

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JASON CARR, VICKI LEMASTER,
EDWARD FORD SERVICES LLC,
CARLTON MORGAN, 365 SUN LLC,
and CANDICE WORTHY, *individually
and on behalf of others similarly
situated,*

Plaintiffs,

v.

KABBAGE, INC., d/b/a KSERVICING,

Defendant.

CIVIL ACTION
NO. 1:22-cv-01249-VMC

**DEFENDANT KABBAGE, INC., d/b/a KSERVICING’S
MOTION TO DISMISS AND REQUEST FOR ORAL ARGUMENT**

Defendant Kabbage, Inc., d/b/a KServicing (“KServicing”), hereby files this Motion to Dismiss Plaintiffs Jason Carr, Vicki LeMaster, Edward Ford Services, LLC, Carlton Morgan, 365 Sun LLC, and Candice Worthy’s (collectively “Plaintiffs”) Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

In support of its Motion, KServicing shows that Plaintiffs’ claims should be dismissed in their entirety for failure to state a claim because all of the claims arise out of and seek enforcement of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (“CARES Act”), which does not provide for a private right of

action. Additionally, according to Plaintiffs, the Terms of Service agreement governs this dispute. Accordingly, disputes relating to Plaintiffs' PPP loans are governed by Georgia law pursuant to the Terms of Service agreement and Georgia law, mandating dismissal of all claims arising under California, North Carolina, Michigan, and Florida statutes. Finally, all of the deceptive or unfair trade practices act claims (including those in Georgia) additionally fail as a matter of law.

Pursuant to Section III.m. of the Court's Standing Order, KServicing respectfully requests oral argument on its motion to dismiss and arguments set forth in its memorandum of law in support. KServicing's oral argument will focus on Plaintiffs' lack of standing to bring a claim based on purported violation of the CARES Act because as no private right of action exists, and Plaintiffs' failure to plead a cognizable claim. The newly enacted CARES Act, and associated SBA regulations, are rapidly evolving and KServicing respectfully submits that oral argument may aid the Court in gaining a more fulsome understanding of the issues raised in KServicing's motion, including the reasons for dismissal.

WHEREFORE, based on the foregoing, KServicing requests that this Court grant its request for oral argument, and grant its Motion and dismiss the Complaint in its entirety.

Dated: 31st day of May, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that on May 31, 2022, I have caused the foregoing **MOTION TO DISMISS** to be filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record. I also certify that the foregoing was prepared in accordance with N.D. Ga. L.R. 5.1, using Times New Roman font, 14 point.

DENTONS US LLP
/s/ Uchenna Ekuma- Nkama
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