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RICHARD GUMBRECHT,
SECURED FINANCE NETWORK

June 25, 2020

Via E-Mail:

The Honorable Rebecca Bauer-Kahan
Room 2130
Statew Capitol
Sacramento, CA 95814

Re: Request for Amendment to CA AB-2559

Dear Assemblywoman Bauer-Kahan:

The Secured Finance Network (formerly known as the Commercial Finance Association) (“SFNet”) is the international trade organization founded in 1944 representing the asset-based lending, factoring, trade and supply chain finance industries, with 1,000 member organizations throughout the State of California, the U.S., Canada and around the world. Our member organizations provide crucial capital to California businesses which is essential to the State’s economy. While we applaud your efforts, particularly in these challenging times to protect small businesses through additional enforcement measures to the California Financing Law (CFL), AB-2559 as approved by the Assembly and now pending consideration before the California State Senate would create unintended consequences that could restrict lending in the State of California.

As you are aware, under the current California Finance Law (“CFL”), the Commissioner of Business Oversight acting through the Department of Business Oversight (“DBO”) can enforce the CFL by, among other things, issuing a fine or citation to any lender subject to the CFL which is found to be violating the CFL. If a fine or citation is levied, it is collected for the benefit of the State of California. AB-2559 expands the DBO’s enforcement powers by allowing the DBO to seek ancillary relief in the form of refunds, restitution, disgorgement or damages paid by the lender subject to the CFL which is found to be violating the CFL. Such ancillary relief is in addition to any fee or citation levied by the DBO and collected for the benefit of the State and is to be paid directly to the aggrieved borrower.

SFNet's concern specifically, is the potential the statute creates for the active plaintiff's bar in California seeing this measure as a lucrative opportunity to get involved with representing the DBO to seek recovery from lenders operating in California. This presents material risk relative to our member companies, who despite acting in good faith, are found to be in violation of the CFL with regard to disclosures or other matters.

Our suggested solution would be to modify the language in Section 22707.5 of the Financial Code, relating to financial institutions to add to clause (b) as follows:

(b) Notwithstanding subdivision (a), **(1)** nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies and **(2) nothing in this Division 9 or Division 9.5 or any rule or regulation thereunder shall be the basis of the commissioner or their designee issuing a citation or claim for ancillary relief due to a violation of Division 9.5 by a licensee or any other person if such person provided estimates of financial disclosures required under Division 9.5 in good faith and otherwise made good faith efforts to comply with Division 9.5,**

This would allow lenders acting in good faith to be fully compliant with the letter and spirit of AB-2559 without exposing them to unintended risks. The effect of not making this recommended change could impact three categories of individuals and business in California: (1) small business that operate within California, (2) finance companies and lenders that provide loans to such business and (3) individuals and organizations that provide services to such small business and/or lenders.

1. Impact on businesses. In the event the Regulations take effect without the changes requested, Asset-Based Lenders and Factors providing loans in the State of California will need to determine whether the risks of unwarranted fines and defending unwarranted litigation outweigh the benefits of lending to businesses in the State. As many of the lenders and factors providing financing to California businesses are small businesses they may make the decision (based on discussions we have had with our members) to no longer work with businesses in California given the risks. This will result in credit becoming less available to business at a critical time in our economy, and may in fact drive vulnerable companies out of business as credit may not be readily available to them from larger banks and lending institutions.
2. Impact on Asset-Based Lenders and Factors. As stated above, if lenders and factors determine that it is in their best interest not to lend to small businesses in California, they will down-size employees and staff within the state and even close offices within the state. In one instance, we have heard from a member that it may shut down operations completely as it mainly does business in California and as a small business, it will not be able to absorb unwarranted fines and litigation costs.
3. Impact on Third Parties. All third parties that provide products and services to affected businesses as well as the lenders and factors will be impacted to the extent the lenders and factors are adversely impacted. This can result in a loss of jobs in the State.

According to SFNet research, California has approximately \$3.8 billion in committed loans deployed by non-banks with approximately \$2 billion in outstandings. In addition, according to a 2018 California DBO Report there is an additional \$7.8B in annual factoring utilized by over 1,000 California firms. A material amount of this capital could be pulled out of the market with associated impacts on job loss if these lenders decide it is too risky to lend into California.

Thank you for your consideration of our important request. Perhaps during the current Legislative summer recess we could schedule a conference call with you and appropriate staff to discuss our suggested amendment and the potential negative impact of this law on borrowers and lenders.

Respectfully,



Richard D. Gumbrecht

Chief Executive Officer

Secured Finance Network

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