

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

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

Debtors.¹

Chapter 11

Case No. 22-10951 (CTG)

(Jointly Administered)

RE: D.I. 622

**DECLARATION OF ISAAC NESSER IN SUPPORT OF JOINT MOTION OF CROSS
RIVER BANK AND CUSTOMERS BANK FOR AN ORDER, PURSUANT TO SECTION
105(a) OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2004, AND LOCAL
BANKRUPTCY RULE 2004-1, AUTHORIZING AND DIRECTING THE
EXAMINATION OF AMERICAN EXPRESS KABBAGE INC.**

Pursuant to 28 U.S.C. § 1746, I, Isaac Nesser, hereby declare under penalty of perjury as follows:

1. I am a partner at Quinn Emanuel Urquhart & Sullivan LLP, counsel for Cross River Bank in the above-captioned cases. I am admitted pro hac vice to the Court for these cases. I submit this declaration on behalf of Cross River Bank in support of the *Joint Motion of Cross River Bank and Customers Bank for an Order, Pursuant to Section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2004, and Local Bankruptcy Rule 2004-1, Authorizing and Directing the Examination of American Express Kabbage Inc.* (the “**Motion**”).²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable are: Kabbage, Inc. d/b/a KServicing (3937); Kabbage Canada Holdings, LLC (N/A); Kabbage Asset Securitization LLC (N/A); Kabbage Asset Funding 2017-A LLC (4803); Kabbage Asset Funding 2019-A LLC (8973); and Kabbage Diameter, LLC (N/A) (collectively, the “Debtors”).

² Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

2. Cross River requested information concerning a number of Cross River's loans being serviced by Kabbage a year and a half ago, including through correspondence and/or meet and confers in August, September, and November 2021, and February 2022.

3. On December 5, 2022, counsel for Cross River, including myself, had a call with counsel for the Debtors to request the CRB Servicing Files and related information.

4. On December 8, 2022, my colleague sent an email to counsel for the Debtors, requesting again that the Debtors provide the CRB Servicing Files. Attached hereto as Exhibit 1 is a true and correct copy of that December 8, 2022 email from Matthew Scheck to Candace Arthur and Ms. Arthur's response confirming receipt.

5. In the following weeks, Cross River and the Debtors further discussed the transfer of the CRB Servicing Files to Cross River, including a call among Cross River's and Kabbage's business, legal, and operations teams, and their respective outside counsel on December 21, 2022.

6. On January 11, 2023, Cross River and the Debtors entered into a stipulation requiring the Debtors to provide the CRB Servicing Files, which the Court so ordered on January 17, 2023. Attached hereto as Exhibit 2 is a true and correct copy of the January 17, 2023 *Order Approving Stipulation Between the Debtors and Cross River Bank* [ECF 444 & ECF 444-1].

7. On or around January 6, 2023, Cross River's General Counsel, Arlen Gelbard, inquired with in-house counsel at American Express regarding obtaining Cross River's servicing files in connection with the PPP loans being serviced by Kabbage. That counsel directed Cross River to American Express's outside counsel, Sullivan & Cromwell.

8. As a result of that communication from American Express, I called American Express's outside counsel, Amanda Davidoff from Sullivan & Cromwell on January 11, 2023 to meet and confer. During that call, Ms. Davidoff informed me on behalf of American Express that

it would be most efficient for American Express to receive information requests directly from the Debtors.

9. Based on that representation from American Express, and at the urging of me and my colleagues at Quinn Emanuel, the Debtors wrote a letter to American Express on January 13, 2023 demanding that American Express agree by January 19, 2023 to provide certain requested materials, including parts of the CRB Servicing Files, and demanding that American Express actually provide those materials by February 17, 2023. Attached hereto as Exhibit 3 is a true and correct copy of the aforementioned January 13, 2023 letter from Theodore Tsekerides to James Bromley, and the document requests attached thereto.

10. My understanding is that American Express has not provided the information, and Cross River has not received any part of the CRB Servicing Files from American Express. Nor have Debtors pursued any legal action as to American Express to obtain the materials.

Pursuant to 28 U.S.C. § 1746, I, declare under penalty of perjury that the foregoing is true and correct.

Dated: March 8, 2023
New York, New York

/s/ Isaac Nesser
Isaac Nesser