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## CA ENACTS SMALL BUSINESS COMMERCIAL FINANCING TRANSACTIONS FEE RESTRICTIONS

On October 13, 2024 the California Governor signed A.B. 666, a bill prohibiting a broker or provider of commercial financing from charging certain fees in connection with a commercial financing transaction with a small business or small business owner. The prohibited fees are as follows:

- (1) A fee for accepting or processing a payment required by the terms of the commercial financing contract as an ACH transfer debit;
- (2) A fee for providing a small business with documentation as to the amount due to satisfy the remaining amount owed;
- (3) A fee in addition to an origination fee that does not have a clear corresponding service provided for the fee;
- (4) A fee for monitoring the small business's collateral, unless the underlying commercial financing transaction is delinquent for more than 60 days; and
- (5) A fee for filing or terminating a lien filed in accordance with the UCC against the business's assets that exceed 150% of the cost of the filing or termination.

The new law adopts the same broad definition of "commercial financing" included in the Commercial Financing Disclosures statute (covers accounts receivable purchase transactions, including factoring, asset-based lending transactions, commercial loans, commercial open-end credit plans, or lease financing transactions intended for use primarily for other than personal, family or household purposes).

The new law contains certain exceptions from the fee prohibitions, including an exception for a commercial financing transaction secured by real property and commercial financing provided by deposit institutions.

Under the new law, "small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees and average annual gross receipts of \$15,000,000 or less over the previous three years. The

new law uses some of the definition in the existing California Financing Law.

In the event of a violation, the small business is entitled to specified relief under the new law, including actual damages, statutory damages and attorneys' fees and costs, making it essential that brokers and creditors ensure that fees charged do not fall within a prohibited fees category.

The bill becomes effective January 1, 2024 and adds to the existing complexity of commercial financing in California. We regularly advise clients on commercial financing matters in California and other states. Please contact us for assistance.

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