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November 18, 2021

Submitted by Electronic Mail to: regulations@dfpi.ca.gov, [REDACTED]@dfpi.ca.gov,
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California Department of Business Oversight to the Department of Financial Protection and
Innovation (DFPI)
Attn: Charles Carriere, Senior Counsel
One Sansome Street
Suite 600
Sacramento, CA 94104-448

Re: PRO 01/18 (SB 1235) – Fourth Modifications to Commercial Financing Disclosure
Regulations

Dear Messrs. Carriere and Mattson,

Rewards Network Establishment Services Inc. (“Rewards Network”) would like to thank the California Department of Financial Protection and Innovation (“DFPI”) for another opportunity to provide input on the above proposed regulations (“Regulations”). While Rewards Network, along with many industry groups and leading providers of small business financing options, has previously provided multiple comments on a broad range of issues, we are happy to remain part of this important ongoing discussion. As the DFPI works towards final rules, there are still many unresolved questions and concerns, and, as such, we respectfully request that you read this comment letter in conjunction with those supplied by our industry peers.

I. OUR COMPANY

Rewards Network provides working capital to local restaurants located throughout California and the United States and has been a vital source of funding for local restaurants for over three decades. Our financing product is a merchant cash advance (“MCAs”); MCAs allow small independent restaurants to sell their future credit card receivables in exchange for immediate

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(and, often, much-needed) working capital. MCAs are a purchase and true-sale of card receivables rather than a loan. The card receivables Rewards Network purchases are generated in the normal course of business and only delivered to us whenever there has been a qualified credit card transaction in accordance with our Receivables Purchase and Marketing Agreement. To be clear, we do not offer an MCA product that includes a true-up mechanism or a fixed payment amount (each payment truly varies based on the speed at which the merchant generates receivables).

Frankly speaking, perhaps at no other time in our history as a company has the value of an MCA been more apparent to our customers, and an MCA product more easily discernable from a loan product, than during the Covid-19 pandemic. Restaurants that were forced to close – either temporarily or permanently – saw a cessation of the delivery of purchased receivables to Rewards Network (as none were generated in the normal course of business). For our restaurant partners, many of whom are “unbankable” and have few alternative sources of funding, our flexible financing product has brought, and continues to bring, peace of mind during extraordinarily difficult times.

II. COMMENTS

A. CONFUSION IN THE MARKET

The proposed Regulations will require the disclosure of an average monthly cost for non-monthly payment financing products. This average monthly cost disclosure will take the form of an estimated APR disclosure, even though the true-sale nature of an MCA fundamentally prohibits set monthly payments and the accrual and payment of interest. We strongly believe that requiring MCA providers to provide an estimated APR disclosure will create widespread confusion and frustration in the market that will undermine the credibility and the effective rollout of the SB 1235 Regulations.

Rewards Network occupies a unique position in this dialogue, and we urge the DFPI to rethink the application of SB 1235 as it relates to requiring non-loan products to disclose a fictitious

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average monthly cost. Every day, I speak within my organization about the importance of accurately describing our MCA product (and avoiding the language of a loan). In the last 15 years, we have gone to great lengths as an organization to develop effective training methodologies to train our staff, we have continuously updated our agreements, and we have stayed current through our industry relationships on best practices in the MCA space. I fear that introducing an estimated APR, or a fictitious average monthly cost, will be diametrically opposed to the work we do to avoid confusion between MCAs and loans and the penalties associated with mischaracterization claims.

As a strong ally and supporter of small businesses, it is important to view these Regulations and their impact through the lens of the average small business owner: for Rewards Network, local restaurateurs. Our sales professionals will first be asked to explain how an MCA does not have an interest rate, it does not have set payments, and credit card receivables are only remitted as they are generated in the normal course of business, and then, to the confusion of the restaurateurs, our sales professionals will be asked to provide a state disclosure that has a monthly cost and an estimated APR. How is a small business owner to understand this situation? Will any California restaurateur be aided in making an informed financing decision, or instead, will California restaurateurs be left with a misconception of what an MCA is, how it is different than a loan, and the circumstances in which an MCA product would be a better or worse fit for their needs?

Respectfully, we fully support the rights of California business owners to make informed decisions about what is right for their business. We do not believe, however, that the application of the Regulations as drafted will increase the level of understanding in the marketplace about MCA products. Instead, we respectfully submit that the application of the Regulations as written will cause confusion and lead to less informed and less strategic business decisions.

B. IMPACT ON RESTAURANT INDUSTRY/CALIFORNIA BUSINESSES

Rewards Network has been a strong ally and partner to the restaurant industry for 37 years, especially smaller, independent establishments. Many of our restaurant partners can aptly be

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described as “local institutions,” each an essential part of the fabric of their respective community. These businesses rely on flexible financing options, such as MCAs, to both survive during lean times and to plan for when they will next thrive. Many of the restaurants we work and partner with are considered “unbankable” by traditional institutions that offer traditional financing products (e.g., loan products or other monthly payment products). Candidly, many of our restaurant clients suffer from a lack of realistic funding options, and Rewards Network and our industry peers are an essential part of the ecosystem that allows community institutions to thrive and supports the next generation of bankable talent as they develop.

The application of the Regulations to MCA providers in their current form will have a chilling effect on the ability of Rewards Network and our industry peers to play our part in this crucial ecosystem. As a corporate officer at Rewards Network, I worry about our ability to compete on fair terms in California. As a lover of local restaurants, many of which are unbankable, I worry that the confusion and barrier to entry the Regulations will create will only harm California-based restaurants, who will have fewer funding options than their counterparts in other states.

C. CONFUSION WITH HOW TO COMPLY WITH REGULATIONS

Putting aside the significant concerns we, along with our industry peers, have that the Regulations as written will result in small businesses (i.e., California-based restaurants) having both a diminished ability to make optimal business decisions and less funding options vis a vis their counterparts in other states, we would ask that the DFPI clarify a key mechanism in the “disclosure process” under the Regulations. Specifically, we understand that MCA providers will be required to make the necessary disclosures “*at the time of extending a specific commercial financing offer*” under Section 22802 of the California Financial Code; the Regulations instruct that this means when “*a specific commercial financing offer is quoted to a recipient.*” What is not clear, however, is what it functionally means to make a quote to a recipient (e.g., Is an informal email communication that contains a specific, yet non-binding, financing amount considered a quote for purposes of the

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Regulations? Or do the Regulations require a communication (i.e., transmission of a contract for signature) that can bind either party? Etc.).

Respectfully, we request that the DFPI update the Regulations for greater clarity, ensuring that those providers impacted know best how to comply.

III. CONCLUSION

Thank you once again for considering our comments. We recognize that Rewards Network is still a relatively new voice to this discussion, but we would like to express to you our steadfast commitment to working with you to implement regulations that provide value to small businesses in general, and local restaurants in our particular case. We would be happy to discuss these matters in person or by telephone. You may reach me at [REDACTED]

Very truly yours,

DocuSigned by:
[REDACTED]
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Robert Kauffman
VP, General Counsel & Secretary