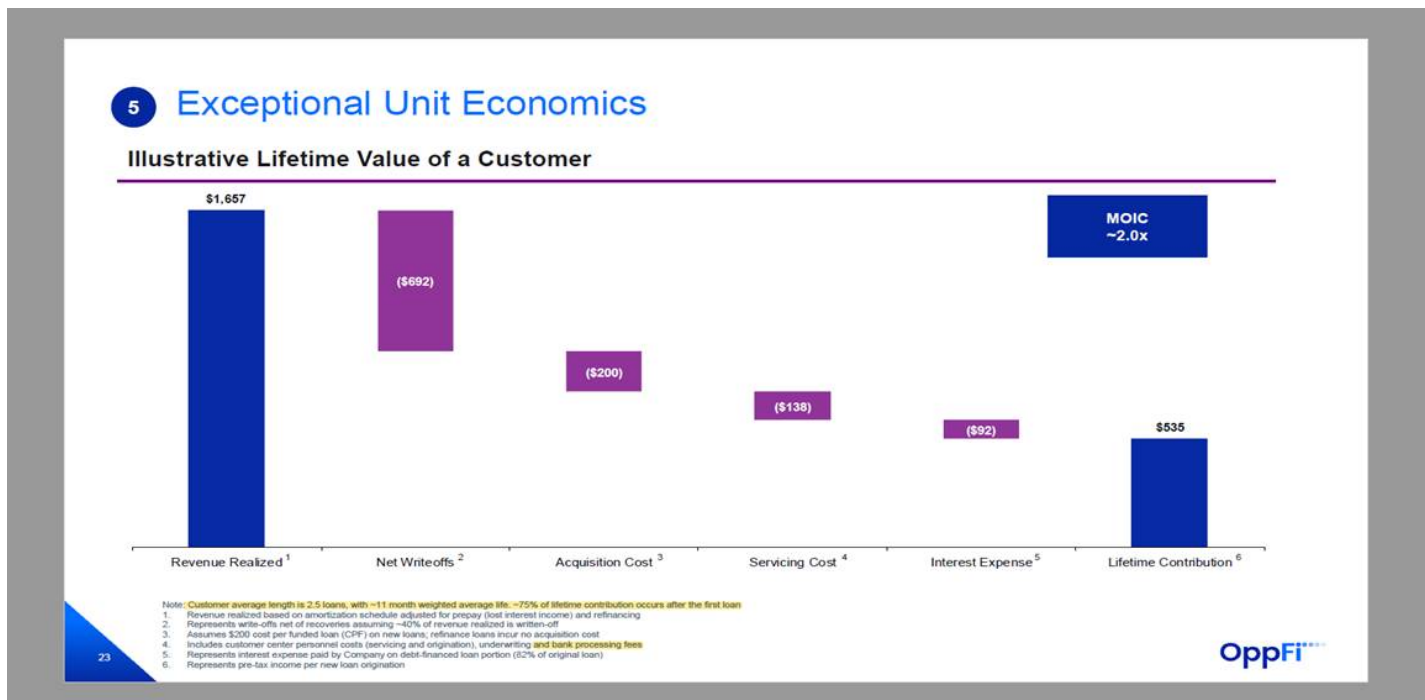
11. By comparison, FinWise's risk and reward in conjunction with these loans is minimal. Both FinWise's fees and its expenses are capped under its agreements with OppFi. OppFi's assumption of the risk and purchase of the receivables is guaranteed through their agreements with FinWise, including the cash required to be held in blocked accounts by the shell companies that OppFi controls.

12. OppFi provides FinWise with three additional layers of security to guarantee OppFi's purchase of the loan receivables: a cash collateral account, an alternate collateral account (both with defined minimum balances), and letters of credit for the benefit of FinWise.

13. In a February 2021 presentation to investors,¹ OppFi confirmed it has the predominant economic interest in each loan. As OppFi admitted in the presentation, excerpted below, for each customer that provides \$1,657 in revenue, OppFi realizes all \$535 in profits generated by the loan. FinWise, on the other hand, realizes only a portion of the total \$138 in servicing costs generated on that loan. The remainder of the revenue goes towards write-offs,

¹ Available at <https://www.opploans.com/wp-content/uploads/2021/01/Investor-Presentation-02.10.2021-final.pdf> (highlighting added) (last checked March 29, 2021).

acquisition costs, and interest expenses on the debt that OppFi incurs to finance its lending.



14. In 2019, OppFi’s revenues from its lending activities totaled \$268,000,000.

II. OppFi’s Marketing, Servicing, and Origination Activities

15. OppFi also conducts and pays for all the marketing of OppLoans, which costs the company tens of millions of dollars each year.

16. OppFi utilizes a variety of methods to find potential borrowers, including prescreened direct mail, e-mails directed at District residents, search engine optimization, online lead generators, social media, and multimedia. OppFi also targets consumers through other digital channels, as well as through its website, opploans.com.

17. OppFi creates the marketing materials and product offerings to promote OppLoans, which is an OppFi trademarked product. Both the program guidelines used to operate the OppLoans program and the advertising materials that OppFi uses to promote OppLoans are the intellectual property of OppFi.

18. OppFi (through one of its subsidiaries) is also the servicer for OppLoans. It has the exclusive license to use customer information and the right to contact and communicate with borrowers about potential loans.

19. Consumers who wish to obtain an OppLoan must go to opploans.com. Consumers attempting to obtain an OppLoan directly from FinWise through FinWise's website, finwisebank.com, are redirected to OppFi's website for the loan.

20. OppFi's duties as a servicer include processing the loan applications, maintaining the originals or copies of all loan documents, identifying eligible applicants and the amounts of the loans, and establishing the account into which the proceeds from the loans are deposited.

21. OppFi executes all notices to consumers concerning the legal status of the loans and has the authority to grant loan modifications to borrowers.

22. Potential OppLoans borrowers are screened based upon lending criteria developed by OppFi. OppFi has a proprietary scorecard that it has developed over time to identify qualified borrowers as well as the amount that the borrower should receive. OppFi and FinWise utilize these analytics, software, and underwriting models for the provision of OppLoans.

23. The overwhelming majority of the lending decisions for OppLoans are automated using OppFi's proprietary credit-decisioning algorithms, with the application and approval process taking only around five minutes.

24. OppFi spends millions of dollars each year to support its national provision of loans, including for advertisements, loan origination, collection, and technology costs.

III. OppFi Deceptively Marketed Its Loans to District Consumers

25. OppFi has deceptively marketed its OppLoans including, among other ways, by (i) misrepresenting the benefits of the loans, including by stating that OppLoans are more

affordable than payday loans and by stating that its credit reporting will help consumers build a positive credit history; and (ii) failing to clearly disclose material facts concerning OppLoans, including that it should only be used in emergencies and that refinancing will result in increased costs.

A. OppFi's Misrepresentations Concerning OppLoans

26. OppFi repeatedly misrepresents and overstates the benefits of OppLoans in order to entice consumers to take out loans from OppFi.

27. For example, on its website, and in its emails to consumers, OppFi advertises its loans as superior to payday loans because they are “faster, more affordable and more personal than payday loans.” It describes OppLoans as better than “predatory” payday loans: “[t]he bottom line: Installment loans are safer, higher-dollar and longer term than predatory payday loans which are simply traps designed to prey on the financially vulnerable.”

28. Payday loans are illegal in the District, and thus OppFi's comparison of its products to such illegal loans is misleading. More fundamentally, however, a consumer borrowing from OppFi will pay significantly more to repay a loan from OppFi than a loan from a payday lender.

29. For example, a typical payday lender charges a fee of \$15 per \$100 borrowed. For a payday loan of \$1000, the fee would therefore be \$150.

30. Yet, if an OppFi customer borrows that same \$1000, at an APR of 160% and a payment term of 9 months (the common terms for an OppLoan), that consumer would pay back \$734.63 above the principal amount borrowed for a total of \$1,734.63. This amounts to almost five times the \$150 that the payday borrower would pay above the principal amount on a \$1000 loan.

31. On its website, OppFi directs consumers to focus on the APR, rather than the overall costs of the loan. “Payday loans may not seem so expensive at first glance, but the APR tells another story.” But this comparison is inapposite and misleading. Even if in some circumstances the APR on a payday loan exceeds the APR offered on OppLoans, as explained above, consumers pay far more in interest for loans of the same amount offered by OppLoans.

32. In addition, OppFi advertises that taking out an OppLoan will help consumers build their credit histories. For example, on its website, OppFi states that it will “go above and beyond to make your personal loan experience easy and help you build your credit history.”

33. OppFi, however, knows that for a large portion of its consumers, these promises are false. Indeed, OppFi’s underwriting model anticipates that up to one third of their borrowers will fail to repay the loan and default. For these consumers, as well as other consumers who fall behind on their loans, OppFi reports negative information to the credit reporting agencies, damaging their credit history. In fact, OppFi reports negative information about consumer payments over three times more frequently than it reports positive information. Simply put, for the majority of consumers, OppLoan’s credit reporting hurts their credit history rather than helping it.

B. OppFi’s Omissions of Material Facts Concerning OppLoans

34. OppFi also fails to disclose material information concerning OppLoans to prospective borrowers.

35. For example, OppLoans are high-cost risky loans that are illegal in the District. Indeed, OppFi itself believes that its loans are not appropriate for general purposes and that they should only be used for emergencies. Nevertheless, OppLoans does not clearly or adequately disclose this important information to prospective borrowers. Although OppFi does include a statement that OppLoans are an expensive form of credit, this statement is at the bottom of its

webpage where consumers are not likely to see it, is buried within other statements, and is in a font size and color that makes it almost unreadable. Critically, however, nowhere in the application process does OppFi warn consumers that OppLoans should not be used for general purposes and only be used for emergencies.

36. In addition, OppFi fails to disclose material information when it reaches out to existing qualifying customers to invite them to refinance their loans. Customers are qualified to refinance OppLoans if they have paid the lesser of 15% of their principal balance or \$400.

37. These refinances provide limited funds to consumers because they only provide consumers with the amount of funds that they have already paid off. For instance, if a consumer's first loan was for \$1000, and the consumer paid off \$200 in principal, the consumer would receive only \$200 in the refinance, to bring the new principal balance back to \$1000.

38. Approximately half of OppFi customers refinance their loans, with the average customer refinancing more than two times. In its solicitations, OppFi presents refinancing as a simple way for consumers to get more money. For instance, one solicitation touts: "Refinancing might sound complicated but it's actually pretty simple. To 'refinance' just means applying for a second loan to pay the balance of your existing loan and provide you additional funds."

39. In its solicitations, OppFi fails to mention that refinancing a current loan is often more expensive than simply obtaining a second loan. For example, a consumer with an OppLoan for \$1200 at a 160% APR who refinanced her loan after paying \$258 in principal (receiving \$258 in cash through the refinance) would pay a total of \$1336.09 in interest as a result of the

refinance.² However, if that same consumer simply took out a second loan for \$258, she would pay \$1088.93 in combined interest on the two loans.³

40. OppFi pushes consumers to refinance because these loans are less expensive for OppFi (despite being more expensive for the consumer) since OppFi does not have to incur the marketing and acquisition costs for these existing customers. Indeed, 75% of the pre-tax income that OppFi makes from OppLoans consumers is the result of refinancing.

IV. OppFi Provided Illegal Loans to District Consumers

41. The District, like most states, has enacted limits on the legal interest rates for lending to prevent lenders from preying upon the District's most vulnerable residents. The District's interest rate cap for most loans in which the interest rate is expressed in the contract, is 24%. D.C. Code § 28–3301(a).

42. From at least July 2018 until May 2020, OppFi offered and advertised loans to District residents at interest rates of up to 198%.

43. The average OppLoan is a nine-month loan for \$1200 at a 160% APR.

44. Since 2018, OppFi has provided loans to over four thousand District consumers in amounts generally between \$500 and \$4000.

45. District consumers have paid or been charged millions of dollars in unlawful interest on the loans provided by OppFi.

46. Additionally, entities that offer loans in the District at any interest rate are required to obtain a money lending license. 16 DCMR § 201.1.

² After making six payments, the consumer would have paid \$440.15 in interest on the first loan of \$1200, and \$895.93 in interest on the second loan of \$1200, for a total of \$1336.09.

³ The consumer would pay \$455.78 in interest on the loan of \$1200, plus \$192.99 in interest on the loan of \$258, for a total of \$1088.93.

47. OppFi has never possessed a money lending license in the District of Columbia.

COUNT ONE
**(Misrepresentations and Omissions
in Violation of the Consumer Protection Procedures Act)**

48. The District re-alleges and incorporates by reference paragraphs 1 through 47.

The CPPA is a remedial statute that should be broadly construed. It establishes a right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

49. Consumers obtain loans from Defendant for personal, household, or family purposes and, therefore, these loans are consumer goods and services.

50. Defendant, in the ordinary course of business, offers to sell or supply consumer goods and services and is therefore a merchant.

51. In addition, Defendant is a merchant because it is connected with the supply-side of a consumer transaction.

52. Merchants who violate the CPPA may be subject to restitution, damages, civil penalties, temporary or permanent injunctions, the costs of the action, and reasonable attorneys' fees. D.C. Code § 28-3909.

53. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by:

a. "represent[ing] that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have," D.C. Code §28-3904(b);

b. "misrepresent[ing] as to a material fact which has a tendency to mislead," D.C. Code §28-3904(e);

- c. “fail[ing] to state a material fact if such failure tends to mislead,” D.C. Code §28-3904(f); and
- d. “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead,” D.C Code §28-3904(f-1).

54. Defendant’s representations, express and implied, that it is permitted to offer loans in the District of Columbia, when, in fact, Defendant does not possess the required money lender license allowing it to lawfully make loans to District residents, and may not in any case provide loans in excess of the interest cap provided by District law, are representations that Defendant has an approval, certification, or status that it does not have and are unlawful trade practices that violate the CPPA, D.C. Code § 28-3904(b).

55. Defendant’s representations, express and implied, including its representations that:

- a. its offer of loans is legal in the District of Columbia,
- b. that its loans are better for consumers than payday loans, and
- c. that using OppLoans will help improve consumers’ credit rating,

are misrepresentations of material facts that have the tendency to mislead consumers and are unlawful trade practices in violation of D.C. Code § 28-3904(e).

56. Defendant’s omissions, including its failure to disclose or to adequately disclose:

- a. that its loans contain an APR in excess of the District’s legal limit for interest,
- b. that its loans are high cost and should only be used in emergency situations, and
- c. that it is more expensive for a customer to refinance an existing loan than to take out a new loan,

are omissions of material facts that mislead consumers and are unlawful trade practices in violation of D.C. Code § 28-3904(f), or, alternatively, constitute ambiguities as to material facts that have the tendency to mislead consumers and are unlawful trade practices in violation of D.C. Code § 28-3904(f-1).

COUNT TWO
**(Unfair and Unconscionable Practices
in Violation of the Consumer Protection Procedures Act)**

57. The District re-alleges and incorporates by reference paragraphs 1 through 56.

58. The CPPA prohibits any person from engaging in unfair trade practices. The CPPA also prohibits any person from engaging in “unconscionable” practices where the seller takes advantage of the “inability of the consumer reasonably to protect his interests.” D.C. Code § 28-3904(r)(5).

59. Defendant has engaged in unfair and unconscionable practices affecting District consumers, in violation of D.C. Code § 28-3904 and § 28-3904(r), by knowingly offering, providing, servicing, and marketing predatory, high-cost loans to consumers in the District of Columbia, causing substantial harm to such consumers.

60. Defendant’s conduct, including inducing consumers with false and deceptive statements to enter into predatory, high-cost loans, constitutes unfair trade practices that violate D.C. Code § 28-3904 and unlawful trade practices that violate D.C. Code § 28-3904(r).

COUNT THREE
**(Violations of D.C. Code § 28–3301(a) in Violation of
the Consumer Protection Procedures Act)**

61. The District re-alleges and incorporates by reference paragraphs 1 through 60.

62. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating the District’s interest rate cap. D.C. Code § 28-3904(ff).

63. The District’s interest rate limit is 24% if the loan is provided by a licensed money lender and the interest rate is expressed in the contract, D.C. Code § 28–3301(a).

64. OppFi has offered loans in the District at APRs of up to 198%, although most of the loans that it provided to District consumers were at an APR of 160%.

65. OppFi is subject to the District’s interest rate laws and it has offered loans that violate the District’s law.

66. OppFi’s offer of loans in violation of the District’s interest rate laws are unlawful trade practices that violate D.C. Code § 28-3904(ff).

COUNT FOUR

(Violations of the DCMR as Violations of the Consumer Protection Procedures Act)

67. The District re-alleges and incorporates by reference paragraphs 1 through 66.

68. The CPPA prohibits any person from engaging in unfair and deceptive trade practices, including by violating “any provision of title 16 of the District of Columbia Municipal Regulations.” D.C. Code § 28-3904(dd).

69. OppFi has engaged in the business of loaning money in the District without obtaining a license as a money lender as required under 16 DCMR § 201.1 and 16 DCMR § 200.4.

70. OppFi’s violations of Title 16 of the District of Columbia Municipals Regulations are unlawful practices in violation of D.C. Code § 28-3904(dd).

PRAYER FOR RELIEF

WHEREFORE, the District of Columbia respectfully requests this Court enter a judgment in its favor and grant relief against Defendants as follows:

a) Permanently enjoin Defendant’s violations of the District of Columbia Consumer Protection Procedures Act, D.C. Code § 28–3901, *et seq.*;

- b) Order Defendant to pay restitution and damages pursuant to D.C. Code §§ 28-3909(a) and (b); and § 26-905;
- c) Order that the loans marketed, offered, and sold by Defendants were unconscionable at the time they were made, or to have been induced by unconscionable conduct, and are therefore unenforceable and void, pursuant to D.C. Code §§ 28-3909 and 28-3812(g)(1);
- d) Order that the loans marketed, offered, and sold by Defendants in violation of 16 DCMR § 201.1 are unenforceable and void;
- e) Order the payment of civil penalties as permitted by statute pursuant to D.C. Code § 28-3909(b);
- f) Award the District the costs of this action and reasonable attorney's fees pursuant to § 28-3909(b); and
- g) Grant such further relief as the Court deems just and proper.

Jury Demand

The District of Columbia demands a trial by jury by the maximum number of jurors permitted by law.

Dated: April 5, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

s/
BENJAMIN WISEMAN (#1005442)
Director, Office of Consumer Protection

