UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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| IN RE: | . | Chapter 11 |
| | . | Case No. 22-10951 (CTG) |
| KABBAGE, INC., d/b/a | . | (Jointly Administered) |
| KSERVICING, | . | |
| | . | Courtroom No. 7 |
| | . | 824 Market Street |
| Debtors. | . | Wilmington, Delaware 19801 |
| | . | |
| | . | Thursday, October 6, 2022 |
| . . . . . . . . . . . . . . . | . | 9:30 a.m. |

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

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EXHIBITS

(Proceedings commenced at 9:30 a.m.)

THE COURT: Good morning, all. This is Judge Goldblatt and we are on the record in, In re Kabbage, Inc., which is Case Number 22-10951. We are proceeding this morning by way of Zoom. As a result, I ask, as I think you folks know, that I ask that folks leave your microphones muted unless you're addressing the Court. That when you do address the Court, that you introduce yourself for the record each time. And, finally, that folks generally leave your cameras off, unless you're, either, addressing the Court or wish to be recognized, mostly because I find the device of having you turn your camera on to be a helpful way to signal to me that you'd like to be recognized, in which case, I will then recognize you.

So, with that, why don't I pass the virtual podium to counsel for the debtor to take us through this morning's agenda. So, whoever's going to take the lead.

MR. DEFRANCESCHI: Good morning, Your Honor.

Although I won't be taking the lead, that'll be my friend and proposed co-counsel, Ray Schrock. I did want to say good morning. Thank you, Your Honor, for hearing us today, and essentially turn it over to Mr. Schrock.

THE COURT: Okay. Thank you, Mr. DeFranceschi.

Mr. Schrock?

MR. SCHROCK: Good morning, Your Honor.

Can you hear me okay?

THE COURT: I can, thank you. You can proceed.

MR. SCHROCK: Okay, great. Thank you.

First of all, it's a pleasure to be before you again and thank you for hearing us for this first day hearing. I'd like to thank the Court, of course, for working with us on scheduling this hearing, including for the bridge order on the cash management over the last day. That was extremely helpful. I would also like to thank the U.S. Trustee for working with us on the first day relief.

I think that the only open issue, subject to somebody correcting me later on, of course, is a new one for me, but just the creditor matrix and -- and kind of deciding how do we want to effectuate service, in light of the fact that this is an online service loan servicing platform.

And, also, I would be remiss if I didn't thank our constituents, a number of whom we've been working with prior to commencing these cases. I can't say that I'm sure this is a surprise -- the cases are a surprise to the key parties in this case. We've definitely been working with everyone, you know, in the days and weeks leading up to these cases.

Your Honor, I'd also like to introduce my colleagues. I have Candace Arthur. I believe she has her camera on. She's be working with me on this case. Natasha Hwangpo, who will be, you know, up here in a few minutes.

And also my litigation partner, Ted Tsekerides, who will be handling any witness work and is also leading the Amex investigation for us internally.

Your Honor, we did file an amended agenda at Docket 47. We filed a few affidavits of service yesterday at Docket 59. We filed the NOL affidavit of service just to make sure that that was out separately. And then just related to the first day hearing, we had, you know, the petitions and the original agenda at Docket 55 and then we filed an amended agenda, just that fifth -- or the notice of affidavit of service at 56, so that it was just to cover things off, just to tidy it up.

Your Honor, in terms of how we would like to proceed, I would like to, you know, go through a demonstrative that we filed at Docket 64 if that would be acceptable, just to give you and the parties in interest an overview of the case. I will try not to repeat a lot of the things that we put into the first day declaration, but I think it will be helpful to see and understand the structure of what we're attempting to do here.

And then I'll turn it over to my colleague Chase Bentley, who will be working through a few matters on the agenda and we'll kind of progress on from there, if that would be acceptable?

THE COURT: Unless there's someone who wants to be heard to the contrary, that's certainly acceptable from the Court's perspective. So, I'm happy to give you a chance to walk through the slides.

MR. SCHROCK: And then one other thing, Judge. I think that Ms. Schweitzer from -- who's representing the Federal Reserve, also, after I give my opening -- I should have -- should mention this, I think she wants to say a few words to the opening, as well. We've been working closely with the Federal Reserve.

THE COURT: Okay. Certainly. I think it makes sense, Mr. Schrock, to give you a chance to do your opening and then before we turn to the motions, if there's any other party in interest who wants to chime in at that point, give them such an opportunity, and then we can turn to the motions, unless someone wants to be heard otherwise.

If not, let me give you a chance to do your overview.

MR. SCHROCK: Okay, great. Thanks very much.

Your Honor, if I could ask for my colleague Chase Bentley to be able to screen share just for the parties, that would helpful.

THE COURT: Certainly. It looks like Mr. Bentley should now have that ability.

MR. SCHROCK: Okay. Great.

THE COURT: Mr. Schrock, just so folks are clear, the slides you're showing, if I have this right, were filed on the docket at D.I. 64; is that correct?

MR. SCHROCK: That is correct, Your Honor.

THE COURT: Okay.

MR. SCHROCK: Thank you.

Okay. Chase, go ahead and hit the next slide, please.

So, in terms of a roadmap, what I'd like to cover is just the basics around KServicing, who we are, make some introductions for you with the management team, as well, the circumstances leading up to these cases.

We do have a Chapter 11 plan that's on file and because of the -- frankly, just because of the liquidity and we want to have a tidy wind-down to the company, we wanted to make sure that we put that out there, and I'm happy to take you through it. It's a basic pot plan with a toggle feature, whether or not parties want to fund, and then a path forward, and then we'll take it from there.

So, if you could flip to the next slide, please, Chase.

So, Kabbage has been doing business as KServicing. You know, it was founded as an online serving and, you know, lending platform for small businesses. This company has been, effectively, in wind-down since selling substantially all of its assets to the leads of American Express in October of 2020. Now, about 99 percent of the company's outstanding loans or portfolios comprised of what we call the Paycheck Protection Program, the Triple P loan program, with the remaining 1 percent being non-PB loans, issued to small businesses, prior to the Amex transaction.

As Your Honor and probably everybody is all too aware, the U.S. small businesses, the SBA launched the Triple P program in April 2020 in connection with enactment of the CARES Act, which authorized hundreds of billions of dollars of government aid to small businesses reeling from the pandemic.

The SBA partnered with private lenders and servicers like Kabbage to process loans on a highly expedited timeline to get funding to small businesses, desperately in need of working capital. As we all probably remember during that time, in April of 2020, there's no other way to say it: It was a national emergency at that time. There was extreme pressure to get these loans out to people who needed them.

I certainly remember everything that we were hearing from government officials and, you know, Kabbage was really on the front lines of helping those small businesses make it through the pandemic and get back on their feet. The company ultimately became the second-largest Triple P lender by application filing and delivered more than 7 billion in Triple P loan funds to more than 300,000 small businesses.

And to date, we have successfully processed about 80 percent of the Triple P loan portfolio. I'm going to go through some details with you and we're really here to seek a wind-down of operations resolved for many claims and utilize the tools available in Chapter 11 to distribute the assets for a Chapter 11 plan.

Now, we've been working with the company for several months and, you know, when you're looking to winding down a company, as we were explaining to the board and management, it's just not as easy as turning off the lights, the last one out the door, and, you know, going through this. It's a, especially with the consumer-facing businesses like this, where we're still, you know, processing -- we're still servicing over 50,000 loans with a principal balance in excess of $1.3 billion, it is difficult and especially has been complicated by a number of the, you know, investigations and kind of what I'll call the looks by the federal government to ensure that the Triple P loan servicing portfolio has been, you know, serviced and administered to, according to rules and laws.

Next slide, please.

So, just an overview. I think this will be helpful as we kind of think about just the buckets of loans that are out there. The Triple P, LF loans, those are the loans that came through the paycheck protection loan program -- loan facility that was given by the actual Federal Reserve. So, those are the loans that, you know, we originated at KServicing, Kabbage. We actually went through and those loans are still owned by the Federal Reserve or, sorry, owned by KServicing, but there's a first priority security interest in those loans that has been granted to the Federal Reserve. So, they are our largest creditor. It's in excess -- the total loan balance is outstanding, still, is in excess of, you know, over $500 million. But those are the loans, the biggest batch of loans that are really on the balance sheet of Kabbage.

The other batch of loans that they can kind of think of, although not on our balance sheet, but are, you know, kind of more or less owned by Kabbage, are the legacy loans that are not on this page but it's about $17 million, 3400 loans, small loans. But those are really from our business, prior to the payroll protection program [sic] enactment. So, those are loans that, you know, were -- they're going to be running off, essentially, over the next several months.

But for me, at least, when you think about the loans that are on the balance sheet, it's those two big batches and then you have a very small batch, which is what's called the "KS PPP" down here. Those are just loans that we originated on our own. I actually think there's less than a hundred, I know we said, that are still outstanding and, you know, it's just a very small balance of a couple million dollars or, you know, between one and two million dollars that is really outstanding.

THE COURT: So, Mr. Schrock, just to make sure that I'm following --

MR. SCHROCK: Yes.

THE COURT: -- for the PPPLF loans where the Federal Reserve is the underlying supplier of liquidity, as far as the borrower is concerned, it's got a contractual agreement with Kabbage, which is its lender, essentially, so therefore those loans are on your balance sheet, and I guess the same is true for those two other smaller buckets that you described. So, there, the borrower has a contractual relationship, a lender/borrower relationship with Kabbage itself and, essentially, the underlying provider of capital is effectively behind the scenes, as far as the borrower is concerned?

MR. SCHROCK: That's correct.

THE COURT: Okay.

MR. SCHROCK: And then, you know, I would also say that even with respect to what I'm going to call, you know, the "partner bank loans," which were where we're just purely a servicer, which includes Customers Bank, which, you know, those of us who have been working on the matter for a while, "Cubby" is, you know, how people refer to them and they're represented by Holland & Knight and then you've got Cross River Bank, represented by Quinn Emanuel, those are -- it's just a purely servicing relationship that, you know, where those loans are owed by them, but we're still the customer-facing, you know, party that is dealing with the borrowers, ensuring that we're working through the forgiveness process. If they're not forgiven, making sure we're -- are.

THE COURT: Okay. There, it works the same way any other servicing relationship works, where the underlying obligation --

MR. SCHROCK: Right.

THE COURT: -- is at least in the first instance, due to the lender, subject to whatever contractual arrangements are made to manage the servicing?

MR. SCHROCK: Yes, that's correct, Your Honor.

THE COURT: Okay.

MR. SCHROCK: That's correct, yeah.

And so, when you think about these loans, and you'll learn a lot more about this as we move forward, you know, there's a couple of big buckets of debt that the Triple P program that went out. You had the April, you know, batch that went out when there's, you know, just an immense amount of loans that were originated and distributed. That's what we call "round one" and then there's round two. Round two was, you know, you may remember, came out in the December time frame of 2020, but actually, most of those loans are actually originated in December of, or say January of 2021.

And where all of the -- you know, the great majority of the issues with, you know, the SBA and all the parties, have been with the round one loans. It's not in all instances, but, you know, I'm trying to generalize so you understand at least from the parties' perspectives -- and they can certainly correct me, but I'm trying to be fair -- I think that's where people saw, you know, listen, there's a lot of -- that's been the toughest batch to process and where a lot of the efforts and the Government have been focused on.

The round two have been pretty clean. You know, lots of -- you know, and not surprisingly, right. We were a little bit farther into the pandemic. We had people, you know, we weren't in an emergency. We aren't working on, you know, when you just think about the conditions under which this company had to work in April 2020 trying to disburse these loans, it's almost hard to fathom. There was -- was so much pressure to get these loans out, get them out the same day. We have to get it in the hands of the people that need them. People were, you know, people were under an extreme amount of pressure and this meant everything.

Traditional banks, they just didn't have these relationships. You know, they didn't have the ability to, you know, process everything, you know, and with the KYC, you know, requirement, frankly, with, you know, U.S. Bank holding companies. There was a, you know -- and so companies like Kabbage, you know, really, like, bore the, you know, the lion's share of putting a lot of these loans out there.

And I'm not here to say that everything is perfect in the midst of a global pandemic when the world is shut down, that there can't ever be an error, but certainly, we -- this company has been solely focused on making sure they're doing their job and doing the right thing for these borrowers, doing the right things by the Government. They're trying to wind-down.

And it just, frankly, you know, it just became so much, you know, it's dealing with -- we're like a pinata almost here between all the various agencies.

THE COURT: So, Mr. Schrock, your papers are very good and very clear and I think you tell a compelling story that says, Look, in April of 2020, there was a national emergency. You know, people's ability to feed their children depended on this cash getting out the door and no one thought you should be overly persnickety about that at the time, because we were dealing with a time of crisis.

And you say that the current investigations you're dealing with are now essentially, you know, hindsight criticism. And I don't think any of the relief that you're asking me on the first day asks me to form a judgment on any of this, but I do understand that narrative and you tell it very compellingly in your papers.

MR. SCHROCK: Okay, thanks. I will move on. Thanks.

Let's go ahead and flip the slide, please, Chase.

Your Honor, I want to make sure I can make some introductions just to folks that are going to be, you know, here with you. Laquisha Milner is the CEO of Kabbage. I'm not sure if she has a camera up, but I wanted to make sure that you knew Ms. Milner. You know, she's really our captain, you know, pushing us through, you know, this on a day-to-day basis and making sure that we're doing everything we can.

You know, our general counsel is Holly Loiseau -- and I'm sorry, Holly -- by the way, you know, this -- we -- she's our general counsel and she's been instrumental, obviously, in pushing us through.

Sal Kafiti, also our deputy general counsel, has been extremely involved.

And then Deborah Rieger-Paganis is our first day declarant from AlixPartners, and she is available and able to answer any questions for the Court, and I will try and move her, the admission of her first day declaration at the conclusion of my presentation.

THE COURT: Okay. For now, I'd like to welcome everyone, virtually, to Wilmington.

MR. SCHROCK: Thanks, Your Honor. We're looking forward to seeing you in person.

The company's professionals are set forth there. The Federal Reserve Bank, as I noted, is represented by Cleary Gottlieb, Ms. Schweitzer. Customers Bank is represented by Holland & Knight. Cross River Bank, Quinn Emanuel, Mr. Kirpalani. And then I should also note for the company's professionals, Jones Day has been handling the DOJ civil investigation and Ms. Janelle Hall has been, you know, taking the laboring oar on that. But those are the key players that you're likely to hear from. There'll be others, I'm sure, but those are the key ones.

Let's keep going, please.

So, this -- I'm going to move through this relatively quickly, just especially in light of the comments that Your Honor made. But the circumstances leading these cases are set forth here and we'll try and talk just a little bit about this to give you a little bit more clarity, in particular, about the Amex transaction.

Next slide, please.

So, in October 2020, affiliates of Amex acquired all, you know, substantially all the company's assets, including the technology associated with the company's loan serving platform for approximately 750 million. We do have a transition services agreement with Amex. Yeah, we're still working together on that.

But, you know, notably, when you think about those two batches of loans that I mentioned, Your Honor, the round one and the round two, this transaction took place in between the round one and round two. So, you know, originally, I think the company was, you know, planning on looking at this and saying, Listen, we're going to wind-down. They heeded the Federal Government's call to go to round two and that's -- frankly, it's glad, you know, the company is fortunate that it did, because I think that it's really round two where, you know, we have a much higher processing rate that it was able to provide the company with additional liquidity for the wind-down. So, I think that certainly was a smart move, but this transaction happened in between those two things.

You know, there's an investigation and I think it's set forth there and, you know, we're working on that and we'll need to continue working with Amex on that. I believe that Sullivan & Cromwell, Mr. Bromley, is representing American Express, as well, Your Honor, and certainly, he's (indiscernible) and I looking forward to working with him.

Next slide, please.

You know, we've talked about in our pleadings, the lack of SBA guidance. I think I'm going to just note here that we believe we did everything that we were supposed to. We think this is revisionist history and, you know, I don't want to see this company in the midst of its final days to be used as a scapegoat, because that's not fair, it's not correct.

Let's keep going.

When I think about what happened here, why are we here in Chapter 11, as opposed to just trying to do this, you know, and make a final distribution to shareholders, the government investigations here have been an immense drain on the company's resources. There's no other way to put it. I think that there's a lot to that. There's been a lot of professional assistance that's been needed. It's kind of frozen the company in its ability to get more -- to get these loans, you know, processed.

And, you know, as a result, it caused friction with customers. On the Cubby receivable dispute, I think one important thing for you to know, Judge, is, one, we're working with Cubby. We're trying to get to a deal. We're still working with the Federal Reserve, you know, and I'm optimistic we're going to have a deal and then we're going to be talking more about a funded transaction, rather than unfunded.

But with the Cubby receivable dispute, you know, I think that we were paid, you know, and we got paid servicing fees in advance for a lot of our customers. We were paid for the servicing fee advance on round one.

Round two, we haven't been -- you know, other than what we set off prior to the commencement of these cases, we haven't been paid anything. And, you know, we're working on it, but, you know, notably, I think that Cubby is trying to set off for round two, you know, with a round two servicing fee for issues they see with round one. And so, that's one of the things that in the days and weeks ahead, we'll try to -- try and work through. And so, that's -- you know, but that's something that we -- it's a critical issue. All the parties are aware of it and I think that, you know, if we didn't commence these cases, we just didn't have the funneling mechanism to make sure that everybody understood the company's only got limited liquidity.

And I do want to note, Your Honor, that one thing that's been very clear from all of the customers, they want the company to continue to do its job. They want us to finish the job of continuing to service these loans. This is not a case where you need a, in our view, like an investment banker to go market the loan servicing platform.

These -- if you go talk to people about, Will you take on these loans, the first thing you're going to hear is, Well, how much are you going to pay me to do that?

It's not like there's a, you know, there's a real marketability to a Triple P loan servicing portfolio. But we're willing to work with people to transition. We're willing to work with people to continue to service those loans on a wind-down. But it's certainly -- we're willing to do it one way or the other.

And then the ST -- the congressional and FTC investigations have just been ongoing. You know, occasionally, we're getting subpoenas. We're getting -- we're being, you know, requested to do those things, as well. And then there's a class-action lawsuit that is now going to be subject to the stay and, you know, we hope to resolve just any claims that are resulting from that as part of these cases.

As I do mention in the first day declaration, Your Honor, all the management and board, they were put in place after the Amex transaction. So, I do want to note for everyone, this is just people trying to do the right thing here. A lot of the board meetings, without divulging confidences are, you know, Gee, we're really trying to do the right thing here. We weren't involved in this. We're trying to get these loans serviced. They're greatly concerned about running out of liquidity and not being able to service these borrowers. And I think for everyone's sake, the Government, you know, the partners, we all have to find a solution here, but we have to do it pretty quickly.

Next slide, please.

The additional issues, you know, causing liquidity constraints are listed here. I don't think I'm going to hit anything else here on these. I'll just note those. These are highlights from the first day declaration.

Keep going.

So, when we talk about a plan, we filed a plan because we want to maintain control of our own destiny to be able to wind-down this company, you know, quickly, but also, you know, for the benefit of all stakeholders and maximize value. So, we have a plan. You know, there's a disclosure statement and we're going to be pressing people to, you know, let's come to an agreement here rather quickly.

On the bottom is the unfunded transaction. So, if we don't reach any agreements with the Federal Reserve, if we can't reach agreements with Cubby, we don't have any choice, but to move to transition those loans to another servicer and move to distribute the company's assets, pursuant to the Bankruptcy Code's priority scheme.

I don't think that anybody really wants that, you know, but it is a forcing mechanism to try and make sure that everybody is focused that we have to reach these agreements quickly. We're very close to an agreement with the Federal Reserve. I think if we reach an agreement with Cubby, you know, that, you know, in some regard, even on an interim basis, saying, Here's the things we can agree on so that we have funding, and we'll resolve the other issues through either by mediating them or, you know, dealing with it in front of the Court, that we're really on the top line in terms of a funded transaction.

THE COURT: So, Mr. Schrock, as I read -- I just worked my way through the plan briefly and obviously saw the description in the first day declaration, it sounds like your -- the unfunded version is essentially the tantamount to your saying, Look, if we can't get to a deal, we're just going to throw the case back at you and best of luck.

Is that essentially what that looks like?

MR. SCHROCK: Essentially, Judge, yes. I mean, we have to, because we just wouldn't have -- we wouldn't have enough liquidity to continue servicing those loans. And we made very clear to our partners that that's not what we want. But when I just look at the cash available on the company's balance sheet, there's no other choice --

THE COURT: Okay.

MR. SCHROCK: -- and that's why the Board, you know, is, frankly, pressing and said, Listen, we have to get on with it and make sure that we do the right thing here by everyone.

You know, there's been a lot of discussion on the funded transaction to least making sure that the company can service loans through the end of March and whether or not it's going to make sense to transfer the loans, even in a funded transaction or have the company to do it, these are things I think we just, frankly, have to work through and we're willing to work with all of our parties on a consensual basis for issues related to that.

And, you know, I think that that's essentially what we're dealing with on the toggle plan between the unfunded and the funded transaction.

The remainder of the presentation just takes you through what is essentially a pot plan. I don't think that there's anything that's really controversial in that pot plan in terms of, you know, being able to toggle between an unfunded and funded. But, you know, depending on how negotiations go here over the next couple of weeks, we're going to be back in front of the Court, you know, requesting, here's the schedule that we really need to move this case forward expeditiously, and I'm hopeful that we can reach an agreement and that everyone can be reasonable and just realize that, you know, you've got a company and management team and board and professionals that want to do the right thing by everyone and get through this as quickly as possible.

It is a lot of whether or not there's going to be significant shortfalls and there's going to have to be, you know, additional funds contributed. It comes down to whether or not, you know, the SBA is going to honor a lot of these guarantees on these loans for the round one loans that have been flagged. I think that's why the customers are, you know, a little bit reserving rights and saying, Gee, you know, we can't be stuck on shorthand, that's why the Federal Reserve is doing there, and it's, you know, any time you're dealing with a complicated loan portfolio, you know, a government loan program it is -- but it is -- it's not lost on me that whether or not the SBA honors loans means everything to whether or not the Federal Reserve recovers on its loan portfolio.

So, this is the system we have and we're working within it, but it is complicated, despite the fact that it's, you know, in the final stages of the company's existence.

So, with that, Your Honor, I thank you for indulging me on this, but I really thought that, you know, kind of teasing some of these issues out would be helpful for you. And I don't -- I'm trying to be objective about it. I understand people are going to have different views, but hopefully (indiscernible) I've been fair about presenting the issues to you.

THE COURT: Okay. Thank you, Mr. Schrock.

I will say that I do find presentations of this kind to be very helpful and this was among them, particularly helpful, so I do appreciate that. But I also want to be fair to others who have a different perspective.

Again, no one should feel they need -- nothing -- none of this is with prejudice to anything, but to the extent there's someone who would like the opportunity to be heard, I'll give them that chance.

Ms. Schweitzer, I think you were first and then we'll go to Mr. Greecher and Mr. Kirpalani.

MR. GREECHER: Oh, Your Honor, if I could just -- Sean Greecher from Young Conaway -- we are co-counsel with Cleary Gottlieb for the Federal Reserve Bank and as Mr. Schrock said, Ms. Schweitzer would like to make some remarks.

We did file a pro hac motion. I don't believe that order's been entered, but we ask Your Honor's indulgence to allow us to uh --

THE COURT: Certainly. So, to the extent there are any *pro hacs*, and, yet, we'll address them when they come in, and no concerns there for today's purposes. So, thank you for that, Mr. Greecher.

And Ms. Schweitzer, you can proceed.

MS. SCHWEITZER: Thank you, Judge.

It's, for the record, Lisa Schweitzer from Cleary Gottlieb Steen & Hamilton, here on behalf of the Federal

Reserve Bank of San Francisco in this Chapter 11 case. And as Mr. Greecher noted, our co-counsel is the Young Conaway firm.

I recognize we don't need campaign speeches today. This is all for background. But given that the Federal Reserve Bank is, as Mr. Schrock noted, the largest creditor in the case, and their largest secured creditor, I thought it made sense just to walk you through a little bit of the history of the PPPLF, trying not to be redundant on things you've heard before. Lots of acronyms, so feel free to ask questions, but I just find to say it a couple times helps, at least, me, because there's a lot of different programs going on.

And so, just by way of background, as Mr. Schrock noted, the CARES Act is what established the I understand Paycheck Protection Program to provide loans that are fully guaranteed, in this case, by the Small Business Administration, or SBA, and they were provided to eligible small businesses and not-for-profits that were adversely impacted by the COVID-19 pandemic.

The Board of Governors at the Federal Reserve system and the U.S. Treasury established the Paycheck Protection Program liquidity facility, or what we call the "PPPLF," to bolster the effectiveness of the PPP by providing liquidity support for the PPP program by making loans to PPP lenders that are secured by PPP loans.

So, just for the sake of clarity, the PPPLF, which is a Federal Reserve facility, and the PPP, or the Paycheck Protection Program, are different programs. The rules and requirements regarding the PPP lending and servicing PPP loans are administered by the SBA, and under the PPPLF, the Federal Reserve Bank has provided term financing to PPP lenders. Supplying PPP lenders with additional liquidity helped increase their capacity to make PPP loans.

Kabbage, which is one of the debtors in this case are specifically from the Federal Reserve Bank of San Francisco. The PPPLF has not made new extensions of credit since July 2021, but in total, the PPPLF lent $208 billion across the country and today, only a total of only 14 billion remains outstanding. So, that has been a quite successful program.

Under the PPPLF, the Federal Reserve Banks, including the Federal Reserve Bank of San Francisco, would lend dollar-for-dollar against PPP loans that were originated by an institution authorized to make PPP loans, including non-depository institutions, such as Kabbage.

Kabbage participated in the PPPLF program through the execution of a letter of agreement and, which along with the Federal Reserve Bank's operating circular Number 10, governs their participation in that program.

The Federal Reserve Bank extended approximately $1.62 billion to Kabbage in financing advances that were secured by PPP loans owned by Kabbage and pledged to the Federal Reserve Bank, as well as the proceeds of those loans. These PPP loans, which include two-year loans and five-year loans, are guaranteed by the SBA under the PPP program, as Mr. Schrock noted, as long as they meet the eligibility requirements for those guarantees.

As of the petition date, the outstanding principal balance of the PPPLF advances to Kabbage is approximately $540 million. Prior to the filing of the cases, certain events of default occurred under the PPPLF agreements, to which Kabbage is a party. The defaults -- and I won't go into much detail here -- some of the issues that you see in the first day declaration, but the defaults related to payment maturity date, Kabbage's ability to continue servicing the loans, and insolvency, and other breaches of reps, warranties, and covenants.

The PPPLF does not require a notice of default to be served; however, on October 21st, 2022, as noted in the first day declaration, the Federal Reserve sent Kabbage a letter identifying these and other defaults, and the Reserve Bank's right to recourse against Kabbage in light of the defaults.

As a result of the defaults, the Reserve Bank is entitled to receive all the proceeds of the PPP loans pledged as collateral under the PPPLF and the advances are all due; however, prior total Chapter 11 filing, the Reserve Bank engaged in discussions with Kabbage regarding actions that can be taken to ensure orderly repayment of the PPPLF and the continued servicing of the PPP loans pledged to the Reserve Bank.

Of course, the Reserve Bank did not, and doesn't now, waive any rights or remedies under the PPPLF, and just for the benefit of today's hearing and expedition, I'll save Mr. Schrock from having to jump up. Everything I'm saying is our view and perspective. He reserves all rights. We're not having final hearings on it, but we think it's helpful for you to hear the facts as we (indiscernible) them.

And more recently, as Mr. Schrock has indicated, as well, the Reserve Bank has been engaged with Kabbage's advisors regarding the potential limited use of the Reserve Bank's cash collateral during the Chapter 11 case, again, to further an orderly repayment of the PPPLF and the PPP loans that constitute the collateral pledged to the Federal Reserve, with a goal of ensuring that the full amount of financing extended under the PPPLF (indiscernible) and there's no interruption in servicing of the underlying PPP loans.

The Reserve Bank is continuing to have discussions with Kabbage on these matters and we hope an agreement can be reached that allows for an orderly case and full repayment of the PPPLF. As Mr. Schrock noted, this (indiscernible) a consensual first day hearing. The Reserve Bank doesn't oppose the first day relief that's being sought by Kabbage or we'd note that Kabbage has accepted the Reserve Bank's comments to their motions and proposed orders, particularly the loan servicing and cash management motions and has confirmed that the proceeds of the PPP loans that were pledged to the Reserve Bank will be segregated, to the extent that they're paid directly to Kabbage, as the parties discuss the potential use of cash collateral.

Finally, as Mr. Schrock noted, the debtors have filed a proposed plan, what they call the "toggle plan" where either the loans stay with the company, serviced by the company, or on an unfunded plan, where it looks like they would turn over the loans and the collateral to either the Reserve Bank and turn over the other loans to the other parties.

We have only started reviewing the plan. This is for other days. It's not before the Court today. The Reserve Bank, obviously, reserves all of its rights. We hope we can all work towards a consensual plan, where the Reserve Bank will receive full repayment on its outstanding secured claims, although, obviously, these discussions are all ongoing with all the parties.

Unless Your Honor has any further questions, I just wanted to give you our view with respect to this, straight from the Federal Reserve's point of view.

THE COURT: So, thank you, Ms. Schweitzer. That's very helpful and it does help give context to what I had thought I understood when I got on the bench. So, I appreciate that. It's very helpful and I don't have any other questions.

MS. SCHWEITZER: Thank you, Your Honor.

THE COURT: Thank you, Ms. Schweitzer.

Mr. Kirpalani?

MR. KIRPALANI: Good morning, Your Honor.

Susheel Kirpalani from Quinn Emanuel Urquhart & Sullivan, on behalf of the Cross River Bank. It's very nice to appear before you.

I'll just say I wanted to give Your Honor a bit of a macro perspective from what I think is the largest unsecured creditor of the debtors. I agree with a lot of what Mr. Schrock said in terms of what has happened so far, but I just wanted to make a finer point on a couple of things.

We don't know exactly what decision-making occurred to permit $750-plus million to come into the debtors and then go out to the debtors' shareholders just two years ago. We do know that some pocket change was left behind to handle all of the debtors' go-forward servicing obligations and other obligations, whether it's regulators or anyone else.

I think what makes Cross River Bank different from, you know, the other so-called partner banks, which was a little bit lumped together in the first day papers, but I wanted to make sure that Your Honor was clear as to the pretty big difference between Cross River Bank and, as Mr. Schrock calls it "Cubby."

Cross River Bank already paid for all of its servicing and so, unlike the other partner bank who owes the estate tens of millions of dollars, it's the other way around, potentially, when it comes to the relationship between Cross River Bank and the debtors. And, you know, I appreciate that Weil Gotshal is doing an investigation into American Express, I certainly hope that investigation also includes the former directors and officers of the debtor, because, certainly, as between those directors and officers, certainly under Delaware law, and innocent third-party creditors like my client, I think the burden falls on the directors and officers to make sure that the company retains more than just pocket change in order to honor all of its commitments and obligations.

I'll just say that I met Mr. Schrock yesterday and he mentioned that he thinks with respect to funds that are received by the debtors from borrowers that are really Cross River Bank's borrowers, that all amounts have been paid over to Cross River Bank before the filing. I just wanted to mention we're still reconcile some numbers. I hope that's the case. I'm not sure that's the case.

And with respect to the plan that's on file, we also haven't had a chance to really dive into it, but I certainly hope it's not, you know, that toggle plan that is really a toggle between a rock and a hard place for creditors who have already paid for the servicing. I appreciate that, you know, there's only a little bit of money left in the debtors' estate, but, you know, there was a lot of money in this debtor just two years ago.

And with that, I'll reserve comments as the case unfolds. But thank you, very much, Your Honor, for letting me speak.

THE COURT: Okay. Thank you, Mr. Kirpalani.

Mr. Schepacarter?

MR. SCHEPACARTER: Thank you, Your Honor.

Can Your Honor hear me clearly?

THE COURT: I can.

MR. SCHEPACARTER: All right. Thank you.

For the record, Richard Schepacarter for the United States Trustee. Just a couple of comments and maybe even questions for Mr. Schrock. One is that the -- we understand the demonstrative and we actually agreed ahead of time that that would not be moved into evidence, but we do reserve our right with respect to the first day declaration, because as Your Honor pointed out, it's kind of their story more than some testimony and, frankly, if we were to hear -- be here to cross-examine the witness on that, we might be here for a couple of days.

THE COURT: All right. Well, when we get to the motions, we can address any evidentiary concerns about the testimony.

MR. SCHEPACARTER: Right. Thank you.

So, having said that, we wouldn't have any objection to it being admitted, subject to all of those reservations, and basically that it's for today -- for today's purposes, so that they can get through the door and move on with this case.

The second part of it is I have a question that kind of just sort of popped up from listening to Mr. Schrock and then to Mr. Kirpalani, is that the American Express investigation, I guess we'll call it, it sounded like Mr. Schrock's firm and maybe some people from his firm are undertaking that investigation, and I just wanted to understand if that's the case, and who else may be undertaking that investigation of the, I guess we'll call it the "American Express transaction." I'm not sure what falls under that, but just at this point in time, at this early point in time, just to get an understanding as to what's going on. Thank you.

THE COURT: Thank you, Mr. Schepacarter.

Mr. Schrock, if you want to respond, I'll give you that chance.

MR. SCHROCK: Sure. So, Mr. Schepacarter, yes, it is, you know, given that we're relatively new to the scene from April of this year, we're handling the investigation. I also think AlixPartners is providing some assistance related to that, but we don't intend on, you know, having another firm, you know, handle that investigation.

THE COURT: Okay. Mr. Schepacarter, anything further from your perspective?

MR. SCHEPACARTER: Not at this point. If something pops up, I'll -- and I think Ms. -- I have, also, Ms. Rosa Sierra-Fox is also handling part of this case with me and she may have some comments later on when we get to the creditor matrix.

THE COURT: Okay. Ms. Sierra-Fox, anything at this point?

(No verbal response)

THE COURT: It looks like that was a no.

Okay. Is there any other party in interest that would like the opportunity to be heard?

Mr. Monaghan?

MR. MONAGHAN: Thank you, Your Honor.

John Monaghan from Holland & Knight, and we are counsel to Customers Bank. I hoped not to play a speaking role today and right from Mr. Schrock's presentation, I thought that I had accomplished that goal, but Mr. Kirpalani made a couple of statements that all I will do is state for the record that in the view of Customers Bank, there is no set of circumstances in which Customers Bank owes the debtor tens of millions of dollars. So, as not to poison the ongoing negotiations, that I agree with Mr. Schrock, are ongoing and have been for some time, I'll note -- not go further than that, but to say that I have no doubt that if called upon to demonstrate the existence of a *bona fide* dispute, there would be that demonstration and it would be successful.

THE COURT: Okay. I don't think anyone is asking me to resolve anything today, so I will allow all of you to continue talking and we'll take up any question that's put in front of me if and when it's put in front of me.

Is there anything further, Mr. Monaghan, or was that the substance of what you wanted to convey? Okay --

MR. MONAGHAN: Your Honor, there's nothing further, Your Honor.

THE COURT: Okay. Thank you, Mr. Monaghan.

Let me just ask, is there any other party in interest that wants to be heard as a preliminary overview matter?

(No verbal response)

THE COURT: Okay. If not, Mr. Schrock, I'm happy to pass the baton back to you or any of your colleagues, to whom you pass the baton further, to proceed as you deem appropriate.

MR. SCHROCK: Thanks very much, Your Honor. Again, Ray Schrock, Weil Gotshal, proposed counsel for the debtors.

At this point, I would like to move into evidence the first day declaration of Ms. Deborah Rieger-Paganis. She is from AlixPartners. I heard the reservations that are already put on, you know, by Mr. Schepacarter, which are just fine with us. We just wanted to make sure that we could get it into evidence for the purposes of first day hearing, for purposes of getting the necessary evidentiary record to get the relief, you know, in front of us.

I appreciate that there are things in there that, you know, that the declaration go to the story of the case and we're certainly not seeking to have, you know, a lot of that admitted for the truth of the matter asserted. It's for the, you know, for the convenience of the parties, and as I understand it, any of the debtors' story coming into these cases.

THE COURT: Okay. Let me --

MR. SCHROCK: It's at Docket 13, and I think we can put -- if Deborah can please go on camera.

THE COURT: And Mr. Schrock, do you intend to do any direct or are you simply moving the declaration into evidence?

MR. SCHROCK: Just moving the declaration into evidence, Your Honor.

THE COURT: Okay.

MR. SCHROCK: She is available for cross-examination.

THE COURT: Okay. Hold on one second.

MR. SCHROCK: (Indiscernible.)

THE COURT: My apologies.

MR. SCHROCK: No worries.

(Pause)

THE COURT: Okay. So, let me ask this question: Is there any party in interest that would like to be heard, with respect to the admissibility of Ms. Rieger-Paganis' first day declaration, which is filed at D.I. 13?

Mr. Schepacarter?

MR. SCHEPACARTER: Thank you, Your Honor.

For the record, Richard Schepacarter, for the

United States Trustee. As Mr. Schrock put on the record, that I put on the record, my reservation of rights, given that statement and the fact that I think that we all understand that this document is being moved for today's purposes only and has a lot of background information, given that, and that all the parties, even parties who haven't appeared today, everybody's rights are reserved, we have no objection to the entry of it today for these purposes. Thank you.

THE COURT: All right. Is there any other party in interest that would like to be heard with respect to the admissibility into evidence for today's purposes of the first day declaration?

(No verbal response)

THE COURT: Okay. Seeing no one --

MR. BROMLEY: Your Honor?

THE COURT: Oh, I'm sorry, Mr. Bromley.

MR. BROMLEY: Yes, good morning, Your Honor.

James Bromley of Sullivan & Cromwell, on behalf of American Express and related entities. Just with respect to the first day declaration, there are certain statements that are background in nature as Mr. Schrock noted that reference American Express. We don't believe that they should be admitted for any purpose today and they are irrelevant to any of the relief that's being sought. So, we have an objection to anything being admitted with respect to the first day declaration that is -- makes any statement with respect to American Express.

THE COURT: Okay. Mr. Schrock?

MR. SCHROCK: That's fine, Your Honor.

THE COURT: Okay. So, let me ask the question this way: Is there any party in interest that would object to the admissibility into evidence of the first day declaration, which is filed on the docket at D.I. 13, with the understanding that, A, it's admitted only for the purpose of today's hearing and, B, that any statement that relates to American Express is stricken?

MR. KIRPALANI: Your Honor?

THE COURT: Mr. Kirpalani?

MR. KIRPALANI: Yeah, I certainly have no objection to what Mr. Bromley asserts, by my understanding of the first day declaration, which has been the way that I've dealt with first day declarations for many years is just because a party doesn't object to a specific characterization of events with respect to their client, doesn't mean that that characterization is correct. And of course Mr. Schrock's clients submitted a declaration saying that everything my client has asserted is bogus, so, obviously, I'm not going to say we have to strike everything in the declaration that relates to Cross River Bank, but I think it's the way things normally operate, but that's not being accepted for its truth because it's not relevant to any of the relief being sought today.

But if I'm required to make an objection with a move to strike to trike things that relate to whether the debtors have complied with their obligations to Cross River Bank, then I would make that objection.

THE COURT: So, look, here's where we are. Mr. Schepacarter has asked, and the debtors agreed that the declaration be admitted only for the purposes of today. So, it's being admitted only for the purposes of an evidentiary basis for the relief sought in the various first day motions.

What you say, Mr. Kirpalani, about whether it was necessary to strike the references to Amex is a fair point, but the proponent of the testimony agreed to strike it and so there we are. You can either ask -- let me strike the references to Cross River Bank or you could accept the correctness of what you said, which is it doesn't matter.

Either way, it's fine with me. I'm here to resolve disputes that are put in front of me, so if you've got an objection, I'll give you a chance to make it and if you think it doesn't matter and you'll move on, that's okay, too.

MR. KIRPALANI: It doesn't matter and I'll move on. Thank you.

THE COURT: Okay.

MR. SCHROCK: And, Your Honor, just to be clear, I thought that what Mr. Bromley was saying was that it doesn't going to be admitted into evidence. I didn't realize that we were actually be striking the statement from, you know, from the record.

THE COURT: Well, I think that's --

MR. SCHROCK: And so I think (indiscernible).

THE COURT: Mr. Bromley, let me ask you this question: For the purposes of today's proceeding, I understood your motion to object to its admission into evidence, which I thought meant that it's stricken from the declaration. If you'd live with what Mr. Kirpalani agreed to on behalf of his client, that's also fine with the Court.

Let me make sure I understood what your objection was.

MR. BROMLEY: Your Honor, you understood my objection entirely. There was no basis on which to make any statements with respect to American Express. There is no competency, with respect to this witness, and there's no relevance to any statements with respect to American Express to any of the relief that's being sought.

THE COURT: So, Mr. Schrock, I think the relevance objection is fair one, which is it doesn't make -- it doesn't bear on the statements made with respect to American Express, as I see it, don't bear on whether you are or aren't entitled to any of the first day relief that you're seeking and therefore I was comfortable striking it on that basis. It doesn't mean it's false or that it's true; it just means it's not part of the record on the first day hearing.

If you want to argue for a different outcome, I'll give you that opportunity.

MR. SCHROCK: Your Honor, I think for purposes of today's hearing, that fine. It can be -- I hear Mr. Bromley end up being stricken. Of course my comments are not testimony but, certainly, you know, we certainly stand behind everything that we've said.

THE COURT: I understand that and none of what I'm ruling bears on the truth or falsity of any of the statements that have been made.

MR. SCHROCK: Yeah.

THE COURT: Okay.

MR. SCHROCK: Very good.

THE COURT: So, is there any objection to admitting the declaration, subject to the caveats just described on the record?

(No verbal response)

THE COURT: Okay. Hearing none, it'll be admitted, subject to those reservations and limitations.

And, Mr. Schrock, I'll allow you to proceed.

(Rieger-Paganis Declaration received in evidence)

MR. SCHROCK: Fantastic. Thanks, Judge.

So, I think at this point, I'll be turning it over to my colleague Mr. Chase Bentley, who's going to be taking you through the next item on the agenda and thanks very much, Your Honor.

I'm going to transfer rooms back down with my colleagues down there in 24(b).

THE COURT: Okay, thank you.

Let me just say the following. I didn't yet ask anyone if they wanted to cross-examine the witness. It seems to me appropriate that to the extent anyone seeks to cross-examine the witness with respect to any particular motion, I ask that you, when I ask whether anyone wants to be heard, with respect to the motion, if someone seeks cross-examination, let me ask that you seek to do it then and then you'll be permitted to do that, but that it makes servicemembers to consider that, to the extent that it arises in connection with particular motions and not in the abstract.

So, with that, why don't I allow Mr. Schrock to pass the virtual podium and to proceed through the motions.

MR. SCHROCK: Okay. To you, Mr. Bentley. Thank you, Your Honor.

THE COURT: Okay. Mr. Bentley?

MR. BENTLEY: Thank you. Good morning, Your Honor.

Are you able to hear he clearly?

THE COURT: I can.

MR. BENTLEY: Great. Your Honor, Chase Bentley of Weil Gotshal, proposed counsel on behalf of at debtors. I'll be addressing Agenda Items 9, 10, and 11 from the amended agenda that was filed yesterday at Docket 47. Those motions are cash management, tax attributes, and taxes, respectively.

Your Honor, first, I'll address Agenda Item 9, which is cash management. The motion was filed at Docket 12.

I'd also note that Your Honor entered an emergency bridge order at Docket 43 last night on an interim basis, pending this hearing.

Your Honor, through this motion, the debtors request authority on an interim basis to consider to maintain its cash management system and to pay outstanding pre-petition bank fees and (indiscernible) expenses, including those that arise during the interim period.

Your Honor, no formal objections were filed to this motion; however, we did have informal discussions with both, the U.S. Trustee and as Ms. Schweitzer, on behalf of the Federal Reserve, referred to earlier, the Federal Reserve. So, their initial comments were incorporated into the motion in the proposed order that was filed with that motion; however, after the filing of the motion, we did receive further comments from the Federal Reserve.

The debtors filed a revised, proposed order at Docket 62, together with a redline against the proposed order that was filed with the initial motion.

Your Honor, if you'd like, I'm happy to walk through those changes for you. I do note that Ms. Schweitzer did preview them, but I'm happy to walk through them in a more detail.

THE COURT: So, Mr. Bentley, I received that redline this morning before taking the bench and have reviewed them, so I don't, myself, have sort of independent concerns about any of those changes, so I don't think you need to walk through them, unless there's anything that you feel a need for the sake of the record, to put forward.

MR. BENTLEY: No, Your Honor. I think that the revised, proposed order speaks for itself and we've spoken with the Fed at length about the details that go behind that language, and I think unless Ms. Schweitzer wants to say anything, then we are okay to move on.

THE COURT: Okay. Ms. Schweitzer?

MS. SCHWEITZER: No, Your Honor. I don't believe I need to address it anymore.

THE COURT: Okay. So let me ask this: Is there any other party in interest that would like the opportunity to be heard with respect to the cash management motion?

(No verbal response)

THE COURT: Okay. Seeing no one, Mr. Bentley, I've reviewed the motion, the original order, the revised order. I'm satisfied the relief that is sought is customary and appropriate and don't, myself, have any concerns, so we will go ahead and enter that revised order.

MR. BENTLEY: Thank you very much, Your Honor.

THE COURT: And that's obviously on an interim basis.

MR. BENTLEY: Sorry. Oh, correct. Thank you very much.

Next, I'll address Agenda Item 10, which is the debtors' tax attributes or is commonly known as "net operating loss" motion. The motion was filed at Docket 6.

Your Honor, through this motion, the debtor is seeking interim relief to protect potential value of consolidated tax attributes, including net-operating losses. The debtors have not received any formal objections to this motion.

Similar to the cash management motion, we did have discussions with the U.S. Trustee, primarily pertaining to informal comments and questions. Those were addressed, without a need to revision of the motion that was filed.

One comment that I would like to call out, though, in particular, from the U.S. Trustee for Your Honor is that the U.S. Trustee requested that notice be provided to all substantial stockholders, as that term is used in the motion, either for such holders, and debtors did, indeed provide that service, as evidenced in the affidavit of service, which was filed on the docket yet at Docket 54.

Unless Your Honor has any further questions or comments, we'd request that you enter an order approving this motion on an interim basis.

THE COURT: Okay is there any party in interest that would like the opportunity to be heard with respect to the NOL motion?

(No verbal response)

THE COURT: Okay. Seeing no one, I've reviewed the motion, appreciate that this relief is customary and appropriate. I don't have any independent concerns with respect to the relief sought therein, and we will go ahead and enter that order and, again, on an interim basis.

MR. BENTLEY: Thank you, Your Honor.

The next and final item that I'll personally address is Agenda Item 11, which is the debtors' tax motion. That motion was filed at Docket 9.

Your Honor, through this motion, the debtor is seeking interim relief to pay certain pre-petition taxes outstanding and fees in amount of $67,000, including any of those that come due during the interim period.

Again, similar to the prior motions, we have received no formal objections on the tax motion and we did just have informal discussions with the U.S. Trustee prior to filing the motion, and so the motion and the proposed order on the docket do reflect the U.S. Trustee's comments.

Unless Your Honor has any further questions or comments, I would ask that you please enter an order approving this motion on an interim basis.

THE COURT: Let me ask this: Is there any party in interest that would like the opportunity to be heard with respect to the motion to pay pre-petition taxes?

(No verbal response)

THE COURT: Okay. Seeing none, again, I've reviewed that motion and order and agree that it is standard, customary, and appropriate, and in the absence of any objection, we will enter that order on an interim basis.

MR. BENTLEY: Thank you, Your Honor.

And with that, Your Honor, I'll turn over the podium, which for us is real, but for others, is virtual. Up next is my colleague Elizabeth Ruocco, who will address the next items on the agenda.

THE COURT: Okay. Thank you, Mr. Bentley.

And, I'm sorry, I -- if you'd just introduce yourself for the record, then you can proceed.

MS. RUOCCO: Thank you, Your Honor.

Elizabeth Ruocco of Weil, Gotshal & Manges, proposed attorneys for the debtors and debtors-in-possession.

THE COURT: Okay.

MS. RUOCCO: I would like to start by, of course, thanking the Court for its time this morning and I would also like to thank the Office of the United States Trustee, who worked closely with us to address and incorporate any comments leading into the October 3rd filing.

And with respect to the three motions that I will be addressing, I believe we have addressed the U.S. Trustee's comments to their satisfaction.

Your Honor, I'll be presenting three motions, which relate to wages, utilities, and insurance, in that order. Beginning with the wages motion, Your Honor, this can be found at Docket 10. Through the interim order, the debtors request authorization to pay prepetition wages, salaries, and benefits, and maintain these compensation and benefit programs in the ordinary course.

A few things to note for the Court with respect to the relief sought are that the debtors are seeking a total of approximately 1.5 million for interim relief comprised of compensation and benefit related obligations. A few other things, Your Honor, with respect to the relief sought, the debtors do not request any relief with respect to an employee bonus program, or KERP, during the interim order, and just for added color, the debtors have approximately 20 employees and 163 contractors, all of which are vital to continued operations.

Unless the Court has any questions, I would request enter of the interim order, Your Honor.

THE COURT: Okay. Is there any party in interest that would like to be heard with respect to the employee wage and benefit motion?

(No verbal response)

THE COURT: Okay. Seeing none, I have reviewed the motion and proposed order and don't independently have concerns about the relief sought therein, which strikes the Court as standard and customary under the circumstances, and so we will enter that order on an interim basis.

MS. RUOCCO: Thank you, Your Honor.

Turning the utilities motion, which can be found at Docket 8, through this motion, the debtors seek enter of an interim order authorizing approval of its proposed forms of adequate assurance, as well as procedures for settling any requests related to additional adequate assurance.

Just further color for the Court, through this order, the debtors are proposing to deposit $12,300 in a separate escrow account as adequate assurance for the utility providers. And that amount was calculated by a historical lookback period of six months many and represents the average two-week cost for each utility provider.

The utility providers can request additional adequate assurance by adhering to the procedures set forth in a proposed interim order. Of course, unless the Court has any questions I'm happy to answer; if not, we would request enter of the interim order.

THE COURT: Okay. Is there any party in interest that would like to be heard, with respect to the utilities motion?

(No verbal response)

THE COURT: Okay. Seeing none, again, I've reviewed the motion and proposed order, believe the relief sought is appropriate, and will -- we will enter that order on an interim basis, following this morning's hearing.

MS. RUOCCO: Thank you, Your Honor.

Turning last to the insurance motion, which is located at Docket 7, through the interim order, the debtors seek authorization to maintain their existing coverage and pay related obligations, as well as to renew, supplement, and modify additional coverage in the ordinary course of business.

As the Court may have seen in the motion, the debtors maintain various insurance, which relate to liability and property coverage, cybersecurity, director and officer, as well as attorney liability. A few things to note for the Court are that the debtors are not seeking to pay anything in the interim period, but in the event it is uncovered that there was a pre-petition obligation, the debtors have a line or item in the interim order which seeks authorization to pay that up to a $25,000 cap.

And one other thing to note for the Court is that the cyber insurance policy is set to expire during the interim period on October 16th, 2022, so the debtors do intend to renew that policy during the interim period.

I'm happy to answer any further questions the Court may have with respect to the relief sought, and if not, we would request enter of the interim order.

THE COURT: Just to make sure that I follow, so, as I read the motion, it's not actually asking for any particular relief, as I understand it, right. You're asking to maintain your insurance program in the ordinary course, which, as your motion explains, you don't really need my authority to do. And you say there's nothing that's due as of the petition date, so you're not asking for authority to pay anything, but what you're really asking for is, gee, if it turns out we discover we have a pre-petition amount, we want that authority. So, it's, in that sense, essentially, a comfort order just in case. Do I understand the relief correctly?

MS. RUOCCO: Yes, Your Honor; that's fair.

THE COURT: Okay. That doesn't particularly trouble or concern me, but let me ask, is there any other party in interest or any party in interest that would like the opportunity to be heard, with respect to the insurance motion?

(No verbal response)

THE COURT: Okay. If not, I'm satisfied that the relief sought is appropriate, certainly in the absence of any objection thereto, and we will go ahead and enter that order, again, on an interim basis.

MS. RUOCCO: Thank you, Your Honor. We appreciate it. And with that, I will cede the podium to my colleague, Ms. Natasha Hwangpo, who will present the remaining items on the agenda.

THE COURT: Okay. Thank you very much.

MS. HWANGPO: Good morning, Your Honor.

THE COURT: Good morning.

MS. HWANGPO: Natasha Hwangpo, of Weil, Gotshal & Manges, proposed counsel to the debtors.

Bringing up the rear, I will be handling the last three agenda items, which I believe are Numbers 15 through 17. Starting with the loan servicing motion, Your Honor, at Agenda Item 15, Docket 11, we're calling this motion essentially, our "loan servicing motion" and it's stylized as a *status quo* motion seeking authority, but not direction to continue running our business in the ordinary course.

As with any comfort motion, many of our borrowers and counterparties have already found comfort that we're seeking to continue the authority to continue servicing our loans, again, in the ordinary course. That is, at least, until our cash position restricts us, but at that point, Your Honor, we will come back to the Court and keep, of course, you apprised of any changes.

But back to the motion itself, Your Honor, the debtors are requesting authority, but not direction, to continue with the ordinary course servicing and subservicing their loan portfolio, including their PPP loans and their legacy loans. And, of course, remitting borrower -- overpayments to borrowers, the SBA, as applicable, and doing any reconciliation activities related thereto.

We also are seeking in the ordinary course to continue fulfilling our compliance and regulatory obligations, as further described in the motion. One thing of note, Your Honor, in the loan servicing motion, we're also seeking to pay pre-petition vendor amounts up to a cap of $75,000 of note that accounts were approximately 7 percent of the debtors' outstanding vendor payables.

As you know, Your Honor, the company is an online financial services company. The majority of our vendors are service providers and any disruption on account of vendor-related refusal or delay could cause irreparable harm and irreversible impacts on the debtors and through a waterfall, their customers and the borrowers.

One thing we also wanted to note, Your Honor, is that before the hearing commenced, we did receive some comments from the SBA through the Department of Justice. We have not yet been able to get through the can comments that they've sent, but what we would like to do and propose, if Your Honor is agreeable, that we would discuss with the SBA, again, through the DOJ, their comments, and then submit a revised order, pursuant to a COC.

THE COURT: Okay. Before I get to that, let me ask if there's any other party in interest that would like the opportunity to be heard with respect to the motion.

Mr. Gesmundo?

MR. GESMUNDO: Good morning, Your Honor.

THE COURT: And apologies if I mispronounced your name.

MR. GESMUNDO: Not a problem.

Alastair Gesmundo on behalf of the United States of America. I appreciate Ms. Hwangpo noting that inquiry and that ask for some proposed language did come to me, and so I'm in support of her proposed plan of action and submitting revised language under COC.

THE COURT: Okay. Thank you, Mr. Gesmundo.

Ms. Schweitzer?

MS. SCHWEITZER: Thank you, Judge Goldblatt.

It's Lisa Schweitzer. And I'm sure Ms. Hwangpo would have done it anyway, but we would just ask that we be able to see any changes to the order before it's submitted. And as she noted, we were comfortable with the order with the additional language put in, protective of our collateral. So, I just wanted to make that comment on the record.

THE COURT: Okay. Thank you, Ms. Schweitzer.

Is there any other party in interest that would like to be heard, with respect to the motion to continue loan servicing in the ordinary course?

Mr. Kirpalani?

MR. KIRPALANI: Thank you, Your Honor.

Susheel Kirpalani from Quinn Emanuel, on behalf of Cross River Bank. We also seek a copy before it is submitted to the Court under a certificate of no objection.

THE COURT: Okay. Ms. Hwangpo, take it that's agreeable to the debtor?

MS. HWANGPO: Yes, we will do so.

THE COURT: Okay.

MR. GESMUNDO: Your Honor, Alastair Gesmundo, again, on behalf of the United States.

Just for everyone's comfort, no one is worried that the language is a significant departure from what Ms. Hwangpo described. I appreciate her describing this as a stylized -- stylized as a *status quo*, and I want to reassure the other parties that the intent was just to clarify as *status quo*. Thank you.

THE COURT: Okay. Thank you Mr. Gesmundo.

Is there any other party in interest that would like to be heard with respect to the loan servicing motion?

(No verbal response)

THE COURT: Okay. If not, I've seen the motion and proposed order in its earlier form. It looks like, again, as counsel described, the only sort of substantive relief that was really being sought was the authority to pay $75,000 of critical vendor payments and that, otherwise, it sought authority that Section 363 expressly provides.

That said, I have no concern about entering an order that makes that clear, and subject to the parties submitting further clarifying language under certification and subject, of course, to the Court's review of that language, we'd expect to enter that language when it is submitted under certification.

MS. HWANGPO: Thank you, Your Honor.

Moving on to the next item on the agenda at Number 16, the application to appoint Omni as the debtors' claims and noticing agent. We filed that at Docket 4.

Also with the application, as Exhibit A, the debtors filed the Deutch declaration and Mr. Paul Deutch, I believe is with us here in the virtual courtroom is and available for any questions.

At this time, Your Honor, I would request that the declaration of Mr. Deutch be entered into evidence.

THE COURT: Is there any party in interest that would like to be heard, with respect to the admission of Mr. Deutch's declaration that was submitted in connection with the motion to retain Omni?

(No verbal response)

THE COURT: Okay. Seeing none, that declaration will be admitted.

(Deutch Declaration received in evidence)

MS. HWANGPO: Thank you, Your Honor.

The debtors believe that there are more than 200 creditors or parties in interest in the case and, accordingly, the appointment of a claims and noticing agent is required under Local Rule 2002-1. The debtors believe that appointing Omni as claims agent will help alleviate the administrative burden on both, the Court and all parties in interest, and the debtors solicited and received proposals from three approved claims and noticing agents, and ultimately selected Omni, based on its experience, reputation, and competitive pricing.

Unless Your Honor has any questions, we'd respectfully request that the order be entered.

THE COURT: Is there any party in interest that would like to be heard, with respect to the motion to appoint Omni as claims agent?

(No verbal response)

THE COURT: Okay. Seeing none, I have reviewed that motion and proposed order, including Mr. Deutch's declaration and I am satisfied that that relief is appropriate and we will enter that order.

MS. HWANGPO: Thank you, Your Honor.

Last, but not least is Agenda Item 17, Docket 5, the debtors' motion seeking authorization to file and maintain a consolidated creditor list, redact personal identification information, approving special electronic noticing procedures.

I'd note, Your Honor, the debtors only seek to apply the special electronic noticing procedures to their borrowers and we believe the relief is appropriate as the company is an online lending and servicing platform and the primary means of communication with all borrowers is through electronic mail; although, there are some inquiries that we handle via telephone, but other than that, everything is communicated via email.

The intent, Your Honor, is to provide as much notice as possible, but tailoring it to the mode of communication that the borrowers are already receiving and also the company's limited resources. We've been working with the Office of the United States Trustee on this motion and incorporated comments to the motion and the proposed order, prior to filing, and since that time, we've continued to work with the U.S. Trustee and this morning, filed a revised form of order at Docket 66.

Your Honor, I am happy to walk through the few changes quickly.

THE COURT: Sure.

MS. HWANGPO: So, the first -- sorry.

THE COURT: Let me let you do that.

MS. HWANGPO: Okay. Thank you, Your Honor.

So, we made one comment in the very beginning of the order and that was just to clarify, I think we missed a definition of "borrowers," so we made that clarification, and then also the addition of paragraph 9, which is the language the U.S. Trustee has sought to us include.

THE COURT: Hold on. Let me just pull it up quickly.

MS. HWANGPO: And, Your Honor, perhaps I could just explain what paragraph 9 does, which is carves out the named plaintiffs in a putative class action and their counsel.

THE COURT: Got it. So, I did see that this morning. Okay. So, what you've done is you've -- you're providing actual mail service on the named plaintiffs in the class-action lawsuit, but you proposed to provide electronic service on other creditors who are otherwise your borrowers and presumably have otherwise consented to receive notices from the company electronically.

Is that, essentially, the ask?

MS. HWANGPO: That is, Your Honor.

THE COURT: Okay.

MS. HWANGPO: One more thing, in addition. As part of our discussions with the United States Trustee, we have said that we would make a statement on the record and that statement is:

"To the best of our knowledge, the vast majority of the company's borrowers, whether PPP or legacy, have consented to the electronic transactions and noticing."

And with that, Your Honor, we understand that the U.S. Trustee does not object to the relief.

THE COURT: Okay. Ms. Sierra-Fox?

MS. SIERRA-FOX: Good morning, Your Honor.

Rosa Sierra-Fox on behalf of the United States Trustee. Counsel is correct, based on the representation made on the record about the borrowers' consent to receive electronic notice, while in doing their business with the debtor and the addition of the language, carving out the putative class action named plaintiffs and their counsel, our issues were resolved.

We would just like to note that in the ordinary course, and we usually prefer, and we think the rules require, service by mail on parties in interest and parties that are part of the creditor matrix. We understand, however, that there is a very large amount of borrowers involved in this case and that they have otherwise, in the ordinary course, conducted their business through email and have otherwise, very important to our office, consented to doing business that way.

And that's a big part of why we are not objecting to the relief that they are seeking in this instance today, without prejudice to any of their cases, and the usual reservations.

THE COURT: Okay. Thank you, Ms. Sierra-Fox.

Is there any other party in interest that would like the opportunity to be heard, with respect to the creditor matrix and noticing motion?

(No verbal response)

THE COURT: Okay. If not, so, I've obviously reviewed the motion and proposed order. I understand Ms. Sierra-Fox's point. I do know what the language of Rule 2000(f) says; that said, in the absence of any party raising any objection to the relief being sought today and without prejudice to any party's right to come in and ask to modify this order if a party so requests, I'm satisfied, particularly in light of the representations of counsel and the circumstances of this case, that the relief sought is permissible.

So, we will go ahead and enter that order.

MS. HWANGPO: Thank you, Your Honor.

I believe that takes us through the balance of the agenda and unless Your Honor has any questions, I believe we're complete.

THE COURT: Okay. Let me just make sure I understand what I've already done. The joint administration motion that I entered yesterday, that wasn't an interim order or is that just a bridge order, right; that was an actual final order, providing for joint administration?

Ms. Barksdale is nodding her head, so that must be the case. Okay. So, that's done and doesn't need to be addressed further and the cash management, which was a bridge order, we now have heard and we will enter that order.

So, I guess that takes us -- does that take us through the agenda, then?

MS. HWANGPO: Yes, sir.

THE COURT: Okay. Let me -- and I take it that there have been dates that have been set for a second day, which I believe is October 26th, and there's an omnibus hearing set for November 7th.

Is that consistent with what the debtor has?

MS. HWANGPO: Yes, Your Honor; that's our understanding.

THE COURT: Okay. Let me just -- that's now on the record so everyone is aware.

Is there -- let me ask this, from the debtors' perspective, is there anything else the Court can do to be constructive today?

MS. HWANGPO: Not from our perspective, Your Honor. We thank you for your time.

THE COURT: This is my job, I'm very happy to do it.

(Laughter)

THE COURT: Is there any other party in interest that would like the opportunity to be heard in any matter today?

Mr. Schepacarter?

MR. SCHEPACARTER: Thank you, Your Honor.

For the record, Richard Schepacarter for the United States Trustee. Just to advise the Court and all the parties in interest, we have dispatched questionnaires for the creditors committee to the top-30 list, those parties that can serve.

The return date for those to come back to our office is October 11th, so hopefully, or we anticipate that a committee will be formed sometime during the week of October 10th. That should be plenty of time, hopefully, before the next omnibus hearing is coming.

I just wanted to let all the parties know that. Thank you.

THE COURT: Okay. Thank you, Mr. Schepacarter.

Mr. Kirpalani?

MR. KIRPALANI: No, Your Honor. Mr. Schepacarter answered my question. Thank you.

THE COURT: Okay. Thank you.

Is there any other party in interest that would like to be with heard on any other matter this morning before we adjourn?

(No verbal response)

THE COURT: Okay. If not, let me thank all of the parties for the -- obviously, this is a case in which a lot of work happened before you came into our court and all of that work did make the Court's job easier and is much appreciated. So, thank you to everyone on all sides of the case for that. And with that, we will stand adjourned. Thank you.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 10:57 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling October 7, 2022

William J. Garling, CET-543
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