IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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: D.I. 683**

DECLARATION OF AMANDA FLUG DAVIDOFF IN SUPPORT OF OBJECTION OF AMERICAN EXPRESS TO JOINT MOTION OF CROSS RIVER BANK AND CUSTOMERS BANK FOR AN ORDER AUTHORIZING RULE 2004 EXAMINATION

I, Amanda Flug Davidoff, hereby declare under penalty of perjury:

1. I am a member in good standing of the Bar of the District of Columbia and the Bars of the States of Connecticut and New York and have been admitted *pro hac vice* to practice before this Court. I am a partner of Sullivan & Cromwell LLP ("S&C") and am one of the attorneys representing American Express in the above-captioned proceedings. I submit this declaration in support of the *Objection of American Express to Joint Motion of Cross River Bank and Customers Bank for an Order Authorizing Rule 2004 Examination* (the "Objection"), to place before the Court certain documents and information referred to in the Objection.[2]

2. On January 4, 2023, S&C reached out to Debtors' counsel at Weil, Gotshal and Manges LLP ("Weil") to schedule a call to discuss Debtors' "options for ongoing 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.

[2] Capitalized terms not otherwise defined herein are defined in the Objection or Joint Motion.

servicing following bankruptcy." Attached hereto as Exhibit 1 is a true and correct copy of an email James Bromley of S&C sent to Theodore Tsekerides of Weil, copying Suniti Mehta of S&C and me, dated January 4, 2023 at 10:33 a.m.

3. On January 6, 2023, Mr. Bromley, Ms. Mehta and I participated in a call with Weil during which Weil indicated that Debtors' Partner Banks (including Movants) were requesting information such as "know your customer" ("KYC") and "know your business" ("KYB") records related to their PPP loans. Weil agreed to provide S&C with a detailed list of the information requested by the Partner Banks, as well as other information about the options being considered to transition servicing.

4. On January 11, 2023, Ms. Mehta and I participated in a call with Isaac Nesser of Quinn Emanuel Urquhart & Sullivan ("Quinn"), during which Mr. Nesser informed us that CRB had been unable to obtain information from Debtors that was needed to service CRB's loans. We explained that Weil had recently made S&C aware of a request for KYC- and KYB-related information, and S&C had asked Debtors' counsel to provide a list of third-party requests. Mr. Nesser agreed that it would be most efficient for all requests for information from American Express to be funneled through Weil, given that multiple parties were seeking similar information. Quinn and S&C did not discuss any specific CRB requests on this call or at any time thereafter.

5. Neither Customers Bank nor its counsel has ever communicated with S&C about data requests to transition servicing.

6. On January 13, 2023, American Express received from Debtors' counsel a letter attaching a set of requests (the "KServicing Requests") for extensive information about American Express's system architecture for storing Debtors' and the Partner Banks' loan data and records, documentation from Debtors' own PPP program that American Express does not

have, documentation and descriptions of American Express's systems and processes that American Express would need to create, and proprietary intellectual property such as all of the "code from Amex system environment." The KServicing Requests also sought data for thousands of individual loans and extensive human capital support. Attached hereto as Exhibit 2 is a true and correct copy of an email chain, including an email Mr. Bromley, Ms. Mehta and I received from Theodore Tsekerides of Weil, dated January 13, 2023, at 4:37 p.m. Attached hereto as Exhibits 3 and 4 are true and correct copies of (i) the KServicing Requests and (ii) the cover letter accompanying the KServicing Requests.

7. On January 19, 2023, S&C responded to the KServicing Requests. S&C notified Weil that "American Express is open to discussing its role in assisting KServicing with its transition plans, including the [KServicing Requests]," and that American Express "agree[s] that it is in the best interests of the parties to work cooperatively and that it would be helpful to meet and confer on the request." S&C explained that "American Express requires more information to understand what is being requested and the ultimate goal with respect to transitioning servicing," and "[s]ome of these requests may require weeks or months of development or other work to accomplish and so should be discussed" in order to develop a "more comprehensive transition plan[.]" S&C noted that "[i]n light of the steps required to scope and respond to the requests, at this time American Express cannot commit to providing all of the documentation, access, and resources requested by February 17, 2023 but is willing to discuss a realistic timeframe for assisting KServicing." Attached hereto as Exhibit 5 is a true and correct copy of an email chain, including an email Ms. Mehta sent to Theodore Tsekerides and Candace Arthur of Weil, copying Natasha Hwangpo, Chase Bentley and Jordan Ollestad of Weil as well as Mr. Bromley and me, dated January 19, 2023, at 5:59 p.m.

8. On January 27, 2023, Weil responded to S&C's January 19, 2023 email and

asked to schedule a call for February 2, 2023. Attached hereto as Exhibit 6 is a true and correct copy of an email chain, including an email Mr. Bromley, Ms. Mehta and I received from Cameron Bonk of Weil, copying Theodore Tsekerides, Candace Arthur, Natasha Hwangpo, Chase Bentley and Jordan Ollestad of Weil, dated January 27, 2023, at 5:00 p.m.

9. On February 2, 2023, Ms. Mehta and I participated in a call with Weil. On this call, Weil informed us that Debtors had decided to transition servicing away from Debtors completely, so that it would be run by Movants and other relevant parties, but Debtors did not know whether American Express would continue to host Debtors' PPP loan data or would need to extract the data and send it to the new servicers. Thus, even at this late date, there was no clear understanding of what was needed from American Express. Weil agreed to arrange a comprehensive discussion among American Express, Movants, other relevant parties, and their respective servicers about how to transition servicing away from Debtors.

10. Weil still had not scheduled the requested transition calls after two weeks. Weil instead sent an email on February 17, 2023 suggesting that American Express was supposed to have been providing some data to Movant CRB. S&C responded, reminding Weil that they were supposed to be scheduling calls with Movants and other relevant parties to discuss exactly what was needed from American Express. At the same time, S&C provided Weil with readily available PPP-related data that Debtors sought in the KServicing Requests, some of which had been provided months earlier. Attached hereto as Exhibit 7 is a true and correct copy of an email chain, including an email Suniti Mehta of S&C sent to Candace Arthur of Weil, copying Theodore Tsekerides, Natasha Hwangpo, Chase Bentley and Jordan Ollestad of Weil, Julia Prezioso Fotos of S&C as well as Mr. Bromley and me, dated February 17, 2023, at 9:42 a.m.

11. On February 28, 2023, Mr. Bromley, Ms. Mehta, and I again participated in

a call with Weil. On this call, Weil informed S&C for the first time how Debtors planned to proceed with the servicing transition: Debtors wanted American Express to extract and transfer Debtors' PPP loan data to Movants, other relevant parties and their servicers. Those parties then would not rely on American Express to continue to host such data, which Weil had said was still a possible path forward when the firms spoke on February 2. This was, at last, a clear request that American Express could act upon. At S&C's request, Weil again agreed to arrange calls with each of Movants, other relevant parties and their respective servicers to discuss the data and information needed by each entity to transition servicing.

12. On March 6, 2023, American Express proposed times to Weil for calls with Movants and others to discuss transitioning servicing. Weil coordinated calls with Movants and others for March 10, 2023. Additional calls have occurred and been scheduled since then, and more will be set among American Express and Movants to discuss the data transfer.

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

Dated: March 15, 2023

/s/ Amanda Flug Davidoff
Amanda Flug Davidoff