# **Exhibit 1**

## **Stipulation**

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

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| In re | Chapter 11 |
| **KABBAGE, INC. d/b/a KSERVICING, et al.,** | Case No. 22-10951 (CTG) |
| Debtors.[1] | (Jointly Administered) |

**STIPULATION BETWEEN THE DEBTORS AND CROSS RIVER BANK**

WHEREAS, Kabbage and Cross River Bank ("Cross River") entered into agreements relating to the origination and servicing of Paycheck Protection Program loans ("PPP Loans"), including that certain Loan Program Agreement dated April 14, 2020, as amended or may be amended from time to time, and including any letter agreements or supplements related thereto (the "LPA") and that certain Sale and Servicing Agreement dated May 6, 2020, as amended or may be amended from time to time, and including any letter agreements or supplements related thereto ("SSA" and together with the LPA, the "Agreements");

WHEREAS, Kabbage established and maintains the Synovus CRB Servicing Account (as defined in the Debtors' cash management motion, Docket No. 12) as a "Subservicing Account" under the Agreements;

WHEREAS, on October 3, 2022, the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code;

WHEREAS, on December 7, 2022, Customers Bank, an operating subsidiary of Customers Bancorp. Inc. ("Customers Bank") filed the *Motion of Customers Bank for Entry of*

[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"); 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").

*an Order (I) Compelling Compliance with Court Approved Settlement Agreement and Order; (II) Requiring Additional Adequate Protection in Favor of Customers Bank; and (III) Granting Related Relief*, in which it, among other things, requested various forms of adequate protection;

WHEREAS, Cross River has requested production of its "Servicing Files" as defined in the Agreements;

NOW THEREFORE, the parties hereby stipulate and agree as follows:

1. The Debtors agree to give Cross River online access to the Subservicing Account for full visibility of account transactions, but not authorization or the ability to move funds to or from that account.

2. The Debtors agree to give Cross River monthly bank statements for the Subservicing Account when available and upon Cross River's request.

3. The Debtors confirm that the name of the Subservicing Account identifies it as being for the benefit of Cross River.

4. The Debtors shall segregate and hold in trust any and all borrower remittances pertaining to Cross River's PPP Loans and deposit such amounts in the Subservicing Account. Those funds shall be disbursed within 14 days after each agreed upon remittance batch to Cross River or in accordance with Cross River's instructions, and the Debtors shall not use those funds for any purposes other than as authorized by Cross River; *provided*, *however*, that the Debtors may remit any borrower overpayments[2] directly to borrowers and/or the Small Business Administration

[2] "Borrower Overpayments" shall mean amounts collected from a borrower on account of a Cross River PPP Loan (i) already purchased by the SBA, thus resulting in such collected amounts being payable to the SBA, (ii) where such amounts are in excess of the required minimum loan payments, including payments on forgiven loans, thus resulting in such collected amounts being payable to the applicable borrower, or (iii) that is ultimately forgiven by the SBA, thus resulting in such collected amounts being payable to the applicable borrower, or (iv) any other overpayments received by KServicing from any source that must be returned or otherwise paid to a borrower or the SBA.

(“SBA”) (as applicable), provided that: (a) on a weekly basis prior to making such payments, the Debtors shall submit in writing via email to the Cross River PPP Operations team the loan details to identify the loans to which the overpayments relate, including but not limited to the amount of the overpayment, the basis for the overpayment, the date of receipt of the payment, a copy of any borrower or SBA correspondence related thereto, and any other information reasonably requested by Cross River; (b) prior to making such payments, Cross River shall within 2 business days respond to the notice and approve the disbursement of such payment; (c) the Debtors will maintain transaction events in the documentation that is relayed to Cross River that will show any such payments to borrowers and/or the SBA; and (d) the Debtors will provide on a monthly basis a reconciliation to Cross River of cash being paid by borrowers and cash being paid to borrowers and/or the SBA no later than 30 days after each respective remittance batch.

5. The Debtors will produce to Cross River the Servicing Files (as defined in the Agreements) as supplemented or otherwise modified by written agreement between the parties or as set forth in the documents specified in the correspondence between counsel to the parties, dated January 11, 2023. This is without prejudice to Cross River’s rights to seek additional documents, including in connection with the transfer of servicing of Cross River’s PPP Loans, and nothing herein shall be construed to modify or amend the Agreements.

Dated: January 11, 2023
Wilmington, Delaware

**BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP**

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Dated: January 11, 2023
Wilmington, Delaware

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