EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
	:	
KABBAGE, INC. d/b/a KSERVICING, *et al.*,	:	**Case No. 22-10951 (CTG)**
	:	
	:	**(Jointly Administered)**
Debtors.[1]	:	**Re: Docket Nos. 172, 173, 174 & 340**

DECLARATION OF DONNA R. EVANS IN SUPPORT OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER ENFORCING THE SETTLEMENT ORDER AND THE SETTLEMENT AGREEMENT BETWEEN KSERVICING AND CUSTOMERS BANK

I, Donna R. Evans, declare pursuant to 28 U.S.C. § 1746, under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the Vice President of Operations of Kabbage, Inc. d/b/a KServicing (the "**Company**" or "**KServicing**") and its affiliated debtors in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), as debtors and debtors-in-possession (collectively, the "**Debtors**").

2. I have served in this role since September 30, 2022. As Vice President of Operations, I develop, implement, and maintain an operational and team structure that supports short- and long-term efforts to process the KServicing loan portfolio. In this capacity, I collaborate and coordinate with internal stakeholders and twelve functional teams, including related third-party vendors and consultants, in order to optimize workflows and processes that support loan

[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). Kabbage is a trademark of American Express used under license; Kabbage, Inc. d/b/a KServicing is not affiliated with American Express. The Debtors' mailing and service address is 925B Peachtree Street NE, Suite 383, Atlanta, GA 30309.

servicing efforts for the Kabbage legacy portfolio, and the SBA's PPP loan program. Prior to this role, I served as the Company's Senior Director of Operations since October 2021, before which I was an independent contractor to KServicing, starting in August 2021.

3. I have over twenty years of experience serving in executive, director, and management roles overseeing production and operations of various companies in the FinTech, health, and media industries. Before joining the Company, for ten years I served as the Vice President of Revenue Operations for Healthgrades, a digital health advertising platform, where I established the revenue operations function and managed a more than 20-person revenue operations team, which involved managing Healthgrades' analytics, ad operations, content marketing, data operations, distribution, and product operations efforts involved with delivering sales revenue and partner commitments. In this role, I also evaluated and managed more than 10 publisher and vendor distribution relationships.

4. Prior to 2010, I served as the Vice President of Publisher Services and Operations at ShortTail Media for two years, and the Vice President of Publisher Operations, the Director of Programming, and Managing Editor of American Online ("**AOL**"), for seven years. As Vice President of Operations for the AOL/Platform A division, I managed various digital advertising and promotional elements of the advertising-supported business, and managed a sales integration team. Prior to 2001, I served as Operations and Production Managers for Buzzsaw.com, Hanley-Wood LLC, Conde Nast, and American Express Publishing.

5. I hold an MMBA from the Farmer School of Business at Miami University and I am certified in digital transformation, finance and accounting, and project management.

6. I submit this declaration in support of the *Motion Of Debtors For Entry of An Order Enforcing The Settlement Order And The Settlement Agreement Between KServicing*

And Customers Bank (the "**Motion to Enforce Settlement**") filed contemporaneously herewith.[2] I am knowledgeable about, and familiar with, the Settlement Agreement and subsequent reconciliation process. Except as otherwise indicated, the facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents and databases, as well as information provided to me by employees working under my supervision or direction. If called upon to testify, I would testify to the facts set forth in this declaration.

The Settlement Agreement

7. On October 27, 2022, the Debtors entered into a *Settlement and Release Agreement* with Customer's Bank ("**CB**") (the "**Settlement Agreement**"), which was approved by the Bankruptcy Court on November 9, 2022 [Docket No. 232] (the "**Settlement Order**") following a hearing on the matter that was held on November 7, 2022.

8. Through the Settlement Agreement, CB and KServicing (collectively, the "**Parties**") agreed upon a Settlement Amount of $58 million to resolve, among other things, the outstanding $65.5 million receivable due from CB to KServicing. A material component of the Settlement Amount was a cash payment (the "**Settlement Payment**") that CB was to make to KServicing following this Court's approval of the Settlement Agreement.

9. The Settlement Agreement sets forth a formula by which the Settlement Payment amount, which CB is obligated to pay to KServicing, is to be calculated. The Settlement Payment is defined as "the Settlement Amount [of $58 million] *less* the amount of the Disputed KServicing Holdbacks as of the Petition Date."

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion to Enforce Settlement.

10. The "Disputed KServicing Remittance Holdback" is defined in the settlement agreement as consisting of two components: (i) funds "collected from borrowers that KServicing is required to remit to CB," and (ii) funds "held by KServicing on account of cancelled loans." The first component consists of a variety of funds, including payments on loans made by borrowers, KServicing received from borrowers on account of loans for which CB is the issuer and KServicing the servicer. The second component, the cancelled loan remittance amount, consists of funds that were disbursed by CB to KServicing for loans that borrowers applied and were approved for, but were either later cancelled and the funds were therefore not disbursed to those borrowers and remained in the possession of KServicing or where the funds were disbursed to the borrower but then the borrower returned to the funds to KServicing.

11. As part of the Settlement Agreement, CB and KServicing were to engage in a good faith reconciliation process (the "**Reconciliation Process**") to jointly confirm the exact amount of the Settlement Payment, which I understood to be approximately $23.2 million as set forth in the Settlement Agreement. Section 3(A) of the Settlement Agreement provides that: "Following the execution of this Agreement through the Effective Date, the Parties shall work together in good faith to promptly reconcile the amounts of the Disputed KServicing Fee Holdback and the Disputed KServicing Remittance Holdback as of the Petition Date to determine the appropriate amount of the Settlement Payment." Section 2 of the Settlement Agreement defines the Effective Date as "the date on which the Bankruptcy Court approves this Agreement[,]" which occurred when the Court entered the Settlement Order on November 9, 2022.

12. Although the hope was to have the Reconciliation Process completed by November 9, it was clear to me from ongoing open information requests from CB and statements made by representatives of CB, that the parties would continue to work in good faith to confirm

the amount of the Settlement Payment even after the Effective Date prior to such funds being wired. At no time did I understand, or did CB ever claim to me during the Reconciliation Process, that the amount of the Settlement Payment could be altered based on an artificial ending of the Reconciliation Process as of November 9th—even if the Parties were still working together to confirm the correct amount of that payment. It was expressly stated by CB on November 9th that the parties would be using the weekend to continue its reconciliation efforts. I was the lead person at KServicing responsible for interfacing with CB in connection with the Reconciliation Process and worked closely with my colleague Tamica Williams, Controller at KServicing, as well as others, to obtain the information necessary to calculate the Settlement Payment.

<u>The Reconciliation Process</u>

13. Beginning on October 31, 2022, CB and KServicing typically met three times a day for hours at a time in connection with the Reconciliation Process contemplated by the Settlement Agreement. As discussed above, the purpose of the Reconciliation Process was to jointly confirm the proper amount of the Settlement Payment which was chiefly comprised of the following three calculations, which would be deducted from the agreed Settlement Amount of $58,000,000 to calculate the Settlement Payment:

- Calculating the amount of the "Disputed KServicing Fee Holdbacks," which are made up of SBA loan origination fees KServicing collected and were due to CB.
- Calculating the amount of the "Disputed KServicing Remittance Holdback" which is comprised of two components:
    - (i) funds "collected from borrowers that KServicing is required to remit to CB," and
    - (ii) funds "held by KServicing on account of cancelled loans."

14. On Friday, November 4th, I emailed Michele Vervlied and Alyssa White at CB, advising them that based on our then current information, the amount of the cancelled loan

holdbacks was $3,617,304. A copy of my email to Michele Vervlied and Alyssa White is attached hereto as **Exhibit 1**. The financial information I sent on that date originated with the Company's former Chief Financial Officer, Danny Eidson, who, prior to his departure from the Company in June 2022, had been the person responsible for tracking funds KServicing had held back that were otherwise due to CB but for their failure to pay our servicing fee. At that time, I expected that the information that had been tracked by Mr. Eidson reflected the most complete and current information. The spreadsheet detailing the cancelled loans listed 204 entries of loans containing, among other information, borrower details, loan identification information, and loan amounts.

15. On Monday, November 7th, via a phone call between myself, Tamica Williams, and David Walker of KServicing, and Alyssa White, Michele Vervlied, and Albert Merkin of CB, CB informed us that KServicing's $3,617,304 figure for cancelled loans was incorrect, and that CB calculated the cancelled loans amount to be approximately $1.6 million. Alyssa White told us that the discrepancy resulted from the fact that some of the loans that were listed in KServicing's November 4th spreadsheet were not cancelled but actually in forgiveness or had otherwise been disbursed (and not returned), and principal amounts associated with those loans would then not be due to CB.

16. Following the November 7th phone call and CB identifying the discrepancy, it became clear that the amount of the cancelled loans needed to be investigated and further reconciled based on the information received from CB. On November 7th, I emailed Michele Vervlied and Alyssa White of CB informing them that KServicing would review the discrepancy in the cancelled loan amounts to confirm CB's figure and provide an updated number. A copy of that email is attached hereto as **Exhibit 2**. The following day, on November 8th, Alyssa

White responded to me that she was "looking forward to that information," and asked, in the interim, for KServicing's wire transfer information. *See id.*

17. My colleagues and I at KServicing, including Tamica Williams and others at our direction and supervision, worked to reconcile the difference between CB's and KServicing's calculation of the cancelled loan amounts. KServicing sought to use the most reliable source of data to conduct that reconciliation and therefore utilized data directly from the SBA website. KServicing looked up each loan on the spreadsheet provided to CB on November 4th on a loan-by-loan basis (using their SBA Loan ID number) on the SBA website to determine whether the loan was, in fact, cancelled, or, instead was actually funded, disbursed, and being repaid or in the process of being forgiven by the SBA. As I discuss below, we sent the outcome of that work to CB on November 14, 2022.

18. On Wednesday, November 9th (the Effective Date under the Settlement Agreement), and two days after I had indicated to Alyssa White by email that we would be working to further reconcile the cancelled loan amounts, Salim Kafiti, KServicing's Deputy General Counsel, and I spoke by phone with CB's General Counsel, Andrew Sachs, who was included on most of the Parties' correspondence during the Reconciliation Process. During this conversation, Mr. Sachs stated that because this Court had just issued its Order approving the Settlement Agreement, and CB accordingly had three business days to make payment by the terms of the Settlement Agreement, the Parties would have the weekend to continue the Reconciliation Process together to jointly confirm the Settlement Payment amount. This was perfectly agreeable to KServicing because we did not view the Settlement Agreement as preventing the Parties from continuing to work in good faith to jointly confirm the correct Settlement Payment.

19. KServicing and CB continued to communicate by email into the evening of November 9th concerning the information exchanged during the Reconciliation Process. Alyssa White emailed me at on November 9 at 4:02 p.m. that CB would "provide feedback" on one of KServicing's data files "by the end of the day tomorrow," November 10th. A copy of that November 9th email is attached hereto as **Exhibit 3**. Indeed, on November 10th, Gregg Anderson of CB asked KServicing to send certain additional information (the October 3rd Loan Portfolio file), which Chioma Ajagba, Program Manager for Partnerships at KServicing, shared with him. A copy of Mr. Anderson's email is attached hereto as **Exhibit 4**. These actions of CB, among others, further supported KServicing's understanding that the parties would continue to work cooperatively to jointly confirm the correct amount of the Settlement Payment even after the Effective Date.

20. Although KServicing was still working through the Reconciliation Process—including addressing the questions posed by CB—on Friday, November 11th, I sent wire instructions to Michele Vervlied and Alyssa White of CB. On Monday, November 14 [at 7:56 a.m.], Alyssa White responded by emailing me and Joe Mullaney of KServicing asking to have a phone call that day to verbally confirm the wire instructions. A copy of that email asking for a call to discuss wire instructions is attached hereto as **Exhibit 5**.

21. Later on November 14th, I emailed Alyssa White, Michele Vervlied, and Albert Merkin of CB following up on the cancelled loan figure and notifying them that, after additional review based on the SBA data, KServicing was able to confirm that 115 of the 204 loans listed in the preliminary cancelled loan spreadsheet sent to CB on November 4th were cancelled, meaning nearly half of those loans we originally thought had been cancelled were not, and that the funds due to CB on account of cancelled loans was therefore significantly less than KServicing

had initially estimated. In that email, I offered to have a call with CB to discuss the updated amount for the cancelled loan population. That November 14, 2022 email is attached hereto as **Exhibit 6**. The new figure aligned with what CB had previously indicated to us on November 7th, and was based on our team's cross referencing with the SBA's data.

22. Instead of acknowledging the corrected cancelled loan amount which was in line with their prior representation, within an hour of my sending the update, CB sent to KServicing an email reflecting an initiated wire transfer amounting to $19,469,355, indicating that, despite their own records to the contrary they used KServicing's older figures (prior to our cross reference with the SBA's data) to calculate the wire transfer amount as it relates to the cancelled loan amount. It appeared that earlier emails from KServicing indicating that we were reconciling the cancelled loan amounts and my email confirming that CB's figure for the cancelled loan amount was accurate, were summarily ignored. After we received CB's notification of the wire transfer on November 14th, CB and its counsel failed to respond to repeated outreach from KServicing for over 24 hours. *See* **Exhibit 7**.

23. The next day, on November 15th, CB revised the amount of the payment and transferred an additional $1,030,328 to KServicing, yielding a total amount of $20,499,683. That day, CB's counsel explained by email that in calculating their payment of $19,469,355 on November 14th, they had "mistakenly viewed" the $1,030,328 figure on account of interest in KServicing's data "as separate and distinct from the aggregate borrower remittance figure," and would therefore wire that amount to KServicing. A copy of that email from CB's counsel, Jeremy Sternberg, to KServicing and its counsel is attached hereto as **Exhibit 7**. Aside from this email and its attachment, CB did not provide KServicing with CB's own data or documentation to support CB's calculation of its payment.

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Date: December 7, 2022
Atlanta, Georgia

/s/ *Donna R. Evans*
Donna R. Evans

EXHIBIT 1

Gmail Donna Evans <devans@kservicecorp.com>

KServicing Update #2
2 messages

Donna Evans <devans@kservicecorp.com> Fri, Nov 4, 2022 at 4:13 PM
To: "Vervlied, Michele L" <mvervlied@customersbank.com>, "White, Alyssa A" <awhite@customersbank.com>
Cc: Sal Kafiti <skafiti@kservicecorp.com>, "Sachs, Andrew" <asachs@customersbank.com>

Michele/Alyssa,

Attached are two files that include the detail for cancelled/missing/incomplete loans that KServicing has included as part of the holdback amount.

Total amount of cancelled/missing/incomplete loan holdback: $3,617,304

Cancelled Loan file includes list of 204 loans that KServicing owes Cubi remittance for.

- **Total amount: $3,479,453**
  - Please note: the bottom of this file includes 22 files highlighted in yellow.
    - The yellow loans are also reflected on the remittance reporting; CUBI will need to back out these loans from remittance file total, so as not to duplicate expected funds to receive.

Missing Loan file includes 3 files that KS owes CUBI

- **Total amount: $137,851**
  - These loans were listed separately by former finance lead and are funds owed to CUBI

--
Donna Robinson Evans
Sr. Operations Director, KServicing
730 Peachtree St., Suite 470
Atlanta, GA 30308
https://www.kservicing.com/

2 attachments

CUBI Other Unremitted_11.4.22.xlsx
10K

CUBI Returned or Incomplete Loans_11.4.22.xlsx
43K

White, Alyssa A <awhite@customersbank.com> Fri, Nov 4, 2022 at 5:12 PM
To: Donna Evans <devans@kservicecorp.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>
Cc: Sal Kafiti <skafiti@kservicecorp.com>, "Sachs, Andrew" <asachs@customersbank.com>

Thank you. Looking at them now. Will let you know if I have any questions.

Alyssa A White

SVP, Director of Digital 7A Operations

40 General Warren Blvd, Suite 200

Malvern, Pennsylvania 19355

(Cell) 484-334-5151

customers bank

From: Donna Evans <devans@kservicecorp.com>
Sent: Friday, November 4, 2022 4:14 PM
To: Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>
Cc: Sal Kafiti <skafiti@kservicecorp.com>; Sachs, Andrew <asachs@customersbank.com>
Subject: KServicing Update #2

Michele/Alyssa,

Attached are two files that include the detail for cancelled/missing/incomplete loans that KServicing has included as part of the holdback amount.

Total amount of cancelled/missing/incomplete loan holdback: $3,617,304

Cancelled Loan file includes list of 204 loans that KServicing owes Cubi remittance for.

- **Total amount: $3,479,453**
    - Please note: the bottom of this file includes 22 files highlighted in yellow.
        - The yellow loans are also reflected on the remittance reporting; CUBI will need to back out these loans from remittance file total, so as not to duplicate expected funds to receive.

Missing Loan file includes 3 files that KS owes CUBI

- **Total amount: $137,851**

- These loans were listed separately by former finance lead and are funds owed to CUBI

--

Donna Robinson Evans

Sr. Operations Director, KServicing

730 Peachtree St., Suite 470

Atlanta, GA 30308

https://www.kservicing.com/

EXHIBIT 2

Gmail

Donna Evans <devans@kservicecorp.com>

KServicing Status Recon Update - 11/7/22

3 messages

Donna Evans <devans@kservicecorp.com> Mon, Nov 7, 2022 at 4:53 PM
To: "Vervlied, Michele L" <mvervlied@customersbank.com>, "White, Alyssa A" <awhite@customersbank.com>
Cc: "Sachs, Andrew" <asachs@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>

Alyssa and Michele,

Below is an update on the follow up items that we discussed earlier today:

Cancelled loan file/status discrepancies: the data team is reviewing the status that KS has access to with the SBA (vs etran that the team currently does not have access to) to revisit where all of the loans stand, and provide an updated version. (ETA Tue)

Synovus file follow up: David Walker providing CB team with definitions of categories to allow CB to analyze the summary provided. (ETA tue)

Trial balance update: Updated trial balance file aligning 1) loan schedule raw file's loan population and original funding amount, with 2) supplemental report's loan population and outstanding principal bank balance, and tying these amounts to the 3) remittance report.

Jason is working on #1 and #2 in the above overview of the trial balance update, using CB portfolio transaction data through 10/3 to demonstrate the alignment between the loan raw schedule file and his supplemental file. (It'll take approx. 1/3 the time to build out this overview in tableau vs rebuilding the supplemental file structure with data reflected through 10/3.)

Jason is pushing to build and complete, to share with the CUBi team by early Wed. (If it is ready sooner, we will schedule time to review with the CB team.)

After this step has been completed, I will then work with the financial team to confirm a timeline to provide an ETA for the trial balance file to include an update that ties the remittance report to the loan raw schedule and supplemental file.

let me know if questions.

--
Donna Robinson Evans
Sr. Operations Director, KServicing
730 Peachtree St., Suite 470
Atlanta, GA 30308
https://www.kservicing.com/

Donna Evans <devans@kservicecorp.com> Mon, Nov 7, 2022 at 4:57 PM
To: Laquisha Milner <lmilner@kservicecorp.com>, Sal Kafiti <skafiti@kservicecorp.com>

FYI for you both.

On the call with CUBI today, we outlined that there are bank filing deadlines that the finance/accounting team has to meet this week, that will impact this trial balance reporting request.

I communicated that every request is being asked for completion in the same 72 hr timeline -- which is not possible.

While Michele did seem to get what I was saying -- they will keep pushing for all of this data to be aligned before a payment is paid on Thursday.
[Quoted text hidden]
--
--donna

White, Alyssa A <awhite@customersbank.com> Tue, Nov 8, 2022 at 2:58 PM
To: Donna Evans <devans@kservicecorp.com>
Cc: "Sachs, Andrew" <asachs@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>

Hi Donna,

Looking forward to that information. With yesterday's approval we are preparing to send a wire on Thursday. Having an accurate trial balance will be a critical piece of information to determining the amount of the payment.

In the interim, please provide KServicing' s wire information. I will also need you confirm that information over the phone for security purposes. We can do that in one of our calls today or tomorrow if that works for you.

Thanks,

Alyssa A White

SVP, Director of Digital 7A Operations

40 General Warren Blvd, Suite 200

Malvern, Pennsylvania 19355

(Cell) 484-334-5151

customers bank

From: Donna Evans <devans@kservicecorp.com>
Sent: Monday, November 7, 2022 4:54 PM
To: Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>
Cc: Sachs, Andrew <asachs@customersbank.com>; Sal Kafiti <skafiti@kservicecorp.com>
Subject: KServicing Status Recon Update - 11/7/22

Alyssa and Michele,

[Quoted text hidden]

EXHIBIT 3

Gmail

Donna Evans <devans@kservicecorp.com>

RE: KS/CB: Review Loan Trial Balance Update: Part 1

6 messages

White, Alyssa A <awhite@customersbank.com> Wed, Nov 9, 2022 at 8:50 AM
To: "devans@kservicecorp.com" <devans@kservicecorp.com>

Hi Donna,

Will Sal be on this call? Andrew was going to join, but wanted to be sure Sal would be there.

Thanks,

Alyssa A White

SVP, Director of Digital 7A Operations

40 General Warren Blvd, Suite 200

Malvern, Pennsylvania 19355

(Cell) 484-334-5151

customers bank

-----Original Appointment-----
From: devans@kservicecorp.com <devans@kservicecorp.com>
Sent: Tuesday, November 8, 2022 5:33 PM
To: devans@kservicecorp.com; Tim Keefe; jdods@kservicecorp.com; White, Alyssa A; Vervlied, Michele L; Merkin, Albert R
Subject: KS/CB: Review Loan Trial Balance Update: Part 1
When: Wednesday, November 9, 2022 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where:

When

Wednesday Nov 9, 2022 · 11:30am – 12pm (Eastern Time - (New York

Guests

devans@kservicecorp.com - organizer

Tim Keefe

jdods@kservicecorp.com

awhite@customersbank.com

mvervlied@customersbank.com

amerkin@customersbank.com

View all guest info

Reply for awhite@customersbank.com

Maybe | No | Yes

More options

Join with Google Meet

Meeting link

meet.google.com/cah-cxtf-gyc

Join by phone

US) +1 732-771-9531)
PIN: 785454850

More phone numbers

Invitation from Google Calendar

You are receiving this email because you are an attendee on the event. To stop receiving future updates for this event, decline this event.

Forwarding this invitation could allow any recipient to send a response to the organizer, be added to the guest list, invite others regardless of their own invitation status, or modify your RSVP. Learn more

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Donna Evans <devans@kservicecorp.com> Wed, Nov 9, 2022 at 10:40 AM

To: "White, Alyssa A" <awhite@customersbank.com>

Hey Alyssa -- I am with Sal today, and he will join us at 11.30.

[Quoted text hidden]

--

--donna

White, Alyssa A <awhite@customersbank.com> Wed, Nov 9, 2022 at 4:02 PM
To: "devans@kservicecorp.com" <devans@kservicecorp.com>, Tim Keefe <tkeefe@kservicecorp.com>, "jdods@kservicecorp.com" <jdods@kservicecorp.com>
Cc: "Merkin, Albert R" <amerkin@customersbank.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>, "Sachs, Andrew" <asachs@customersbank.com>

Hi Donna,

Just checking in to be sure you are still sending over the file. Friday is a bank holiday for us, so we'd like to have time to provide feedback by end of day tomorrow.

[Quoted text hidden]

Tim Keefe <tkeefe@kservicecorp.com> Wed, Nov 9, 2022 at 4:47 PM
To: "White, Alyssa A" <awhite@customersbank.com>
Cc: "devans@kservicecorp.com" <devans@kservicecorp.com>, "jdods@kservicecorp.com" <jdods@kservicecorp.com>, "Merkin, Albert R" <amerkin@customersbank.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>, "Sachs, Andrew" <asachs@customersbank.com>

Hi Alyssa,

Pls find the file attached.

Thanks,
Tim

[Quoted text hidden]

CB-reconcile.xlsx
9698K

White, Alyssa A <awhite@customersbank.com> Wed, Nov 9, 2022 at 7:07 PM
To: Tim Keefe <tkeefe@kservicecorp.com>
Cc: "devans@kservicecorp.com" <devans@kservicecorp.com>, "jdods@kservicecorp.com" <jdods@kservicecorp.com>, "Merkin, Albert R" <amerkin@customersbank.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>, "Sachs, Andrew" <asachs@customersbank.com>

Thanks Tim.

A few questions:

- What is on the Comparison 103 to 103 tab vs Supplemental?
- Is the principal balance the bank balance?
- What date is this information as of? I see an 11/9 date referenced in column B of the Supplemental tab.

[Quoted text hidden]

Jason Dods <jdods@kservicecorp.com> Wed, Nov 9, 2022 at 7:10 PM
To: "White, Alyssa A" <awhite@customersbank.com>
Cc: "Merkin, Albert R" <amerkin@customersbank.com>, "Sachs, Andrew" <asachs@customersbank.com>, Sal Kafiti <skafiti@kservicecorp.com>, Tim Keefe <tkeefe@kservicecorp.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>, "devans@kservicecorp.com" <devans@kservicecorp.com>

10/3 to 10/3 is the data we reviewed today in Tableau as an Excel. The supplemental tab is the full list of loans in todays supplemental file as comparison (see last column in 10/3 tab)
Principal balance in the first tab is the customer ledger balance, same as discussed today on the call
First tab is data as of 10/3, second tab is 11/9 supplemental file loans as comparison to show coverage

Please excuse any typos or brevity as this was sent by thumbs
Jason

[Quoted text hidden]

EXHIBIT 4

Gmail **Donna Evans <devans@kservicecorp.com>**

FW: CB Loan Portfolio + Supplemental - 2022-09-28 - Followup

9 messages

Anderson, Gregg <ganderson@customersbank.com> Mon, Oct 31, 2022 at 8:24 AM
To: Chioma Ajagba <cajagba@kservicecorp.com>, Jason Dods <jdods@kservicecorp.com>
Cc: Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>

Hi. Can you provide an update on:

1. Reconciliation of Supplemental file with the Loan Schedule Raw?
2. Detailed logic for each balance field of the supplemental file?

Thanks.

Gregg Anderson

Account Manager (Contractor)

40 General Warren Blvd. Suite 200

Malvern, PA 19355

customers bank

Anderson, Gregg <ganderson@customersbank.com> Mon, Oct 31, 2022 at 11:29 AM
To: Chioma Ajagba <cajagba@kservicecorp.com>, Jason Dods <jdods@kservicecorp.com>
Cc: Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

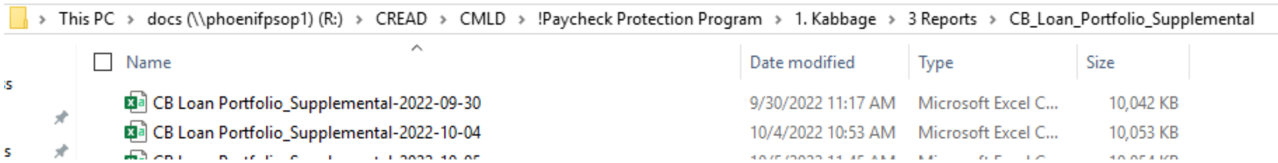
Hi. As we look at the files, can you also confirm the file names that we should be using to compare balances as of the end of September month end?

i.e. Loan Schedule Raw – Which file reflects the 9/30 Balances?

> This PC > docs (\\phoenifpsop1) (R:) > CREAD > CMLD > !Paycheck Protection Program > 1. Kabbage > 3 Reports

Name	Date modified	Type	Size
kbg_cb_loan_schedule_raw_20220929	9/30/2022 9:56 AM	Microsoft Excel Comma Separated Values File	3,663 KB
cb_loan_cancellation_report_20220929	9/30/2022 9:12 AM	Microsoft Excel Comma Separated Values File	105 KB
cb_ppp_payments_report_20220929	9/30/2022 9:11 AM	Microsoft Excel Comma Separated Values File	57 KB

Supplemental File – Which file reflects the 9/30 Balances?



Thanks.

Gregg Anderson

Account Manager (Contractor)

40 General Warren Blvd. Suite 200

Malvern, PA 19355

customers bank

[Quoted text hidden]

Jason Dods <jdods@kservicecorp.com> Mon, Oct 31, 2022 at 12:15 PM
To: "Anderson, Gregg" <ganderson@customersbank.com>
Cc: Chioma Ajagba <cajagba@kservicecorp.com>, Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

For the supplement please use the file marked 10/3
[Quoted text hidden]

Anderson, Gregg <ganderson@customersbank.com> Mon, Oct 31, 2022 at 12:44 PM
To: Jason Dods <jdods@kservicecorp.com>
Cc: Chioma Ajagba <cajagba@kservicecorp.com>, Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

Thanks. Can you send that file? It was a Holiday, so I do not think we received the file.

Gregg Anderson

Account Manager (Contractor)

40 General Warren Blvd. Suite 200

Malvern, PA 19355

customers bank

From: Jason Dods <jdods@kservicecorp.com>
Sent: Monday, October 31, 2022 12:16 PM
To: Anderson, Gregg <ganderson@customersbank.com>
Cc: Chioma Ajagba <cajagba@kservicecorp.com>; Donna Evans <devans@kservicecorp.com>; White, Alyssa A <awhite@customersbank.com>; English, Jonathan <jenglish@customersbank.com>; Gannon, Gwenn

<gganon@customersbank.com>; Nagulur, Prakash <pnagulur@customersbank.com>; Brown, Emily <ebrown@customersbank.com>; Mannebach, Pete <pmannebach@customersbank.com>; Merkin, Albert R <amerkin@customersbank.com>
Subject: Re: FW: CB Loan Portfolio + Supplemental - 2022-09-28 - Followup

PLEASE NOTE: This email is not from a Customers Bank address.
Do not click on suspicious links. Do not give out personal or bank information to unknown senders.

[Quoted text hidden]
[Quoted text hidden]

Jason Dods <jdods@kservicecorp.com> Mon, Oct 31, 2022 at 1:22 PM
To: "Anderson, Gregg" <ganderson@customersbank.com>
Cc: Chioma Ajagba <cajagba@kservicecorp.com>, Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

@Chioma Ajagba
[Quoted text hidden]

White, Alyssa A <awhite@customersbank.com> Mon, Oct 31, 2022 at 1:32 PM
To: Jason Dods <jdods@kservicecorp.com>, "Anderson, Gregg" <ganderson@customersbank.com>
Cc: Chioma Ajagba <cajagba@kservicecorp.com>, Donna Evans <devans@kservicecorp.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

Do we have the correct file for the loan schedule raw? We only have a 9/29 file.

Alyssa A White

SVP, Director of Digital 7A Operations

40 General Warren Blvd, Suite 200

Malvern, Pennsylvania 19355

(Cell) 484-334-5151

[Quoted text hidden]

Chioma Ajagba <cajagba@kservicecorp.com> Mon, Oct 31, 2022 at 6:35 PM
To: Jason Dods <jdods@kservicecorp.com>
Cc: "Anderson, Gregg" <ganderson@customersbank.com>, Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

Hi Gregg.

See attached for the 10/3 supplemental file.

-Chioma
[Quoted text hidden]
--
Chioma Ajagba
Program Management, Bank Partners
KServicing
https://www.kservicing.com/

CB Loan Portfolio_Supplemental-2022-10-03.csv
10047K

Anderson, Gregg <ganderson@customersbank.com> Thu, Nov 10, 2022 at 2:13 PM
To: Chioma Ajagba <cajagba@kservicecorp.com>, Jason Dods <jdods@kservicecorp.com>
Cc: Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

Chioma.

Can you send us the 10/3 CB Loan Portfolio file please?

Thanks.

Gregg Anderson

Account Manager (Contractor)

40 General Warren Blvd. Suite 200

Malvern, PA 19355

customers bank

[Quoted text hidden]

Chioma Ajagba <cajagba@kservicecorp.com> Thu, Nov 10, 2022 at 2:33 PM
To: "Anderson, Gregg" <ganderson@customersbank.com>
Cc: Jason Dods <jdods@kservicecorp.com>, Donna Evans <devans@kservicecorp.com>, "White, Alyssa A" <awhite@customersbank.com>, "English, Jonathan" <jenglish@customersbank.com>, "Gannon, Gwenn" <ggannon@customersbank.com>, "Nagulur, Prakash" <pnagulur@customersbank.com>, "Brown, Emily" <ebrown@customersbank.com>, "Mannebach, Pete" <pmannebach@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>

Hi Gregg,

Attached are the 10/3 CB loan files.

-Chioma
[Quoted text hidden]

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2 attachments

CB Loan Portfolio-2022-10-03.xlsx
4978K

CB Loan Portfolio_Supplemental-2022-10-03.csv
10047K

EXHIBIT 5

Gmail

Donna Evans <devans@kservicecorp.com>

KServicing Follow Up: Wire Instructions

4 messages

Donna Evans <devans@kservicecorp.com> Fri, Nov 11, 2022 at 1:02 PM
To: "Vervlied, Michele L" <mvervlied@customersbank.com>, "White, Alyssa A" <awhite@customersbank.com>
Cc: Joe Mullaney <jmullaney@kservicecorp.com>

Michele and Alyssa,

Follow up from this week: wire instructions.

Attached is the routing number and account number for the KServicing Synovus account.

Joe Mullaney is the point of contact to verbally confirm the wire information with the Customers team. (He's cc'd.)

thank you!

--
Donna Robinson Evans
Sr. Operations Director, KServicing
730 Peachtree St., Suite 470
Atlanta, GA 30308
https://www.kservicing.com/

Synovus Operating Account Instructions.docx
13K

Donna Evans <devans@kservicecorp.com> Fri, Nov 11, 2022 at 1:02 PM
To: Sal Kafiti <skafiti@kservicecorp.com>

fyi
[Quoted text hidden]
--
--donna

Synovus Operating Account Instructions.docx
13K

White, Alyssa A <awhite@customersbank.com> Mon, Nov 14, 2022 at 7:56 AM
To: Donna Evans <devans@kservicecorp.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>
Cc: Joe Mullaney <jmullaney@kservicecorp.com>

Thanks Donna.

Joe, please let me know when you are available today before 2:30 ET to talk live time to confirm the wire instructions.

Thanks,

Alyssa A White

SVP, Director of Digital 7A Operations

40 General Warren Blvd, Suite 200

Malvern, Pennsylvania 19355

(Cell) 484-334-5151

customers bank

From: Donna Evans <devans@kservicecorp.com>
Sent: Friday, November 11, 2022 1:03 PM
To: Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>
Cc: Joe Mullaney <jmullaney@kservicecorp.com>
Subject: KServicing Follow Up: Wire Instructions

PLEASE NOTE: This email is not from a Customers Bank address.
Do not click on suspicious links. Do not give out personal or bank information to unknown senders.

Michele and Alyssa,

[Quoted text hidden]

Joe Mullaney <jmullaney@kservicecorp.com> Mon, Nov 14, 2022 at 9:10 AM
To: "White, Alyssa A" <awhite@customersbank.com>
Cc: Donna Evans <devans@kservicecorp.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>

Good morning Alyssa,

With the exception of a 1/2 hour meeting at 10:00, I am free to take a call.

Best Regards,

Joe Mullaney, CTP
FinOps
JMullaney@kservicing.com
(678) 908-6320

[Quoted text hidden]

EXHIBIT 6

Gmail

Donna Evans <devans@kservicecorp.com>

KServicing Follow up: Updated cancelled loan analysis

Donna Evans <devans@kservicecorp.com> Mon, Nov 14, 2022 at 6:06 PM
To: "White, Alyssa A" <awhite@customersbank.com>, "Vervlied, Michele L" <mvervlied@customersbank.com>, "Merkin, Albert R" <amerkin@customersbank.com>
Cc: Tim Keefe <tkeefe@kservicecorp.com>, Jason Dods <jdods@kservicecorp.com>

Alyssa, Albert and Michele,

We have a follow up analysis about the cancelled loan file that KS had forwarded to the CB team on 11.4.22. We conducted another analysis of the data last week, and confirmed the cancelled loan population was different. Summary below (and analysis file attached.)

Let us know if a call would be helpful; we'd like to confirm if the updates noted below align with the CB cancelled loan amounts.

--donna

KServicing cancelled/incomplete analysis follow up:

- KServicing forwarded a file on 11/4/22 that listed 204 loans with a total value of $3,479,453 in returned or incomplete loans.
- CB highlighted discrepancies with the list on 11/7/22.
- KServicing conducted additional analysis from the list last week, and confirmed that 115 of the 204 loans were confirmed as cancelled, totaling $1,665,641 in cancelled loans.

In the attached file, the 204 loans KS had noted as cancelled have an updated status. The file includes KS data and also brought in SBA portal status data in columns N, O and P.

- 56 loans, totalling $1,066,331 were confirmed as disbursed, and need to be removed from the cancelled/returned list
- 33 loans, totalling $747,381 were processed for GP and listed as "payment confirmed" in the SBA portal, and need to be removed from the cancelled/returned list
  - pls note: last week, these 33 loans were listed as "none" disbursed status in the SBA portal, along with GP status of "payment confirmed"
  - these loans were rechecked earlier today, the disbursed status was changed to "yes" from "none" on these loans
- 115 loans, totalling $1,665,641 are cancelled, confirmed as not appearing in the SBA's PPP portal

Updated hold back amounts:

- KServicing had held $3,479,453 as hold back from these 204 loans
- Updated cancelled loan amount is $1,665,641

--
Donna Robinson Evans
Sr. Operations Director, KServicing
730 Peachtree St., Suite 470
Atlanta, GA 30308
https://www.kservicing.com/

CUBI Returned or Incomplete Loans_11.4.22Updated.xlsx
37K

EXHIBIT 7

From:	Sternberg, Jeremy M (BOS - X71476)
To:	Arthur, Candace M.; Watkins, Philip S; Vervlied, Michele L; White, Alyssa A; Leibold, Carla; Monaghan, John (BOS - X75834)
Cc:	Slack, Richard; Tsekerides, Theodore; Sal Kafiti; Schrock, Ray; Bentley, Chase; Donna Evans
Subject:	RE: Settlement Payment
Date:	Tuesday, November 15, 2022 10:22:43 PM
Attachments:	image002.png Kabbage Settlement Payment Reconciliation FINAL UPDATED 11 15 22.pdf

Candace and team,

We write in response to your email from 9:26pm on Monday. Your email incorrectly asserts that Customers Bank ("CB") has not paid the "full Settlement Payment."

Some history and context is required in light of your disappointing and errant accusations of "bad faith and contempt of Court."

The Settlement and Release Agreement obliges CB to pay $58MM less the amount of the Disputed KServicing Holdbacks as of the Petition Date. Paragraph 3 of the Agreement provides that following the execution of the Agreement "through the Effective Date, the Parties shall work together in good faith to promptly reconcile the amounts of the Disputed KServicing Fee Holdback and the Disputed KServicing Holdback as of the Petition Date to determine the appropriate amount of the Settlement Payment." Paragraph 2 of the Agreement provides that the Effective Date is the date the Bankruptcy Court approves the Agreement. That date was November 9, 2022.

An important part of the history of the Agreement is that KServicing wanted a term (*see* 10/25/22 DRAFT Agreement at paragraph 3(B)) that would continue the reconciliation process from the Effective Date "through the Servicing Termination Date. . ." CB rejected that term, and in a phone call on October 26, 2022, I explained the reasons that CB was uncomfortable with and would not agree to that term, and by email dated October 26, 2022 at 5:14 pm your team responded that you had "discussed with KS the final two outstanding points on the Settlement Agreement and are comfortable removing them, per your request." That same day your team circulated the final Agreement, CB signed it, and the next day KServicing signed it and then filed it with the court with the 9019 motion. Based on an email that Donna Evans of KServicing sent at 6:23pm on November 14, 2022 to the CB team stating that "my understanding is we'd continue to work together to ensure data points align on both sides. . .", it does not seem that certain members of the KServicing team appreciate that the reconciliation process had already ceased, per the terms of the final Settlement Agreement. CB intends to abide by the Settlement Agreement it signed and that the Court entered, not an earlier version that proposed an extended reconciliation process.

As part of its efforts to work "in good faith" with KServicing to reconcile the Disputed KServicing Holdback, CB promptly and repeatedly sought basic source information from KServicing. At every turn, these requests were either ignored, met with misdirection, or resulted in KServicing providing information different from the basic information that any servicer should have (trial balance and bank statements) and that any bank would want and expect. In fact, at no time prior to the Effective Date did KServicing provide CB with the figure that KServicing thought was the amount of the Disputed KServicing Remittance Holdbacks. When we repeatedly asked for the data and calculations used by Alix Partners to arrive at its estimate of that figure, KServicing refused to provide it. It certainly began to raise a suspicion within the CB team that by refusing to provide basic information KServicing was trying to hide something.

By way of a few examples of CB's good faith requests for information and KServicing's stonewalling or inability to provide it:

1. On November 3, Andrew Sachs of CB made an email request to the KServicing team for: (a) records evidencing total amounts received into the remittance account; (b) records evidence total amounts CB paid KServicing for loans that were never funded or that were canceled and repaid by the borrower; and (c) records evidencing total amounts withdrawn from the remittance account and then returned to the borrowers or paid to the SBA. KServicing refused to provide these documents. That same day, CB made a written request for an updated trial balance. KServicing's response via email from Donna Evans was that KServicing would be unable to provide that information in a timely way.

2. As an alternative, I sought on multiple occasions from you (11/3/22 email at 6:56pm and 11/9/22 email at 8:36am) the information that Alix Partners reviewed and its calculations that were the basis for the estimated figure of $26.6MM in paragraph 1(E) of the Settlement Agreement for the Disputed KServicing Remittance Holdback. You did not provide that information.

3. On Friday night (11/4/22) by email at 7:52pm, KServicing promised to provide remittance reports and ACH information. On Monday evening (11/7/22), by email from Donna Evans at 4:54pm, KServicing announced that it was still working on providing the "Canceled loan file/status discrepancies," "Synovus file follow up," and "Trial balance update." Those materials were not provided in full by the Effective Date.

KServicing's inability to provide the basic information that would be expected in a good faith reconciliation is emblematic of its processing and servicing failures that led to the dispute between the parties. Though frustrated by KServicing's inability to provide basic information that would be required for a good faith reconciliation, CB worked hard and in good faith to meet its obligations under the Settlement Agreement from both a substance and timing perspective. Therefore, while KServicing's data was incomplete as of the Effective Date, CB reluctantly accepted it and used it to calculate the Settlement Payment.

In any event, each figure in the payment reconciliation provided by CB to KServicing on the payment day (11/14/22) is accurate based on KServicing's information, with one exception set forth below.

The Settlement Agreement provides that the Settlement Amount = $58MM less Disputed KServicing Holdbacks

Disputed KServicing Holdbacks are:

A. **The amounts of the SBA loan origination fees due to CB under the Sale and Servicing Agreement (Settlement Agreement at paragraph 1(C)) and were estimated at $8.3 million**. According to an email from Donna Evans of KServicing to CB on 11/4/22 at 4:25pm the amount of the Fee Holdback is $8,317,023. CB accepted that amount.

B. **The amounts collected from borrowers that KServicing was required to remit to CB (Settlement Agreement at paragraph 1(E)(i)).** These total $26,608,962 according to a spreadsheet provided by KServicing to CB by email on 11/4/22 at 7pm. CB accepted that amount. That same spreadsheet describes a separate amount for interest in the amount of $1,030,328.48. CB mistakenly viewed that as separate and distinct from the aggregate borrower remittance figure, and will be wiring that amount ($1,030,328.48) to KServicing tomorrow morning. The only other element of the borrower remittance figure is $497,900, described in a spreadsheet called Synovus Account Analysis sent by KServicing to CB by email on 11/4/22 at 7:38pm. After correcting its error noted above, the remittance amount used by CB in calculating the Settlement Payment is the exact figure that KServicing reported in the Synovus Account Analysis as having been collected from CB's borrowers.

C. **The amounts held by KServicing on account of cancelled loans (Settlement Agreement at paragraph 1(E)(ii))**. By email dated 11/4/22 at 4:14pm, Donna Evans of KServicing wrote to the CB team that the "amount of cancelled/missing/incomplete loan holdback: $3,617,304." CB accepted that amount, but acting in the highest level of good faith reduced it by $426,258 (in KServicing's favor) based on payments that it found duplicated in KServicing's remittance report. It added back $35,899 based on loans that KServicing's CFO advised by email dated August 28, 2021 had been funded by CB but not disbursed. CB also agreed with KServicing's figure of $1,150,513 for fees owed to the SBA for borrower overpayments, a figure provided by KServicing to CB by email on 11/4/22 at 8:33pm.

We have attached an updated and corrected reconciliation summary that includes all of these figures.

Contrary to the accusation in your email, CB does not believe there is any "unilateral attempt to pay millions of dollars less than what is owed. . ." Rather, CB made appropriate efforts to pay what was owed and did so openly and transparently by providing the full calculation to KServicing.

The time for reconciliation has ended, and it is time for KServicing to focus on its servicing obligations in the Settlement Agreement. You should be aware that KServicing unilaterally canceled its vital servicing meetings today with CB. CB entered into this settlement so as to obtain important loan servicing from KServicing. If those commitments are not going to be met, CB will be seeking relief from the court.

Jeremy Sternberg | **Holland & Knight**
Partner
Holland & Knight LLP
10 St. James Avenue, 11th Floor | Boston, Massachusetts 02116
Phone 617.854.1476 | Fax 617.523.6850
jeremy.sternberg@hklaw.com | www.hklaw.com

From: Arthur, Candace M. <Candace.Arthur@weil.com>
Sent: Monday, November 14, 2022 9:21 PM
To: Watkins, Philip S <pwatkins@customersbank.com>; Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>; Leibold, Carla <cleibold@customersbank.com>; Sternberg, Jeremy M (BOS - X71476) <Jeremy.Sternberg@hklaw.com>; Monaghan, John (BOS - X75834) <john.monaghan@hklaw.com>

Cc: Slack, Richard <richard.slack@weil.com>; Tsekerides, Theodore <theodore.tsekerides@weil.com>; Sal Kafiti <skafiti@kservicecorp.com>; Schrock, Ray <Ray.Schrock@weil.com>; Bentley, Chase <Chase.Bentley@weil.com>; Donna Evans <devans@kservicecorp.com>
Subject: RE: Settlement Payment

[External email]
We are in receipt of the below correspondence from Customers Bank reflecting the initiation of a wire payment in the amount of $19,469,355 (the "Deposit") in connection with its obligations under that certain Settlement Agreement between Customers Bank and Kabbage Inc. d/b/a KServicing (the "Debtor"), dated October 27, 2022, and approved by the United States Bankruptcy Court for the District of Delaware on November 9, 2022 (the "Settlement Agreement").

The Deposit is not the full Settlement Payment due to the Debtor. The Debtor's reject any attempt to pay less than the Court ordered settlement amount of $58 million and such action is, among other things, in bad faith and in contempt of the Court. The Debtor's view the pending payment as a deposit in connection with the full Settlement Amount due and demand immediate remittance of the balance. It is my understanding that the parties were mutually engaged in further reconciliation and, in response to direct requests made by Customers Bank, the Debtor provided Customers Bank with data reconciling the Disputed KServicing Remittance Holdback before the issuance of any wire payment and such data clearly demonstrates that the Deposit is incorrect as to final amounts due.

The unilateral attempt to pay millions of dollars less than what is owed is not accepted nor acceptable. For the avoidance of doubt, any acceptance of the Deposit by the Debtor is not in full and final satisfaction of amounts due to the Debtor from Customers Bank under the Settlement Agreement. The acceptance of the partial payment shall in no way abridge the Debtor's rights with respect to receiving the balance of the Settlement Payment due under the Settlement Agreement and all rights, remedies, claims and defenses are fully reserved.

I have copied my litigation partners, Richard Slack and Theodore Tsekerides to this correspondence. We trust you will govern yourselves accordingly and look forward to promptly hearing from you. Absent corrective action on your part the Debtor will seek immediate Court intervention.

Candace M. Arthur
Partner

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
candace.arthur@weil.com
+1 212 310 8324 Direct
+1 212 310 8007 Fax

From: Sal Kafiti <skafiti@kservicecorp.com>

Sent: Monday, November 14, 2022 6:28 PM
To: Sachs, Andrew <asachs@customersbank.com>
Cc: Watkins, Philip S <pwatkins@customersbank.com>; Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>; Leibold, Carla <cleibold@customersbank.com>; devans@kservicecorp.com <devans@kservicecorp.com>
Subject: Re: Settlement Payment

this doesn't sound like our numbers. it sounds light. and it's the first i'm hearing of it. i'm going to fold in Weil — i know there was some reconciliation still happening on our end that got sent over this afternoon.

Get Outlook for iOS

From: Sachs, Andrew <asachs@customersbank.com>
Sent: Monday, November 14, 2022 6:20 PM
To: Sal Kafiti <skafiti@kservicecorp.com>
Cc: Watkins, Philip S <pwatkins@customersbank.com>; Vervlied, Michele L <mvervlied@customersbank.com>; White, Alyssa A <awhite@customersbank.com>; Leibold, Carla <cleibold@customersbank.com>; devans@kservicecorp.com <devans@kservicecorp.com>
Subject: Settlement Payment

Sal,

I hope you had a good weekend. We have initiated a wire for $19,469,355 to the following account.

Bank Name:		Synovus Bank
Routing Number:		[redacted]
Account Name:		Kabbage Operating Account
Account Number:		[redacted]
Fed Ref:		# 20221114 QMGFT007 002294

Attached you will find the calculations underlying this final tally. The attached numbers should look familiar to you, as they are the same numbers you reported to us, but let me know if you have any questions.

Thanks,

Andrew

Andrew B. Sachs
EVP, General Counsel and Corporate Secretary
West Reading, Pennsylvania
(Cell) 336-493-2334

www.customersbank.com

NYSE: CUBI

Reurned/Cancelled Loans	$3,617,304
Reurned/Cancelled Loans in Remittance Report	($426,258)
Additional Loans not Disbursed (per Danny)	$35,899
Adjusted Returned/Canceled Loans	**$3,226,945**
Borrower Principal Repayments and Returns per Remittance File	$25,578,633
Interest Collected	$1,030,328
Reported Remittance Account Variance	$497,900
Total Borrower Remittance Payments (P&I)	**$27,106,862**
Adjusted Returned/Cancelled Loans	$3,226,945
Total Borrower Remittance Payments (P&I)	$27,106,862
Fees Owed to SBA (Borrower Overpayments)	($1,150,513)
Disputed KServicing Remittance Holdbacks	**$29,183,294**
Disputed KServicing Fee Holdbacks	**$8,317,023**
Disputed KServicing Remittance Holdbacks	$29,183,294
Disputed KServicing Fee Holdbacks	$8,317,023
Disputed KServicing Holdbacks	**$37,500,317**
Negotiated Receivable	$58,000,000
Disputed KServicing Holdbacks	($37,500,317)
Settlement Payment	**$20,499,683**