UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 22-10951 (CTG)
KABBAGE, INC., d/b/a	.
KSERVICING, *et al.*,	. (Jointly Administered)
	.
	. Courtroom No. 7
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Monday, March 20, 2023
. . . .	. 10:00 a.m.

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

APPEARANCES:

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-and-

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APPEARANCES (CONTINUED):

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(Proceedings commence at 10:00 a.m.)

THE COURT: Be seated.

(Participants confer)

THE COURT: So good morning. We are here in In Re Kabbage, Inc., which is Case Number 22-10951.

Mr. Shapiro.

MR. SHAPIRO: Good morning. For the record, Zach Shapiro, Richards, Layton & Finger, on behalf of the debtors.

I will just walk Your Honor through the agenda very quickly and then turn it over to Mr. Tsekerides.

THE COURT: Okay.

MR. SHAPIRO: Item Number 2 was listed as an uncontested matter. We are still working to resolve that and we should -- it should be resolved. It's not going to go forward today.

In the unlikely event that we have -- we need Your Honor's guidance, we know how to reach out.

THE COURT: Got it. Okay. That makes good sense. This is as to the 2004 exam.

MR. SHAPIRO: Correct.

THE COURT: And you're going to endeavor to submit an agreed order; and, if not, you'll let me know.

MR. SHAPIRO: Yes.

THE COURT: Perfect.

MR. SHAPIRO: And then, skipping ahead, Item

Number 4 were interim fee applications for which we submitted an order under COC.

THE COURT: Right.

MR. SHAPIRO: I enter the -- I understand Your Honor is still looking at this --

THE COURT: Right.

MR. SHAPIRO: -- and will --

THE COURT: We'll do our --

MR. SHAPIRO: -- let us know --

THE COURT: -- best to get those done as promptly as we can. In the event we were to run into an issue, we'd reach out, but -- to set a hearing. But assuming we get through them and nothing jumps out at us, we'll get those orders entered as quickly as we can.

MR. SHAPIRO: Thank you.

So, with that, I will turn the podium over.

THE COURT: Okay. Mr. Tsekerides.

MR. TSEKERIDES: Yes. Good morning, Your Honor. Ted Tsekerides from Weil Gotshal for the debtors.

So I'd like to lay out what the plan is for today and see if it's agreeable. This is on the motion we filed, I think back in December, on the settlement agreement dispute, on how much money we thought was owed. We've narrowed the issue down to just one issue on what we call "borrower remittances," and the amount at issue is about 1.5 million.

The way we'd like to proceed, we have two witnesses; the other side has one witness. I'd like to move in the two declarations of our first witness. I'd propose that counsel for the adversary cross her, then put the other one in and do it that way, then they can put theirs in, if that's okay with the Court.

THE COURT: Is that agreeable on your side?

MR. STERNBERG: That is agreeable, Your Honor. Jeremy Sternberg on behalf of Customers Bank.

THE COURT: Okay. Then, certainly, we can -- if the parties agree, I'm not going to get in the way --

MR. TSEKERIDES: Okay.

THE COURT: -- so you can certainly proceed --

MR. TSEKERIDES: So let me --

THE COURT: -- that way.

MR. TSEKERIDES: Let me dispense with some of those formalities.

So I'd like to move first in the two declarations from the company's corporate controller, Tamica Williams. That's at Docket 341 and 671, with the company exhibits.

THE COURT: Any objection?

MR. STERNBERG: No objection.

THE COURT: Okay. They will be admitted.

(Williams Declarations received in evidence)

MR. TSEKERIDES: Okay. And then I hope Your Honor has a binder or some materials that we submitted with exhibits.

THE COURT: I've got the electronic versions --

MR. TSEKERIDES: Okay.

THE COURT: -- of those materials --

MR. TSEKERIDES: So, for --

THE COURT: -- yes.

MR. TSEKERIDES: For now, I'd like to move in Exhibits 1 through 29 of the debtors' exhibits.

THE COURT: Hold on. Exhibits 1 through 29. Any objection?

(Participants confer)

MR. STERNBERG: No objection to those.

THE COURT: Okay. They will be admitted.

(Debtors' Exhibits 1 through 29 received in evidence)

MR. TSEKERIDES: There were a few more, I think 30 through 36. Those address some disputes we had about some discovery points that relate to this. Mr. Slack might take that up, depending on what happens with their witness. But in order to avoid any skirmishes at the beginning here, let's just table that for later.

THE COURT: That's agreeable here.

MR. TSEKERIDES: Okay. So, with that, with our declarations in -- and I do want to make one point I forgot.

On the Williams declaration -- and this will also apply to the other one, too -- obviously, the parties have talked since those -- the first one was filed. There might be some paragraphs that aren't directly relevant any longer. Rather than going through and try to piece out individual paragraphs, since it's not a jury trial, I think you -- unless the Court wants us to, we'll just leave --

THE COURT: No.

MR. TSEKERIDES: -- them the --

THE COURT: There's other --

MR. TSEKERIDES: -- way they are.

THE COURT: -- things that are admitted that have become rendered obsolete --

MR. TSEKERIDES: Exactly.

THE COURT: -- by virtue of the issues narrowing. Having them admitted, unless there's -- someone has an issue with it, I don't think it -- see there being any harm in there being extraneous material in the record.

MR. TSEKERIDES: I just wanted to reference that for the Court.

THE COURT: Okay. No, I appreciate that.

And just before we go on, just to make sure that we're all rowing together, Mr. Sternberg, you agree with what Mr. Tsekerides said about the issues narrowing and that we've got this dispute about the $1.5 million in the -- what is referred to as the "disputed remittances." Is -- are we on the same page there?

MR. STERNBERG: We are.

THE COURT: Okay. Just so that I'm focused correctly on what the parties --

MR. TSEKERIDES: Yeah.

THE COURT: -- actually -- where they agree and --

MR. TSEKERIDES: That's actually --

THE COURT: -- disagree.

MR. TSEKERIDES: -- good to know, in case something happened. Yeah.

THE COURT: Okay.

MR. TSEKERIDES: Okay. So --

THE COURT: Very well. I appreciate that.

MR. TSEKERIDES: So, with that, it's in. Ms. Williams is here in the courtroom, available to be crossed.

THE COURT: Okay. And do you wish to cross-examine Ms. Williams?

MR. STERNBERG: I do, Your Honor.

And before we start that cross-examination, I'd like to ask the Court to invoke the role on sequestration of witnesses and to have Ms. Evans outside the courtroom --

THE COURT: Okay.

MR. STERNBERG: -- and, in turn, also the Customers Bank witness who's here, Ms. White, in fairness, should also be outside the courtroom.

THE COURT: Okay. Very well. So, if --

MR. TSEKERIDES: Yeah, as long as Ms. White is also not here.

THE COURT: Okay.

MR. TSEKERIDES: That's fine.

THE COURT: So both of the --

MR. TSEKERIDES: Yeah.

THE COURT: Both fact witnesses who are not yet testifying should leave the courtroom.

(Participants confer)

THE COURT: Certainly. If you can resolve this while you're there, that would be great.

(Laughter)

(Participants confer)

MR. STERNBERG: Your Honor, if I might, I'll put a binder on Ms. Williams' desk.

THE COURT: Certainly.

(Participants confer)

MR. STERNBERG: I'd like to call Ms. Williams for cross-examination.

THE COURT: Okay. Ms. Williams, if you can take the stand.

And Ms. Barksdale, if you could swear the witness.

THE COURT OFFICER: Raise your right hand.

TAMICA WILLIAMS, WITNESS FOR THE DEBTORS, AFFIRMED

THE COURT OFFICER: Please state your full name and spell your last name for the record.

THE WITNESS: Tamica Williams, W-I-l-l-I-a-m-s.

THE COURT OFFICER: Thank you. You may be seated.

THE COURT: Okay. You can proceed.

MR. STERNBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. STERNBERG:

Q Ms. Williams, I won't belabor the background since your declaration has now gone in.

You joined Kabbage in November 2021. Is that correct?

A That is correct.

Q And that's about a year and four months after the Kabbage/Customers Bank relationship had been established?

A That is correct.

Q Okay. Now, Ms. Williams, you understand that Kabbage and Customers Bank reached a settlement agreement in this case that the Court entered on November 9th, 2022?

A Yes.

Q In that settlement agreement, do you understand that there was a process called for called "reconciliation"?

A Yes.

Q The reconciliation was limited by time, correct?

A Not that I'm aware of.

MR. STERNBERG: Okay. Your Honor, may I --

Q Well, Ms. Williams, you have two binders on your desk.

A Yes.

Q Once is a Customers Bank exhibit binder and then one is a binder from your counsel.

If you could turn to the binder from your counsel, it's the thicker of the two binders, it's called "Debtors' Hearing Exhibit Binder."

Take a look at the first tab, it's called "Settlement Agreement and Release."

A The first tab.

Q Do you see a document called "Settlement Agreement"?

A Yes, I do.

Q If you could turn to Paragraph 3, it's on Page 5 of that agreement.

A Okay.

Q Do you see there's a paragraph that's entitled "Reconciliation"?

A Yes, I do see that.

Q And that paragraph reads as follows:

"Following the execution of this agreement through the effective date, the parties shall work together in good faith to promptly reconcile the amount of the disputed case servicing fee holdback."

Did I read that correctly?

A Yes.

Q And do you see, right above Paragraph 3, there's a Paragraph 2 that's called "Effective Date"?

A Yes.

Q Yes. And do you see that "effective date" is defined as:

"The agreement shall be effective on the date on which the Bankruptcy Court approves this agreement, pursuant to Paragraph 5."

A I do see that.

Q Do you understand that the Court, the Bankruptcy Court, approved the settlement agreement on November 9th, 2022?

A Yes, I see that.

Q So do you understand that the reconciliation period ran from roughly October 27th, 2022 -- which is the date the parties signed it -- to November 9th, 2022?

MR. TSEKERIDES: Your Honor, I object to the extent that it calls for a legal conclusion. If she has an understanding on her own, I think that's fair, but if he's asking her to interpret the document, I think that's objectionable.

THE COURT: To the extent you have knowledge of the question, you can answer.

THE WITNESS: Can you ask me that question again, please?

MR. STERNBERG: Sure.

BY MR. STERNBERG:

Q Do you understand that the reconciliation period, by the terms of the agreement, ran from October 27th, 2022 to November 9th, 2022?

A I -- I can't say that I understand that.

Q Did you understand something different about the reconciliation period?

A I understood that we were continuing to reconcile until some type of resolution was reached.

Q If you'd turn further in the settlement agreement that we're both looking at to Page 9, there's a paragraph called "Entire Agreement," Paragraph 12.

A I see that.

(Participants confer)

Q Are you aware of whether the parties entered into any written agreement to amend the reconciliation period?

A I am not aware of that.

Q Now the reconciliation period -- or strike that.

During the reconciliation, Kabbage provided certain information to Customers Bank, correct?

A That is correct.

Q Some of that information was uniquely within Kabbage's control, correct?

A "Uniquely" in Kabbage's control?

Q Sure. As servicer, Kabbage collected funds from borrowers on Customers Bank's behalf, correct?
A Correct.
Q As servicer, Kabbage had those funds deposited into a bank account that Kabbage controlled, correct?
A That is correct.
Q As servicer, Kabbage was responsible for reporting to Customers Bank, on a loan-level basis, all the payments that had been received.
A That is correct.
Q As servicer, Kabbage was responsible for turning over the borrower payments to Customers Bank.
A That would be correct.
Q As servicer, Kabbage maintained a bank account to hold those borrower remittances on behalf of Customers Bank, correct?
A Yes.
Q And the information about that bank account was uniquely within Kabbage's control.
A Kabbage did have control of the bank account.
Q In other words, Customers Bank, prior to October 3rd, 2022, could not log into some portal or call the bank and get bank account information, could it?
A Not that I'm aware of.
Q At some point, Kabbage started withholding borrower

payments from Customers Bank?

A I understand that to be true.

Q And as a result of Kabbage's withholding of these borrower -- what we call "borrower remittances" or borrower payments, was one of the reconciliation items called for by the settlement agreement to reconcile the amount of the borrower payments that had been withheld from Customers Bank?

A Can you repeat that question?

Q Sure.

Did you understand that one of the items to be reconciled as part of the settlement agreement was the amount of borrower payments that Kabbage had withheld from Customers Bank?

A Yes, that was to be reconciled.

Q And those borrower payments were made to an account at a bank called Synovus?

A At a certain point in time, yes. There was -- at a certain point in time, yes.

Q The payments to be reconciled were payments that had been made to a Synovus bank account.

A Not necessarily. There were -- the Synovus bank account originated post the relationship between Customers Bank and KServicing.

Q So, in the course of the reconciliation process, did Kabbage provide information to Customers Bank to reconcile

borrower payments for any bank account other than the Synovus account?
A Can you repeat that question? I'm sorry.
Q As part of the reconciliation, did Kabbage provide information to Customers Bank about borrower remittances to any account other than the Synovus account?
A As part of the reconciliation process, yes.
Q So Kabbage provided bank statements, for example, for bank accounts other than the Synovus account?
A We did provide a bank statement that I'm aware of as part of the declarations that I believe Customers Bank has access to that was not a Synovus account.
Q When did Kabbage start withholding payments from Customers Bank?
A I'm not exactly certain of that. That -- my understanding is that payments were being withheld when I started with KServicing in November of 2021.
Q The Synovus bank account was formed in November 2020, correct?
A I believe it was, yes.
Q Were bank -- were payments being withheld from Customers Bank before November 2020?
A Not that I'm aware of. I -- I can't speak to that.
Q You weren't there at the time.
A No, I was not.

Q Was the account that Kabbage established at Synovus Bank called the CUBI -- C-U-B-I -- PPP account?
A Was it called that? It was referred to that by -- we -- KServicing has referred to that account as the "CUBI account."
Q Take a look, if you would, Ms. Williams, at the binder on your desk called "Exhibits of Customers Bank." It's the thinner of the two binders.
MR. STERNBERG: Your Honor, I have a binder for the Court, if that would be helpful.
THE COURT: I'm -- I think I'm happy to look at it -- actually, you know what? That would be helpful. Thank you.
(Participants confer)
BY MR. STERNBERG:
Q Ms. Williams, if you would --
THE COURT: Thank you.
Q -- turn to Tab 3 of that binder you'll see a cover email. And then, if you turn the page, you'll see a Synovus bank account statement from November 2020.
A Yes.
Q And do you see that the beginning balance on the account was zero, and then there were a series of deposits made starting in mid-November of 2020?
A Yes, I see that.

Q And do you see that the account is called "Kabbage, Inc. PPP Payments CUBI"?
A Yes, I see that.
Q Do you understand that "CUBI" is a shorthand for Customers Bank?
A Yes, I do.
Q Now, up until Kabbage filed for bankruptcy, is it fair to say that Customers Bank had no visibility into this bank account, correct?
A I'm not certain of that.
Q Did Customers Bank have any control over this account at any time?
A Not that I'm aware of.
Q And is it fair to say that Customers Bank relied on Kabbage to provide whatever information Kabbage was willing to provide about this Synovus bank account?
MR. TSEKERIDES: Object to the form, Your Honor. How is she going to know what Customers Bank was relying on? It's an inappropriate question.
THE COURT: Is there a response?
MR. STERNBERG: I'm going to rephrase, Your Honor.
BY MR. STERNBERG:
Q Is it your understanding that any information prior to October 3rd, 2022 that Customers Bank received about the Synovus account it received from Customers Bank?

A I'm sorry. Can you repeat that for me?
Q Yes.
Is it your understanding that, prior to October 3rd, 2022, any information that Customers Bank received about this Synovus bank account, it received from Kabbage?
A I'm not -- I can't speak to everything that they may have received for this -- from this bank account.
Q You know that the parties' contractual relationship, as we already talked about, started in April 2020.
A I'm not aware of the start date of the contractual relationship. I know that it was prior to my employment with KServicing.
Q At the time that this Synovus bank account was established, had Kabbage already been servicing thousands of loans for Customers Bank?
A I -- I can't speak to what -- the number of loans that were being serviced in 2020.
Q Were there servicing -- was Kabbage servicing any loans for Customers Bank prior to November 2020?
A Prior to November 2020. It is my understanding that they were.
Q What steps did you take as part of the reconciliation process to account for all of the borrower remittances that had been received into this Synovus account that we're looking at in Tab 3?

A Can you repeat that question? I'm sorry.

Q What did you do to reconcile all of the borrower remittances that had been received into this Synovus bank account. When I say "this," the one that's depicted in Tab 3.

A Well, I inherited the borrower remittances tracking file from our prior CFO, and I established a process to reconcile the current listing of the remittance file to the liability due to -- to CUBI.

Q Which bank accounts did you look at in order to do that?

A I used the Synovus bank account activity from the date that I received the file from the prior CFO, which would have been late April 2022.

Q As part of your effort to reconcile the amount of borrower remittances into the Synovus bank account as part of the settlement agreement reconciliation process, did you consult with anyone from AlixPartners?

A No, I did not.

Q Did you do all that work within the four walls, to speak, of Kabbage?

A Within the four walls of Kabbage. Yes. Yes, I did.

Q Okay. Ms. Williams, would you agree to me -- with me that, at its core, the job of a loan servicers is to collect money from borrowers and apply it to their loans?

A I would agree that that is a part of servicing.
Q Would you agree with me that another core part of servicing is that, in addition to collecting the money and applying it to the loans, is to account for those payments and those applications to the bank?
A Is to -- can you repeat that last part? I -- I didn't hear the word before "bank." I'm sorry.
Q Is one of the important functions of a loan servicer, not only to collect the money and apply it to the borrower's loans, but to account for those payments and collections to the bank?
A When you say, "to the bank," which bank are you referring to?
Q Let's talk about Customers Bank.
So, if Customers Bank loaned $100 to a PPP borrower and Kabbage was the servicers, and Kabbage received $10 in the month of November 2020, was it Kabbage's job to collect that money into the Synovus account, apply it to the borrower balance, and tell Customers Bank that it had done so?
A Yes.
Q And if, after November 2020, a borrower had sent money in payment of a loan, a PPP loan, a Customers Bank borrower, that money would have been received into the Synovus bank account?
A After the establishment of the Synovus bank account,

yes.
Q And when Kabbage received that money into the Synovus bank account after November 2020, fair to say that Kabbage would make an entry into its account to reduce that balance of that loan by whatever the amount of the payment was?
A That is correct.
Q And did Kabbage create a running document that showed every payment that was made and every application to the borrower's balance?
A That running document was created, but it was not limited to after November 2020.
Q Fair point. I mean, it's the job of a servicer to do that before 2020, after 2020. That's a core job of a servicer, right?
A Correct.
Q I'm just focusing now on the period after 2020.
Is it fair to say, after November 2020, any money that came into Synovus account, Kabbage made an effort to account for it and report that accounting to Customers Bank?
A If it were a Customers Bank customer payment, yes.
Q What's a trial balance?
A My understanding of a trial balance as a finance professional is a balance of general ledger accounts at a period of time.
Q At a very high level, do you understand that a trial

balance shows at least the following information: The amount of money that the bank has laid out to borrowers and the amount of the balance remaining to be collected?

A That's not my understanding of a trial balance. My -- my understanding of a trial balance as a finance professional consists of general ledger account balances at a period in time.

Q So your understanding of a trial balance has nothing to do with PPP loan programs?

A My understanding of a trial balance would not entail individual PPP loan balances.

Q How about at the aggregate level, does your understanding of a trial balance include that, at the aggregate level, if Customers Bank has loaned out $100 million in total to thousands of borrowers, and those thousands of borrowers have paid back $20,000, do those two data points constitute part of a trial balance in your lexicon?

A No, they do not.

Q Okay. Whatever we call it -- let's not call it a "trial balance." Let's just refer to what the data is.

As of the date of the bankruptcy petition, October 3rd, 2022, did Kabbage have an accurate accounting of how much money had been loaned and how much money it had collected on those loans?

A On October 3rd. On October 3rd, Kabbage did have an account of amounts that had been loaned and the amount of money collected on those loans.

Q My question had another modifier in it.

Did it have an accurate account of those two figures?

A Accurate, to the best of our knowledge, yes.

Q Is it your understanding that the data that Kabbage had on October 3rd, 2022 was actually accurate?

A Is it my understanding it was actually accurate?

Q You said it was accurate to the best of your ability or understanding. Is that different from whether it was actually accurate --

A Well, it --

Q -- based on --

A -- would be --

Q -- the real --

A It would --

Q -- numbers?

A -- be accurate to the best of information that we would have had at the time.

Q Well, isn't the information entirely within Kabbage's control?

A Not necessarily. There's information that we receive from the SBA.

Q Is there any information that Kabbage needed, but

didn't have, as of October 3rd, 2022, in order to accurately portray the amount of loans made and the amount of loan -- borrower payments on those loans?
A I am not aware of the exact status of information that may have been outstanding with the SBA at that time.
Q During the reconciliation process, did anyone from Kabbage provide Customers Bank with information about what Kabbage thought the settlement payment should be?
A If it -- repeat that for me one more time, please.
Q During the reconciliation process, did anyone from Kabbage provide Customers Bank with any data or information about what Kabbage thought the settlement payment should be?
A During the time of the reconciliation, I did not. I'm not sure if anyone else provided. I -- I did not provide Customers Bank.
Q To your knowledge, did Kabbage supply a series of data and information and bank account statements and other information in order to allow Customers Bank to calculate the settlement payment?
A I understand that there was information provided to Customers Bank. I do not know whether or not it was for the purposes of them calculating a settlement payment.
Q Do you know whether it was for the purposes of the reconciliation called for by the settlement agreement?
A No, I do not know if it was that purpose. I was not

involved in the process when -- when those -- when that information was provided.

Q Did you get involved in the process after Customers Bank had made the settlement payment?

A On what date did Customers Bank make the settlement payment?

A On or about November 14th, 2022.

Q I did become involved before November 14th.

Q What date did you become involved?

A November 7th.

Q Take a look, if you would, Ms. Williams, at Tab 3 in the smaller of your two binders.

A Tab 3.

Q Do you see an email dated November 4th, 2022, at 7:48 p.m. from Donna Evans to a group of -- excuse me -- a group of people?

A I do see that email.

Q Have you seen this email before?

A I have seen this email printed as part of the exhibits before, yes.

Q And do you see that the email from Ms. Evans to the group of people, including Alyssa White, talks about a Synovus account analysis?

A I do see that, yes.

Q And Ms. Evans says that KServicing -- "KServicing" is

another word for Kabbage?
A Generally, yes.
Q Do you understand, if I use "Kabbage" and "KServicing," I'm referring to your employer?
A Yes, I -- I do.
Q It says:

"KServicing has performed an analysis of the activity in the Synovus account from inception to October 3rd, 2022."

Do you see that?
A I do see that.
Q And is that your understanding of what Kabbage was doing during the reconciliation process to provide information about the Synovus account to Customers Bank?
A Can you repeat that question?
Q Sure.

Did you understand that, during the reconciliation process, Kabbage was performing an analysis of the Synovus bank account?
A I -- I was not aware of that at this time. I -- I was not involved at this time.
Q Do you see that Ms. Evans further says that:

"The analysis was reconciling that activity in that account to our remittances files."
A I do see where that is stated here.

Q And "that account," as you read this, refers to the Synovus account?

A Yes.

Q What are "remittances files"?

A The remittance file is a listing of customer payments made by Customers Bank customers, along with customer refunds made to Customers Bank customers and any payments to the SBA on behalf of Customers Bank.

Q So, basically, a way of informing with Kabbage informing Customers Bank on a monthly basis how much money had been collected and borrowed?

A Yes.

Q If you turn to Tab 4, of the smaller binder, you will see something called "KServicing Synovus borrower repayment account analysis."

A Yes.

Q Have you seen that document before?

A Yes, I have.

MR. TSEKERIDES: Your Honor, we did have one objection to that document that we raised earlier that it wasn't complete, that there is a missing page at the end.

THE COURT: Okay. So, you're talking about Exhibit 4?

MR. TSEKERIDES: This is Customers Bank Exhibit 4, which appears, I think, in our Exhibit 22. We had raised that with counsel earlier.

THE COURT: All right. So, let me make sure I understand. So, its Customers Bank Exhibit 4 and you have got a version of the same document that is your Exhibit 22.

MR. TSEKERIDES: Right, that has the complete document.

THE COURT: And you've got -- there's an additional page in your version that is absent in your version?

MR. TSEKERIDES: Correct.

MR. STERNBERG: I'm happy to use the entire --

MR. TSEKERIDES: That was the suggestion that we had.

MR. STERNBERG: -- version. I am only focused on this one page, but if counsel wants it to be a complete exhibit that's fine with us.

THE COURT: All right. So, I take it, Mr. Tsekerides, for the purposes of this examination you're fine using their version because they are going to use a page that is in both versions.

MR. TSEKERIDES: Exactly.

THE COURT: Okay. You can proceed.

BY MR. STERNBERG:

Q Ms. Williams, did you have any role in preparing what's under Tab 4?

A I did not.
Q Do you see that its entitled a Synovus borrower repayment account analysis?
A I do see that.
Q Have you ever seen something called a Wells Fargo borrower repayment account analysis?
A I have not.
Q Ms. Williams, you submitted two declarations in this case?
A Yes.
Q Do you have them both in front of you?
A They should be in the notebook here.
MR. STERNBERG: If I may approach, Your Honor.
THE COURT: You may.
BY MR. STERNBERG:
Q I am going to show you or I'm going to hand you up, Ms. Williams, your two declarations. I think they are in that large binder, but this may be --
A All right.
Q The one at the bottom right corner is dated December 7th, 2022. Do you see that?
A I do.
Q And the other one in the bottom right corner is dated March 13th, 2023.
A Yes.

Q I will try to refer to them by date, but I also may call them first and second declaration if that works for you.

THE COURT: So, my apologies. So that I have the right documents in front of me, do you happen to have those by docket item number?

MR. STERNBERG: Yes, Your Honor. The first one is Docket No. 341. The second is Docket --

MR. TSEKERIDES: 671, the second one.

MR. STERNBERG: Thank you.

THE COURT: Okay. So, I've got both of those in front of me.

MR. STERNBERG: Would you like hard copies?

THE COURT: No, I don't need a hard copy. I'm good. Thank you.

BY MR. STERNBERG:

Q Ms. Williams, let's start with the first one, the one dated December 7th, 2022. I take it you prepared both of these with care and signed them after reading them thoroughly. Is that correct?

A That is correct.

Q You were satisfied that they were entirely accurate and truthful when you signed them?

A Yes.

Q And you personally read each word and looked at each exhibit?

A I did.

Q The first one, dated December 7th, 2022, says that you supervised all accounting and financial functions of Kabbage. That is Paragraph 1, do you see that?

A Yes.

Q You did that -- obviously, you couldn't do that before you started at Kabbage. You did that starting in November 2021 forward.

A Correct.

Q When you started did you go back and do a reconciliation of analysis of all the things that had happened before you got there?

A No, I did not.

Q You started and then looked forward.

A I did, unless there was reason to go back and look at the period before I got there.

Q Paragraph 5 of your first declaration says that the current dispute, the one we're here today discussing arises from Customers Bank's failure to pay KServicing the full amount owed under the settlement agreement. Fair to say, I think, as we talked about earlier, during the reconciliation process you are not aware that anyone from Kabbage told Customers Bank what Kabbage thought was owed as a settlement payment, correct?

A Prior to the -- I'm sorry, can you --

Q During the reconciliation process no one from Kabbage told Customers Bank here is what we think the settlement payment should be.

A During the reconciliation process, at some point during the reconciliation process.

Q Let me ask it a different way. Before midnight on November 9th did anyone from Kabbage tell anyone at Customers Bank here is what we think, we at Kabbage think the settlement payment should be.

A I can't speak to that. I don't know of anyone before November 9th.

Q You say in Paragraph 7 of the same affidavit, your December 7th, 2022 affidavit, that it was your expectation, Kabbage's expectation, that the settlement payment would be $23.2 million. Do you see that?

A Let me see. I see that.

Q And you used the word "approximately" to modify $23.2 million, correct?

A Yes.

Q And you understood that the goal of the reconciliation process that was embedded in the settlement agreement was to find out what the actual number was.

A The goal of the reconciliation process embedded in the settlement agreement.

Q We looked at the settlement agreement earlier today.

And do you recall that we looked at Paragraph 3 that was called reconciliation?
A Yes.
Q And one of the goals of that reconciliation paragraph was to figure out the exact amount of the disputed KServicing holdbacks, correct?
A That is correct.
Q So, the goal of the reconciliation process was to find out exactly how much money was Kabbage holding in borrower payments that it had not remitted to Customers Bank.
A That was the goal, yes.
Q And what the settlement agreement recited were estimates that parties thought it was approximately this or that, but the reconciliation process was going to define it to the penny, correct?
A The reconciliation process, yes.
Q And as to the main aspect of this reconciliation, figuring out the amount of borrower repayments that Kabbage collected but not remitted over to Customers Bank that was information that was uniquely within Kabbage’s possession.
A Can you repeat that for me?
Q Sure. The amount of borrower payments that had been made to the Synovus Bank account, held by Kabbage, and not paid over to Customers Bank that was information that was uniquely within Kabbage’s possession.

A That is not true.

Q So, Customers Bank, prior to October 3rd, 2022, had access to the Synovus Bank accounts?

A No, but they had remittance files each month prior to October that showed what might be due. And there had been -- they had remittance files each month prior to October 3rd.

Q The remittance files were summary files of amounts that Kabbage had collected but not paid over to Customers Bank, correct?

A They were. The remittance files were summary files.

Q The real proof of every dollar that was paid was in the bank account, correct?

A Not necessarily. The CUBIs loans were serviced prior to November 2020 and the Synovus Bank account didn’t exist until November 2020.

Q Ms. Williams, from November 2020 on --

A Yes.

Q -- Kabbage collected borrower payments on behalf of Customers Bank in the Synovus Bank account, correct?

A It is my understanding that they did from November 2020.

Q And that bank account information was uniquely within Kabbage’s possession prior to October 3rd, 2022.

A I am not aware of any access that CUBI would have had to the bank account prior to that date.

Q You seem to be fighting me on the concept of whether the bank account information was in Kabbage's possession. Is there a reason for that?

MR. TSEKERIDES: Your Honor, he doesn't have to characterize whether the witness is fighting him or not. It's not necessary.

THE COURT: Can you -- I guess my question is what is your question to the witness?

MR. STERNBERG: I will withdraw the question, Your Honor.

THE COURT: Okay.

BY MR. STERNBERG:

Q Going onto Paragraph 11 of your December 7th declaration, Ms. Williams --

A Okay.

Q -- you say that KServicing has determined that the full amount owed by Customers Bank to KServicing under the settlement agreement is $23.7 odd million dollars. Is that correct?

A That is correct at that time.

Q That is not a true statement today, is it?

A That is correct.

Q Based on information that you have learned over the last several months about $2 million that you claim was owed, based on canceled loans, you have withdrawn, correct?

A $2 million that was owed based on canceled loans -- can you ask that question again, please.

Q Sure. In Paragraph 11 of your December 7th, 2022 declaration you say under oath that KServicing is determined that the full amount owed by Customers Bank to KServicing is more than $23.7 million.

A Yes.

Q And the reason that is not a true statement anymore is you have come to realize that everything you said in this declaration about $1.94 odd million owed, based on canceled loans, is not correct.

A Well we continued to reconcile after this declaration was filed. And we did discover that the original number of canceled loans, which was about $3 million, was the correct number of canceled loans.

Q Is that a long way of saying that you agree with me that what you asserted, including Paragraph 18 of your declaration, that the amount of canceled loans should have been $1.6 million is not correct; it should be about $3.6 million.

A That's correct.

Q So, when you talk about resolving that issue there was no compromise, you just accepted what Customers Bank told you and your counsel.

A We did not just accept that. My understanding that there was additional research done by Donna Evans and the team.

Q In Paragraph 27 of the same declaration you say that you put you and many of your colleagues at KServicing put many days into reconciling all of the available data sources and other sources of information. You are confident that these calculations are correct. Do you see that?

A Yes.

Q Your confidence was misplaced as to that nearly $2 million on the canceled loan issue, correct?

A Well the confidence was based on the information that I had available at the time. And after Donna and team continued to research the canceled loan I obtained better information.

Q Ms. Williams, have you looked at the Synovus account statements from November 2020 onward?

A I cannot say that I have looked at every single statement each month from November 2020 onward.

Q Have you looked at them enough to understand that month, after month, after month there were millions of dollars in deposits and sometimes millions of dollars in withdrawals?

A I am not sure -- I cannot speak to the amount each month, but I realized that there would be deposits and withdrawals each month.

Q And Kabbage was serving thousands, tens of thousands of loans for Customers Bank?
A I am not aware of the number of loans --
Q You don't --
A -- that were serviced at any time.
Q Do you know that the maximum size of the portfolio is about 98,000 loans?
A I do not know the count.
Q What is your best estimate of how many loans Kabbage serviced for Customers Bank?
A I couldn't guess. I am not on the operations side. I have not taken note of the number of loans that would be in service.
Q Are you aware that there were millions of dollars flowing through the Synovus bank account?
A I have seen, in particular months, millions of dollars in deposits.
Q After Kabbage started withholding the borrower remittances from Customers Bank did Kabbage just keep the borrower remittances in the Synovus account or did it use the money for some other purposes?
A I was not with KServicing when withholdings were stopped -- not withholdings, when remittances were -- when remittances to Customers Bank stopped and we were holding, KServicing was holding the customer payments.

Q Did you -- were you ever called upon to account for monies that Kabbage used from the account we just looked at, the Synovus CUBI PPP account. Were you ever called upon to account for Kabbage's use of those funds for purposes other than paying Customers Bank?
A There were payments to the SBA from those accounts on behalf of Customers Bank and there were payments to Customers on behalf of Customers Bank.
Q So, take three parties out of the equation, the SBA, customers, and Customers Bank, were you ever called upon to account for any payments made to anyone else; payments for rent, payments for employee bonuses, payments for electricity?
A No.
Q Ms. Williams, if you could turn back to your declaration, the December 7th, 2022 declaration, and look at Paragraph 19. In Paragraph 19 you refer to a former CFO of the company. Do you see that?
A Yes.
Q Is that referenced to a man named Daniel Eidson?
A Yes. That refers to Daniel.
Q When you came to Kabbage was Daniel Eidson still the CFO?
A He was.
Q And then during the time you worked for Kabbage he left

for another job?
A Correct.
Q And have you stayed in touch with him after he left?
A I have not.
Q Have you ever spoken to him?
A I have not.
Q In Paragraph 20 of your declaration, the December 7th declaration, you say that Customers Bank erroneously relied on what you call “preliminary data.” You say CB used preliminary data provided by KServicing on November 4th.
A Yes.
Q The email we looked at from November 4th, Tab 3 in your small binder, can you take a look at that. Do you see the word “preliminary” in there?
A I do not see the word “preliminary.”
Q In Paragraph 22 of your December 7th, 2022 declaration you talk about a certain file that Daniel Eidson referred you to. Do you see that?
A That he referred me to?
Q Let’s take it in steps. In Paragraph 22 you say you learned something from Daniel Eidson on November 10th, 2022?
A I said we learned, collectively the company.
Q Okay. Did Kabbage learn something from Mr. Eidson on November 10th, 2022?
A Yes.

Q And would you agree with me that November 10th is after November 9th?

A It is after November 9th.

Q Now does the fact that in two years earlier, October 2020, KServicing or Kabbage paid Customers Bank some money from another account, a Wells Fargo account. Does that bear on how much Kabbage collected into the Synovus account in November 2020 on?

A Just that there to how much collected. It does because if monies were collected in the Wells Fargo account they could not be collected in the Synovus account.

Q Right. So, if money was collected into the Synovus account it has nothing to do with the Wells Fargo account?

A The actual cash, no.

Q You agree with me if a borrower paid money after November 2020 into the Synovus account that same money that was collected in the Synovus account couldn't be paid to the Wells Fargo account.

A Correct. There would have been separate funds paid in the Wells Fargo account versus funds -- separate funds collected in the Wells Fargo account versus funds collected in the Synovus account.

Q And if Kabbage was doing things correctly shouldn't the Synovus account only have included deposits made by Customers Bank borrowers after November 2020?

A I am not sure when the Wells Fargo account was closed or not in use.
Q I want you to assume with me that the Wells Fargo account was closed in October 2020 as a result of the Amex transaction.
A Okay.
Q Pickup with me on November -- in November 2020 when the Synovus account was created. You with me so far?
A Yes.
Q From that point on, let’s call it November 1st, 2020, should all of the Customers Bank borrowers who made payments on their loans, should all of that money have been deposited into the Synovus account?
A From that point forward it should be, yes.
Q Paragraph 22, the one that we are still on, refers to a loan return analysis dated February 1st, 2021. Do you see that?
A Yes.
Q And that includes data from January 2021, December 2020, November 2020, all the way leading up to February 1st, 2021?
A That -- I can’t attest to that. My focus on this file, the loan return analysis file, was a particular tab dated October 2020.
Q I understand that is your focus, but is the data in the

February 1st, 2021 file inclusive up to February 1st, 2021?
A I don't know. I didn't look at the other data in the file. There are several tabs in the file.
Q In Paragraph 22 you say that Mr. Eidson provided you with a copy of this loan return analysis filed dated February 1st, 2021. Do you see that?
A Well, I was provided with a copy of the file, not directly by Mr. Eidson.
Q You say in your declaration, Paragraph 22, a review of Mr. Eidson's email also confirms that he sent a copy of that file to Customers Bank on October 21st, 2020. Do you see that?
A Yes.
Q And that file that you are referring to is Exhibit 2, 2021 return analysis? I am just referring to what is in Paragraph 22 of your affidavit. You can look at whatever you want, but you say that file --
A Oh, yes.
Q -- you are referring to --
A Referring to, yes.
Q How was Mr. Eidson able to send a file with February 1st, 2021 data in October of 2020?
A I am not -- the file that I was provided was titled loan return analysis 2/1/21. I am not sure if the file -- oh, I can see the name of the attachment on the email that

Mr. Eidson sent.

Q Do you think it would have been possible for Mr. Eidson to send information in October 2020 that was about things that happened in November, December 2020, January 2021?

A No. The file name does not indicate that there was data in the file from future months. Like I said, I did not look at all of the tabs in the file. My focus was on a particular tab dated October 2020.

Q Ms. Williams, you can set aside your first declaration, the one from December, and let's take a look at a more recent one, one filed a week ago today. This one you also prepared with painstaking care.

A To the best of my knowledge at the time, yes.

Q You reviewed it before you signed it?

A Yes.

Q You made sure that each word and each exhibit were truthful and accurate?

A To the best of my ability, yes.

Q Did the best of your ability include reading it thoroughly?

A Yes.

Q Comparing exhibits to what is said in the declaration?

A Yes.

Q Now in this declaration you say you are knowledgeable, I'm looking at Paragraph 2, about the disputed KServicing remittance holdbacks. Look at the top of Page 2, I am knowledgeable about and familiar with KServicing's calculation of the final settlement payment as well as the disputed KServicing remittance holdback as defined in the settlement agreement.

A Yes.

Q Fair to say, as we have discussed, you joined, in November 2021, after the Synovus account had been established, after the holdbacks started, correct?

A Correct.

Q And so did you take steps to go back in time and do reconciliations and calculations about what had happened before you joined?

A Not unless there was reason to.

Q Well, wasn't there reason to with this reconciliation?

A There was and we did.

Q Did you?

A Well, once I obtained the spreadsheet from Danny, that was prepared by Mr. Eidson, that showed payments returned to Customers Bank, yes, I did go back to October.

Q So, your efforts with respect to this reconciliation process started November 10th after you spoke to Mr. Eidson?

A No. I started working with this on November 7th.

Q What were you doing on November 7th?

A On November 7th I assisted Donna with understanding of the canceled loans, the $3 million by referencing a file that was given to me or passed to me by Danny that had a listing of canceled loans that made up the $3 million. I was asked to, kind of, put numbers together that showed the settlement calculation.

Q So, your focus from November 7th to November 10th was on the canceled loan issue?

A It was on both. The settlement calculation as a whole, which included the canceled loan issue.

Q During the period November 7th to November 10th did you do any reconciliation of the Synovus account?

A If I did any reconciliation of the Synovus account, I didn't not.

Q Ms. Williams, do you know what is meant by the expression "money is fungible?"

A Fungible.

Q Do you know what that --

A Can you define that for me?

Q Let me try with an example. If there are -- let's say Customers Bank had two borrowers, they each had a $100 loan, payable over, let's call it, 10 installments. So, in the first month $20 comes into the account, $10 from one borrower, $10 from the other borrower. Do you understand that the practice by Kabbage was to aggregate all that money into one account and then make the appropriate allocations of the money?

A Yes.

Q And so it wasn't a situation where if I was a borrower and I paid $10 it would go into a special Jeremy Sternberg account.

A That is correct, it came into one account and it would be accounted for in the loan system applied to the proper loan.

Q And in a given month, I'm just going to make up a number, let's say toward the beginning of the relationship, before Kabbage was withholding money from Customers Bank if $1 million in borrower remittances had come in and Kabbage paid $1 million to Customers Bank, embedded in that $1 million were the borrower payments for hundreds of borrowers, correct?

A Correct.

Q The money was all pulled into one account and then allocated as appropriate?

A Correct.

Q There was no special consideration given to my $10, or your $10, or anyone's particular $10?

A Other than applying it to your loan, no.

Q So at the -- as we talked about, at the end of each month or whenever the payment period was, Kabbage would pay an aggregate amount to Customers Bank as opposed to a thousand different checks or wire transfers for each of the different borrowers?

A If it were during a time that KServicing was remitting funds to Customers Bank, yes, an aggregate amount would be sent with the detail as to what that amount represented.

Q Now Paragraph 8 of your more recent declaration, the one from last week, you described a situation in which you assert that Customers Bank was paid twice with respect to five particular loans; once in October 2020 out of a Wells Fargo account and then again as part of a settlement reconciliation process, correct?

A No. I don't assert that they were paid twice because the -- I don't assert that they were paid twice. I do assert that they were paid once from the Wells Fargo account.

Q If we were to adopt the Customers Bank calculation of the settlement payment what you're saying is, in effect, Customers Bank would be paid twice on those five loans amounting to about a million-five.

A That is what I am saying, yes.

Q Now if that was the case, if Customers Bank was paid twice for these five loans totaling around a million-five, wouldn't the trial balance for the entire portfolio be off by a million-five?

A The trial balance does not track what has been paid to Customers Bank.

Q Let me ask it a different way. We had a definitional problem with trial balance.
A Yeah.
Q If today, based on the payment that Customers Bank has made, the amount of loans outstanding -- monies leant out, the amount paid to date, and the amount still outstanding all add up. If we took a million-five out of that equation wouldn't you agree with me that that would throw it out of balance?
A The reason that the issued loans less everything they have been paid getting to an amount outstanding that difference would represent monies collected or should represent monies collected by KServicing on behalf of Customers Bank's customers, but it would not indicate whether or not any of that money had been paid to Customers Bank.
Q Let me give you a scenario, Ms. Williams. Let's say in October 2020 there were five borrowers who had aggregate loan payments of a million-five and then there were another five borrowers who had made loan payments of a million-five. If Kabbage had paid Customers Bank for one set of those borrowers, but withheld the money for the other set you would agree with me that there was no double payment, right?
A Well, its two different sets of loans.
Q Right. What you can't say, as you sit here, because you haven't done a reconciliation of the Wells Fargo account,

is whether Kabbage overpaid, underpaid, or paid exactly the right amount that it should have to Customers Bank from the Wells Fargo account in respect of Customers Bank remittances.
A I have seen a detailed listing of the dollar amount that made up what was paid to Customers Bank from the Wells Fargo account. That detailed listing has loan numbers in amounts so I know what made up that payment.
Q If you wanted to do a loan-by-loan analysis all borrower remittances and all payments made by Kabbage to Customers Bank wouldn't we have to go back to the beginning of time here to April 2020?
A If I wanted to see all of them, I would have to go back to the beginning.
Q And Kabbage hasn't done that.
A I don't see that it was necessary to do that.
Q I am not asking you whether it was necessary or not, I'm just -- as a factual matter, Kabbage didn't do a loan by loan reconciliation of all accounts, Wells Fargo, Synovus, and any others from the beginning of the relationship?
A I don't know. I have not.
Q And the five loans that you are talking about were paid into a Wells Fargo account on or before October 2020, correct?
A That is correct.
Q Before the Synovus account was setup?

A That is correct.
Q And there were thousands of borrowers who made millions of dollars of payments into that Wells Fargo account?
A Oh, I thought that was a statement. I'm sorry, was that a question?
Q It is.
A I can't say how many borrowers would have, but numerous, yes.
Q Numerous borrowers with numerous payments, correct?
A Yes.
Q And if we wanted to reconcile the Wells Fargo account we would have to go back and add up all the borrower remittances and all the payments to Customers Bank, correct?
A To reconcile we would have to do that.
Q And that wasn't done during the reconciliation process, was it?
A There was not a need to reconcile the Wells Fargo account.
Q Why would there be anything about transactions from a Wells Fargo account in a Synovus account?
A Why would there be anything about transactions -- there aren't transactions from a Wells Fargo account in the Synovus account.
Q Did you understand that the goal of the -- one of the goals of the reconciliation process was to figure out how

much money had been paid into the Synovus account and withheld from Customers Bank?
A That was one of the goals.
Q If you look at Tab 4 in the smaller of the two binders you have, what Kabbage told Customers Bank, I'm looking toward the bottom of the page, the bold heading called "Per CUBI remittance file." Do you see that?
A Yes.
Q What Kabbage told Customers Bank is that the receipts into the Synovus bank account were about $26.6 million?
A No. What Kabbage told Customers Bank was that the remittance file showed $26.6 million.
Q Okay. And that remittance file should have been just about the Synovus bank account.
A Not necessarily. The remittance file, as I understand, was being manually tracked prior to the Synovus bank account.
Q There is also a variance that is mentioned there, $497,900. Why would there be a variance that large?
A I am not sure. I didn't prepare this file. I am not sure why there would be a variance that large –
Q Did you prepare the --
A -- or small.
Q I'm sorry, I didn't mean to cut you off.
A I wouldn't consider that large. Its irrelative.
Q You didn't prepare the CUBI remittance file, did you?

A No, I didn't prepare this particular Synovus borrower repayment account analysis.
Q Did you prepare any CUBI remittance files?
A I maintained the CUBI remittance file after April 2022.
Q So, did you send CUBI a remittance file showing that there were $26,608,962 in borrower remittances?
A I did not send it, but the file was obtained and sent, yes.
Q You prepared it and someone else sent it?
A I was responsible for the file. One of the accountants under me prepared it, but I was responsible for the file, yes.
Q In everything that you have seen about the reconciliation process from October 27th, 2022 through midnight November 9th, 2022 have you seen any information conveyed to Customers Bank about a Wells Fargo account?
A To November 9th?
Q Yes.
A I have not seen any information conveyed about a Wells Fargo account.

MR. STERNBERG: Your Honor, may I have a moment to confer with Mr. Monohan?

THE COURT: Certainly.

(Pause)

MR. STERNBERG: Your Honor, Ms. Williams, that is all the questions I have for now.

THE COURT: Okay. Any redirect?

MR. TSEKERIDES: Yes, Your Honor.

We have been going a little over an hour, is the witness okay. Do you want to take five?

THE WITNESS: No, I'm fine.

MR. TSEKERIDES: Okay.

REDIRECT EXAMINATION

BY MR. TSEKERIDES:

Q Good morning, Ms. Williams. Again, for the record, Ted Tsekerides from Weil for the debtors.

There were numerous borrowers and numerous payments, but how many loans are we talking about in this dispute?

A Five.

Q You were asked a lot of questions about Synovus accounts, but if a payment was made to Kabbage on account of a CUBI loan prior to November 2020 where would that money go?

A That would have gone into the operating account at the time which was a Wells Fargo account.

Q So, was Kabbage collecting money on account of CUBI loans prior to November 2020?

A Yes, they were.

Q And they could still do that even though they didn't have a Synovus account, right?

A Correct.

Q You have your declaration up there?
A Yes.
Q Why don’t you take a look at the December 7th one. You were asked some questions about a Mr. Eidson. He was the former CFO, I believe, you said?
A Yes.
Q How did it come about that you were even looking for Mr. Eidson’s file?
A When preparing the preliminary settlement calculation I had a discussion with the interim CFO at the time, David Walker, and he asked if I was aware of any payments that had been made to Customers Bank. I said that no payments have been made that I’m aware of since I have been with the company, but I’m not sure if the prior CFO had been making payments to Customers Bank.
Q And what happened next?
A Mr. Walker wondered if the company should reach out to Mr. Eidson to inquire as to whether or not he had made any payments to Customers Bank.
Q And then, from your perspective, what do you know happened next?
A My boss at the time, David Walker, the interim CFO, informed me that there had been a conversation with Mr. Eidson and that there was a file that Mr. Eidson had in which showed a number of loans for which he had paid CUBI the

funds.

Q Okay. So, let's take a look at that declaration. This is the 12/7 declaration. There's an Exhibit 3 that is attached to that. Let me know when you are there.

A Yes.

Q What does that document show?

A This is an email that Mr. Eidson sent to employees at Customers Bank on October 21st of 2020.

Q Okay. If you flip to the end is the attachment also included in this exhibit?

A Yes. This is the attachment that was with the email.

Q If you look at the top of the email it says: "Attached, CUBI payment detail 10/21/20." Right?

A It does.

Q And you remember you were asked some questions about loans of 2021. Do you remember that questioning?

A Yes.

Q This file is 2020, right?

A It was.

Q And what do the items on the attachment refer to?

A What items on the attachment?

Q The spreadsheet. What do those refer to?

A These are loans for which Customers Bank were paid funds from the Wells Fargo account.

Q So, this is money that Kabbage sent to Customers Bank?

A Yes, it is.
Q Now when you looked at this document, the attachment from Mr. Eidson, what did you do with it?
A When I looked at this document I compared it to the remittance file to see if there were any loans and payments on the remittance file that were on this document as having already been paid to Customers Bank.
Q And when you say the remittance file what are you referring to there?
A I am referring to the remittance file showing the tracking of Customer payments collected for Customers Bank.
Q So, if you take a look at what was Customers Bank Exhibit 4, and I am going to focus on that first page that counsel referred to as well. Let me know when you are there.
A Customers 4?
Q Right. This is the -- it might say CUBI or Customers Bank on it. It's the thinner binder.
A Yes.
Q You have it?
A Yes.
Q Exhibit 4 is in front of you?
A Yes.
Q Okay. You see where it says: "Per CUBI remittance file?"
A Yes.

Q Okay. Is that the same remittance file that you are talking about that you compared Mr. Eidson's file to?
A Yes, it is.
Q And what did you find out when you compared those two?
A When I compared the two, I found that there were five loans with related payments in the remittance file that were also on the file of Mr. Eidson's that showed payments already sent to Customers Bank.
Q Okay. And you were asked some questions about the goal of the settlement reconciliation. Do you remember that?
A Yes.
Q Wasn't one of the goals to determine how much money was actually withheld from Customers Bank and how much was actually paid to Customers Bank?
A Yes, it was.
Q Okay. So, what did you determine whether or not these five loans that were also on the remittance were already paid. What did that conclude for you?
A That concluded for me that the amount on the remittance file, as owed, was really less than the actual -- the actual amount owed was really less then what was on the remittance file.
Q So, if those five loans were already paid shouldn't they have been on the remittance file?
A No. They should not have been.

Q And having them come out of the remittance file what would that do to the settlement calculation?
A It would indicate that Customers Bank owed us an additional $1.5 million.
Q Why is that?
A Because Customers Bank had already been paid that $1.5 million and in their settlement calculation they were including that $1.5 million as owed.
Q Did you prepare an updated settlement calculation?
A I did prepare an updated settlement calculation.
Q Can you turn to what's in the bigger binder, Exhibit 25?
A Exhibit 25.
Q I entered a lot of tabs in there, it should just be a 25 with no lettering or anything.
A Okay.
Q Are you there?
A I am.
Q Okay. What is this document?
A This is the updated settlement calculation.
Q And who prepared this?
A I prepared this.
Q Where on this will we see -- strike that.
Did you make an adjustment to account for the remittance updated information that you found from Mr.

Eidson's file?
A I did make an adjustment to account for that.
Q Where do we see that on this document?
A You see that on the borrowed principal repayments and returns for remittance file.
Q Is that the one that CUBI has as $27.1 roughly and you have as $25.5?
A The totals, yes.
Q And is that delta roughly the one-five-five number?
A It is.
Q Did you understand that the reconciliation was to stop on November 9th?
A I did not.
Q Did you understand that the reconciliation was to stop even if the numbers were completely wrong?

MR. STERNBERG: Your Honor, I object. The reconciliation period, kind of further to Mr. Tsekerides objection during my examination, is defined in the settlement agreement. The witness's understanding of it is --

THE COURT: Yeah, I understand. What is the relevance of the witness's understanding of --

MR. TSEKERIDES: He asked her questions about it stopping and I'm asking her if she had an understanding. So, he solicited testimony about her understanding.

THE COURT: All right. I think that's fair to follow-up. I will allow you to solicit an answer.

MR. TSEKERIDES: Thank you.

BY MR. TSEKERIDES:

Q Ms. Williams, the question was did you have an understanding if the reconciliation was supposed to stop on November 9th?

A No. My understanding was that we were reconciling until we got to the right number.

MR. TSEKERIDES: Can I have one moment, Your Honor?

THE COURT: You may.

(Pause)

MR. TSEKERIDES: This is the last question.

BY MR. TSEKERIDES:

Q What is the total amount that the debtors believe that Customers Bank owes on the settlement payment?

A $1,555,656.

MR. TSEKERIDES: Thank you. I have no further questions, Your Honor.

THE COURT: Thank you. Recross?

MR. STERNBERG: Nothing further, Your Honor.

THE COURT: Thank you, Ms. Williams. You can step down.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Mr. Tsekerides, whereto from here?

MR. TSEKERIDES: Yeah, so I think from here we will go with Ms. Evans, who I believe is outside.

THE COURT: Okay.

MR. TSEKERIDES: We already moved those in, so cross.

THE COURT: Okay. So, you're retrieving Ms. Evans.

MR. TSEKERIDES: While they're retrieving her I did want to move in those declarations for Ms. Evans.

THE COURT: Okay.

MR. TSEKERIDES: I don't think I did that earlier. These would be Docket 342 and Docket 672.

THE COURT: Give me one second. I'm sorry, you just said this, but its Docket Items 342 and --

MR. TSEKERIDES: 342 and accompanying exhibits, and Docket 672.

THE COURT: Any objection?

MR. STERNBERG: No objection.

THE COURT: They will be admitted.

(Evans Declarations received into evidence)

THE COURT: So, Ms. Evans, if you could take the stand.

Ms. Barksdale, if you wouldn't mind swearing the witness.

DONNA EVANS, WITNESS FOR DEBTORS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Donna Robinson Evans, R-O-B-I-N-S-O-N, E-V-A-N-S.

THE CLERK: You may be seated.

MR. STERNBERG: May I proceed, Your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. STERNBERG:

Q Good morning, Ms. Evans.

A Good morning.

Q You have submitted, at least, two declarations in this matter?

A Yes.

Q One was in December of last year, one was a week ago.

A Yes.

Q The one in December of last year criticized Customers Bank for using a figure for the canceled loan amount aspect of the settlement reconciliation process which you claim that Customers Bank was off by about $2 million, correct?

A Yes.

Q And you since have abandoned that?

A That is not part of today's -- I mean it's not a point that I know we're discussing today.

Q You agree with Customers Bank the calculation of that issue?
A No. After the document that Ms. White filed in December I went back and we did additional research, and we actually learned that the data points on the initial list of $3.6 million is actually the list of canceled loans, and that is the correct number.
Q So, Ms. White's declaration was correct?
A If she stated it was $3.6 million, which her feedback was that it was $1.6 million. So, we had done additional research.
Q Have you read Ms. White's declaration?
A Yes.
Q The most recent declaration you filed was a week ago?
A Yes.
Q And that one is primarily about the trial balance document that Ms. White prepared and that has been shared with you and the Customers Bank team?
A Yes.
Q Before we get to that declaration there are two binders on that desk, one is thicker, one is thinner. If you could look at the thinner one and please turn to Tab 3.
A Yes.
Q Do you see there, Ms. Evans, an email from you to Alyssa White and others dated November 4th, 2022?

A Yes.

Q During the reconciliation process did you understand the settlement agreement called for a reconciliation of certain items including the amount of money that Kabbage had held back in borrower payments from Customers Bank?

A I do understand that, yes.

Q And you were a key figure in the reconciliation process? You shared information that is here in Tab 3 and other information with Customers Bank during that process?

A Yes.

Q And among the information you shared was information about the Synovus bank account, correct?

A Yes.

MR. STERNBERG: I may get to this during Ms. White's examination, Your Honor, but just since we're on it I move into evidence Tab 3.

THE COURT: Any objection?

MR. TSEKERIDES: No objection.

THE COURT: It will be admitted.

(Customers Bank's Exhibit 3 received into evidence)

BY MR. STERNBERG:

Q Take a look at your email, Ms. Evans, starting off Alyssa, Michele. That is to Alyssa White and Michele Vervlied?

A Correct.

Q Those are both employees at Customers Bank?
A Correct.
Q People you have worked with for a long time?
A Yes.
Q You say Synovus account analysis, correct?
A Correct.
Q You understood that during the reconciliation process one of the tasks was to reconcile the borrower payments into the Synovus account, yes?
A Yes, those were the tasks.
Q During the reconciliation process did you send any information to Ms. White, Ms. Vervlied, or anyone at Customers Bank about a Wells Fargo account analysis?
A I did not.
Q In the body of your email that is now Exhibit 3 you say:
"KServicing has performed an analysis of the activity in the Synovus account from inception to October 3rd, 2022 reconciling the activity in that account to our remittances file."
Did I read that correctly?
A You did.
Q When you say "that account" you are talking about the Synovus account, yes?
A Yes.

Q So, the analysis that you understood was happening for the reconciliation was solely of the Synovus account?
A My understanding is that the analysis included the Synovus account and this is the information that was provided to us by the acting CFO at the time.
Q Acting CFO of Kabbage?
A Yes.
Q And when we talk about this information we're talking about Synovus account analysis, correct?
A Correct.
Q And we're talking about Synovus bank account statements?
A Correct.
Q And particularly the bank statements. Those were uniquely within the Kabbage control?
A Correct.
Q Take a look if you would at Tab 4 of the same binder.
MR. STERNBERG: Your Honor, if it's okay with you and Mr. Tsekerides I will refer to this as Exhibit 22 since we are going to have that as a complete exhibit.
MR. TSEKERIDES: That's fine.
THE COURT: Okay.
BY MR. STERNBERG:
Q Ms. Evans, let us know when you have had a chance to read just that one page of Exhibit 22?

A I've had a chance.
Q Who prepared this cover page, this -- what is called KServicing, Synovus borrower repayment account analysis October 3rd, 2022.
A My understanding is our accounting team.
Q Kabbage accounting team?
A Kabbage, yeah.
Q The title of the document is Synovus borrower repayment account analysis, correct?
A Correct.
Q During the reconciliation process did you see a document called Wells Fargo borrower repayment account analysis?
A I did not.
Q Did you ask anyone to prepare such a document, a Wells Fargo account analysis?
A I did not.
Q According to this front page of Exhibit 22 the entry entitled "Borrower repayments per remittances file" is $26,608,962, is that correct?
A Correct.
Q And is that what Kabbage communicated to Customers Bank is the amount of withheld borrower remittances in the Synovus account?
A Yes. This is what was sent on November 4th.

Q There's also an entry, if you will, called remaining variants to be resolved. Its nearly $500,000. What is that?
A Our accounting team can speak in more detail about that, but that was an amount that needed to be reconciled. That is my understanding at that point.
Q Is it your understanding that there were monies that had come in from Customers Bank borrowers after the remittances file had gone out that needed to be added to the $26.6 million?
A That is not my -- I mean I can't say yes or no definitively.
Q Do you just not know what this half a million dollars is?
A Right. That is part of the calculation that our accounting team was working through.
Q Going back to what is now Exhibit 3, Tab 3 in your binder, you understood that this email, your November 4th email to Ms. White and others was conveying important information for the reconciliation process?
A I do understand that.
Q And did you understand that Customers Bank was relying on that information?
A I understood they were relying on this information. I did not know if they were relying on other information.
Q Fair point. You didn't know the entirety of what

Customers Bank was relying on, but you knew that this was information that you and your team were providing during the reconciliation was information that Customers Bank would be relying on?

A Yes.

Q In this email, that is Exhibit 3, do you use the word "preliminary?"

A I do not.

Q Do you convey in any way to Customers Bank that the information is not reliable?

A I do not.

Q I want to go to your most recent declaration, the one from a week ago. I take it you read that and were satisfied it was accurate before you signed it?

A Yes.

Q And in doing so -- strike that.

In your most recent declaration you criticize the accuracy of the trial balance that Alyssa White used to create her trial balance analysis?

A The details in the declaration focuses on a specific data point that I believe Customers Bank uses for the trial balance. That is one of the outputs from the American Express systems.

Q Customers Bank had no independent relationship with American Express during Customers Bank relationship with

Kabbage, correct?

A Not that I am aware of.

Q American Express came to the party because Kabbage did a transaction with American Express?

A That is my understanding.

Q In a sense, American Express was introduced to the relationship in that manner?

A That is my understanding.

Q After American Express acquired whatever assets it acquired of Kabbage's, did American Express take over certain financial reporting functions a part of the servicing that Kabbage was doing.

A They provided automated reports, but I would not call that the financial reporting for the KServicing business.

Q What automated reports?

A A report -- my understanding that was created prior to the acquisition that created an output of data points regarding a portfolio that was automatically delivered into the Customers Bank data environment via an asset TP connection each day.

Q Its one of the sources of many meetings, many conversations that you have had with the Customers Bank team a desire by the Customers Bank team to harmonize the information it was getting from Kabbage and American Express?

A That's accurate.

Q Were there frequently differences between what was being reported by Kabbage and what was being reported by American Express?

A There were discrepancies.

Q Ms. Evans, fair to say you know which trial balance Ms. White used to construct her total portfolio analysis?

A I do. I don't know how it was created, but I know the file.

Q I file that your colleague, Tim Keith, sent to Alyssa White on November 9th?

A That was a list of transaction data, correct?

Q Just so we're singing off the same sheet of music, could you take a look at Exhibit 14 in the small binder?

A Correct.

Q Is that the email by which your colleague, Tim Keith, communicated to Ms. White the trial balance data?

A Yes. Following a meeting we had to review that data with the Customers Bank team.

MR. STERNBERG: Your Honor, I offer Exhibit 14.

THE COURT: Any objection?

MR. TSEKERIDES: No objection, Your Honor.

THE COURT: It will be admitted.

(Customers Bank's Exhibit 14 received into evidence)

BY MR. STERNBERG:

Q Ms. White, in your declaration, which is all of three

and a half pages, you don’t point to any particular error that you say Ms. White made in her total trial balance analysis, do you?
A I do not.
Q You just say you think relying on whatever she relied on would be inherently inaccurate and unreliable, correct?
A Correct; although, I was not aware until now that this was the document she used to create the Customers Bank trial balance.
Q I take it you would have a different -- knowing that now are you satisfied that the data points she used was reliable?
A I’d have to understand the different data points that were used within the Customers Bank team outside of the KServicing data to create the trial balance. So, I can’t answer that definitively.
Q So, fair to say you can’t now definitively say that what she relied on was inherently inaccurate and unreliable?
A I can’t say yes or no either way until I have more information.
Q So, would you want to withdraw that part of your declaration?
A Not without further understanding of how the document was created and built.
Q You just said don’t know one way or the other as you

sit here now?
A Correct. I need to look at more data.
Q In your declaration from last week, March 13th, 2023, you don't proffer an alternative total trial balance analysis, do you?
A I did not.
Q And you don't proffer your own version of how this total trial balance analysis meshes with the settlement payment made by Customers Bank?
A I do not.
Q Is that because you haven't done that -- when I say "you" Kabbage hasn't done that analysis?
A I haven't done that.
Q Do you know whether anyone on the Kabbage team has done that?
A Other members of our team have done analysis.
Q Let me be specific about the analysis I am asking about. Has anyone from Kabbage, to your knowledge, prepared a total trial balance analysis of the entire Customers Bank portfolio and analyzed it in terms of the settlement payment that Customers Bank made to Kabbage?
A At the current time not in one document, in different pieces, but not as you described it.
Q Would you agree with me that the job of a servicer, the basic core job of a servicer, is to keep track of all the

money its collecting on behalf of its client?
A I would agree with that.
Q And that job -- do you know how many loans approximately in the portfolio that Kabbage is servicing for Customers Bank?
A 99,365.
Q And of that 99,365 loans the obligation would be to all 99,365 to accurately track all the loans?
A I agree with that.
Q It wouldn't be just to pick out five particular loans and do an analysis based on those?
A No.
Q Ms. Evans, for many months during your tenure at Kabbage have you participated in weekly and monthly meetings with the Customers Bank team including Alyssa White, Michel Vervlied and others?
A Correct.
Q Was one of the issues that was discussed regularly at those meetings discrepancies between what Kabbage was showing at borrower balances and what Customers Bank's internal analysis showed?
A That is accurate.
Q And at one point in time, toward the end of September, early October 2022 were there approximately 13,000 loans that had discrepant balances?

A I don’t recall the number.
Q Do you recall that there were thousands of loans with discrepancies?
A I recall there were discrepancies with a number of loans, a large number. We are working to resolve them.
Q And your declaration doesn’t provide any information on any effort by Kabbage to reconcile the thousands of loans and millions of dollars paid into the Wells Fargo account, correct?
A It does not.
Q To your knowledge no one at Kabbage has done that?
A Can you repeat the question again?
Q Sure. To your knowledge has anyone at Kabbage gone back in time and reconciled all of the payments made into the Wells Fargo account and all of the payments made out to Customers Bank?
A Not that I am aware of.

MR. STERNBERG: May I have a moment, Your Honor?

THE COURT: You may.

(Pause)

MR. STERNBERG: Your Honor, Ms. Evans, nothing further.

THE COURT: Okay. Redirect, Mr. Tsekerides.

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REDIRECT EXAMINATION

BY MR. TSEKERIDES:

Q Ms. Evans, do you have the shorter -- Ted Tsekerides from Weil for the debtors.

Do you have the smaller binder?

A Yes.

Q You were asked -- let me get the three in front of you, please.

A Yes.

Q This was an email you referred to, its dated November 4th. Do you see that?

A Yes.

Q Why did you send this over to Customers Bank on November 4th?

A After the settlement was signed the week of the 31st we had a number of meetings, different meetings, with the Customers Bank team to work on reconciliation efforts. On the morning of that Friday, the 4th, when this email was sent there was a meeting with Andrew Sachs and Michele, and Sal Cafeti [phonetic] from the KServicing team and myself where there was a request to deliver all files available at the current stage they were in by end of day, as soon as possible.

Q Was KServicing done with its analysis when you sent this?

A We were not.
Q On November 4th was KServicing aware of a file that that Danny Eidson had referred Ms. Williams and others to?
A No.
Q On November 4th was Kabbage aware of payments that had been made to Customers Bank from a Wells Fargo account?
A No.
Q Was one of the purposes of the reconciliation to determine how much was withheld and/or paid to CUBI on various loans?
A Yes.
Q Take a look at Exhibit 22, it's in the bigger binder. Let me know when you're there?
A Yes, I'm here.
Q You were shown, the first page has a box with a bunch of numbers in it.
A Yes.
Q Okay. Under per CUBI remittance file what does that refer to?
A The amount of money that had been held back by KServicing that was owed to the Customers Bank team.
Q And you were asked a lot of questions about thousands of loans and it would be hard to reconcile all these loans. Were there specific loans identified in the remittance file?
A Correct.

Q And were those the loans that were going to be looked at for purposes of deciding what the settlement amount was?

A Yes. Our team did a loan-by-loan level analysis.

Q And if loans that were in that remittance file had already been paid should they have been in the remittance file?

A No.

Q Now you have testified you've had a lot of conversations with people from Customers Bank?

A Yes.

Q Okay. Did they ever tell you in any of those conversations that this reconciliation had to be done by November 9th?

A No.

Q Did they ever say anything to you that would make you believe that it didn't have to be done by November 9th?

A No.

Q Did they say anything to you that the reconciliation process would continue even past November 9th?

A They did. There was a call on November 9th, the same call where we discussed the exhibit that we just looked at. And the call ended with Andrew Sachs from the Customers Bank team highlighting to those on the call, which was myself, Sal, Andrew Sachs, Albert Merkin, Alyssa White, and Michele from the Customers Bank team, that we had through the weekend to continue working on reconciliation.

Q Would the weekend take you past November 9th?

A Yes.

MR. TSEKERIDES: One moment, Your Honor.

THE COURT: Certainly.

MR. TSEKERIDES: No further questions, Your Honor.

THE COURT: Okay. Any recross?

MR. STERNBERG: I do have some recross, Your Honor.

THE COURT: Okay. You can proceed.

RECROSS-EXAMINATION

BY MR. STERNBERG:

Q Ms. Evans, forgive my memory on this, were you here on November 7th for the hearing on entering the settlement agreement?

A Here in the room?

Q Or zooming in?

A I was not.

Q Were you part of that hearing?

A I was not.

Q Were you aware that there was a hearing on November 7th on Kabbage's motion to enter the settlement agreement?

A I am aware of that.

Q And so November 4th, when you sent Exhibit 3 and other emails that evening that was a Friday night, correct?

A It was Friday night.
Q And the hearing was the following Monday morning?
A Correct.
Q And was it your understanding that the Court could have entered the settlement order that day?
A I don't have an understanding either way.
Q Did you have an understanding that there was some urgency on Friday night because if the settlement order entered on Monday that would be the effective date?
A That is not my understanding on the urgency. My understanding on the urgency was resolve the issues and get to the right number as quickly as possible. I did not have clarity it was tied to the settlement.
Q Are you aware of any written amendment to the settlement agreement that extended the reconciliation period?
A I am not aware of that.

MR. STERNBERG: Nothing else, Your Honor.

THE COURT: Okay.

MR. TSEKERIDES: Nothing further.

THE COURT: Ms. Evans, thank you for your testimony. You can step down.

(Witness excused)

THE COURT: Mr. Tsekerides, whereto from here?

MR. TSEKERIDES: I'm sorry, Your Honor, one moment.

THE COURT: Certainly.

(Pause)

MR. TSEKERIDES: Those are the witnesses that the debtors have. We do have some collateral disputes on the Ms. White declaration and exhibits, but I think that is the next step that they would move in their own witness's declaration. Mr. Slack is going to handle that. It will be a couple of paragraphs there, but I will leave that to them, but that is the next step in the process.

THE COURT: Okay. So, in terms of the debtor's affirmative case, on an evidentiary basis, you are now done?

MR. TSEKERIDES: Correct.

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

Can I ask you this, about how long do you think we are -- I am just trying to figure out what is a sensible time to break. I am pretty flexible, but I want to be courteous to others.

MR. STERNBERG: Your Honor, our plan is to move in Ms. White's December 7th, 2022 declaration and exhibits; although, I think only three of those exhibits are germane to the dispute today. Then I have got a very short live direct of her to bring us from December 7th to today. Then tender her for cross-examination.

THE COURT: Okay. Any reason we shouldn't, at least, begin that process? Mr. Slack.

MR. SLACK: You know, Your Honor, I would expect maybe about half hour, 45 minutes of cross-examination, you know, depending on what the direct, I haven't heard yet, looks like. So, that is, I think, where we are.

THE COURT: Okay. Given where we are in time what do the parties think about doing the direct, seeing where we are, and then having a conversation then about whether to go directly into cross or to take a break at that point.

MR. SLACK: That sounds fine. My only request, Your Honor, is maybe a five minute or 10 minute break for nature.

THE COURT: Certainly. Should we do that at this point?

MR. SLACK: Yeah, that's what I would suggest.

THE COURT: Okay. Fair enough. So, why don't we recess for seven minutes and come back at -- actually, why don't we resume at noon. We will do the moving into evidence, the direct, and then we will see where we are.

So, with that we are in recess until 12 o'clock.

(Recess taken at 11:48 a.m.)

(Proceedings resumed at 12:00 p.m.)

THE CLERK: All rise.

THE COURT: Please be seated.

MR. STERNBERG: Your Honor, may I call Ms. White?

THE COURT: Certainly.

MR. STERNBERG: While Ms. White is taking the stand I would like to offer her December 7th, 2021 declaration and Exhibits 1, 3 and what's 3-A to her declaration, but its already in evidence as 22.

THE COURT: Okay. So, let's slow down. So, first you have moved in her declaration which is, if you don't mind, are you able to identify that by docket number that would be super helpful.

MR. STERNBERG: It is -- may I approach Ms. White? I think it's on the declaration.

THE COURT: Certainly. Oh, I see, is it 337?

MR. STERNBERG: I think that's an earlier one.

THE COURT: Oh, I see, 358. All right. So, you moved into evidence the declaration that is at D.I. 358.

Mr. Slack, it looks like you have --

MR. SLACK: Yes. We have a limited objection to the declaration and one of the exhibits. So, our objection is to Paragraphs 23 and 24 of the declaration which relate to a trial balance analysis. Then we also object to the admission of --

THE COURT: All right. Let's take the declaration first. Let's go one paragraph at a time so that I get each issue.

MR. SLACK: Okay.

THE COURT: That way I'm less likely to get it wrong if we do it, sort of -- if we isolate the moving parts.

MR. SLACK: I would say that they are related, Your Honor.

THE COURT: Okay.

MR. SLACK: But that is fine. Your Honor, 23 and 24 relate to a trial balance analysis and we have two objections to it. Number one, the settlement payment and the calculation of the settlement payment that was submitted by Customers Bank was not based on any kind of trial balance analysis. It was based on a very different analysis related to the remittance file and that is set forth in their own exhibit.

More importantly, Your Honor, as soon as we received the declaration we asked Customers Bank for all the backup to the trial balance analysis. Your Honor, this was the exhibits that we have on our exhibit list which is Exhibits 30 through 36. There was an objection to those, but they relate to this objection that we have to Ms. White's declaration at 23, 24.

What the proffer of these exhibits show is that right after we received the declaration we asked Customers Bank for all of the documents that relate, all of the work product, the spreadsheets so that our clients could analyze and do whatever, and we recreate, and understand whatever work was done. We received a letter, that is our Exhibit 30, back saying, no, that was the answer to that. Interestingly enough, what we were told is that while much of the information was information we received it was clear, based on that letter, because it said much of it that was, in fact, and as the Court would know, that there, obviously, was work that was done on this trial balance analysis that we never received.

So, we wrote back and we said, look, we need this and we were, again, told no, but we will give you a one page analysis. So, they gave us a one page analysis which is now they're Exhibit 13. They still have not given us any of the work product, any of the background. They haven't, you know, tied A to B or given -- there's information in that one sheet that says that they used, for example, Customers Bank's general ledger. We haven't received any of that. We don't know what they used, what they didn't, how they did their calculations.

Ms. White, in her declaration, for example, says there was a series of people who did work. We don't know what work they did. We don't know what instructions they had. We know none of that.

THE COURT: So, the basis for your objection is they're putting this forward and you were deprived of the opportunity, in discovery, to test it?

MR. SLACK: Exactly, Your Honor. We said, look, you want us to make this a formal request. They said we don't need a formal request, we are just saying no. So, we told them, in our letters, that we were going to raise this issue that if we didn't get any of the background we didn't think it was fair, you know, to put on an analysis that we have literally had no opportunity to have any information on whatsoever, zero.

THE COURT: Okay. What is your response?

MR. STERNBERG: Your Honor, if we're talking about fairness Ms. White's -- first of all, I hope the Court will hear from Ms. White the total trial balance analysis that she did was very much part of the settlement reconciliation. It was the bank's way of doing a belts and suspenders analysis. So, its highly relevant and it was done contemporaneously.

THE COURT: What is your response to the question that he asked you for the backup so he could understand it, and you didn't produce it, and you shouldn't be allowed to come forward with information without giving your opponent a chance to test it.

MR. STERNBERG: We have given -- this is the document. Exhibit 13 is what Ms. White prepared and in it, it shows each input. They have it all and we told them they have it all. What is curious about this is if they thought there was a discovery issue make a motion.

THE COURT: I understand. All right, here is what

I am going to: I am going to take this -- I am going to allow you to proceed, I am going to bracket the disputed portion, and I will look at that -- I think I will make a smarter decision once I've heard it and thought about it then I would if I make a decision now. So, I am going to proceed, sort of, without prejudice and then consider the question at the end.

MR. STERNBERG: If I might, Your Honor, I'd add one piece to what I have already said. We provided the document that Ms. White prepared. She can talk about math. I mean, I don't know that anybody needs the backup math. But each component of it is described and it's something that Kabbage provided to Customers Bank. We offered as recently, I think, of last week if they had any questions, Ms. White would be happy to answer them. Here we are, I suppose in a sense she is going to answer some of those questions now.

MR. SLACK: I have to say that that just didn't happen.

THE COURT: All right, well --

MR. SLACK: You know, in fact, there was a statement by counsel that said we would have a meeting where we would go over it. We had that meeting and they got off the phone without doing it. So, that just never happened.

THE COURT: Look, I understand the parties' positions on this. I am going to allow the evidence to proceed and will resolve the questions of the admissibility after I understand more about the lay of the land. So, with that you can proceed.

Oh, I’m sorry, Ms. Barksdale, if you could swear the witness. And thank you for letting me know that I made a mistake.

MR. STERNBERG: Your Honor, have you received Ms. White’s declaration and the exhibits?

THE COURT: What I have done is the parts that are unobjected to are admitted. The parts that are subject to Mr. Slack’s objection are lodged, let’s call it, and we will address the question of their admissibility when I understand it better.

(White Declaration received into evidence)

MR. STERNBERG: Very well. I think what we are talking about there is Paragraphs 23 and 24, and our Exhibit 13.

THE COURT: Right. I take it have you moved other exhibits into evidence?

MR. STERNBERG: Two of them are already in. I am moving Exhibit 1 into evidence as well from Ms. White’s declaration. I think it’s the one exhibit that remains not in the evidence as part of --

THE COURT: Okay. I’m sorry, its Exhibit 1 of her declaration or Exhibit 1 from your binder?

MR. STERNBERG: Both.

THE COURT: Okay. It's the same thing.

Mr. Slack, any objection to the introduction into evidence of Exhibit 1?

MR. SLACK: That is the calculation. I have no objection.

THE COURT: So, that will be admitted. Whatever was already admitted remains admitted.

(Customers Bank's Exhibit 1 received into evidence)

THE COURT: Are there any other evidentiary matters before you turn to your testimony?

MR. STERNBERG: There are not.

THE COURT: So, Ms. Barksdale, if you could swear the witness.

ALYSSA WHITE, CUSTOMERS BANK'S WITNESS, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Alyssa Anne White, W-H-I-T-E.

DIRECT EXAMINATION

BY MR. STERNBERG:

Q Good afternoon, Ms. White.

Could you briefly introduce yourself to the Court by telling us where you work and what you do?

A I work for Customers Bank. I am the senior vice president of our digital operations. I am responsible for the governance and oversight of all of the FinTech partners that we use for that product, as well as general responsibility for the oversight of the portfolio itself.

Q Does your oversight responsibility extend to the paycheck protection program loans?

A It does.

Q And if I call that PPP we will understand each other?

A Yes.

Q In the course of your work for Customers Bank on PPP did you have occasion to work with Kabbage?

A I have.

Q Can you tell us, just in broad terms, about your work with Kabbage?

A I work with them. We meet typically several times a week to discuss the status of the portfolio relative to balances, other servicing activities that they perform on behalf of Customers Bank for that portfolio.

Q More recently, and what I mean by more recently is over the last year or so, did you have occasion to have regular interactions with Ms. Williams and Ms. Evans?

A Yes. Ms. Evans more so than Ms. Williams.

Q And how about before Ms. Evans arrived at Kabbage who was your primary contact?

A Danny Eidson.

Q And Mr. Eidson was the CFO of Kabbage?

A Correct.
Q Over the course of your work with Kabbage have you met weekly, monthly with Kabbage team and the Customers Bank team on a variety of issues?
A Yes.
Q Can you tell us what kinds of issues you interacted with Kabbage on?
A We would have regular meeting cadences. Prior to this settlement, in October of 2022, we would meet on a weekly basis to review reconciliation of the data that they provide. We, obviously, rely heavily on the data that they provide for our accounting and financial matters. So, we would often meet about discrepancies in the reporting information that was provided.
Q What kinds of discrepancies?
A Borrower trial balances, where remittance payments weren't appropriately reflected on the borrower's trial balance, or the trial balance couldn't be validated because it appeared that there was a payment, but there was no history in the remittance report. So, those two reports kind of depend, really go hand in hand.
Q Based on your experience with working with the Kabbage team how did you find the accuracy and completeness of Kabbage's financial reporting?
A Very poor data integrity. We just consistently

received information from Amex and then when KServicing was developed after they sold to American Express then we continued to get reporting from them that conflicted even there were issues with reports they would send us an entirely new report that didn't reconcile to the other report. It was just consistent errors across all the reporting.
Q Ms. White, you've used this term a couple of times "trial balance." What is a trial balance?
A A trial balance itemizes all of the loans in the portfolio, the original amount that was disbursed in the loan, and then the balance of that loan at a specific point in time.
Q Why is a complete and accurate trial balance an important document in the banking lending industry?
A It's a financial -- its used for financial and accounting records. From a regulatory standpoint and a publicly traded company that's a critical document that validates our financials as a bank and allows us to track the funds that we have lent out to borrowers.
Q Have you used trial balance in your daily work at Customers Bank?
A Operational decisions are made to be able to monitor the health of that portfolio, to be able to predict our financials as a bank on our receivables. If borrowers are delinquent on loans, just in general it's a critical --

Q Ms. White, are you aware of a settlement agreement between Kabbage and Customers Bank?
A I am.
Q And you have seen the settlement agreement between the parties?
A I have.
Q Were you involved in the reconciliation process that is called for by that settlement agreement?
A I was.
Q What was your role in the reconciliation process?
A I helped coordinate it on behalf of Customers Bank and interacted with Kabbage in gathering the information.
Q What information in particular did you request from Kabbage as part of the reconciliation process?
A We requested the remittance report that would reflect the amount that was held back, an accurate trial balance as of the date of settlement, and the Synovus bank accounts.
Q I probably should have done this already. You said, "remittance report of the amount held back."
Did you understand that one of the things being reconciled was the amount of borrower payments that Kabbage was holding and it had not yet paid to Customers Bank?
A Correct.
Q You mentioned you received the final remittance report, a trial balance and Synovus bank statements?

A That's what we requested.
Q Why do you want bank statements?
A We had -- because we had no visibility of borrower payments. The only way we could see that a borrower had made a payment is by the reduction in the trial balance. So, to validate that the trial balance was accurate, that borrowers had an inaccurate balance on their loan, and to validate that the payments that were reflected in the remittance report were accurate, we wanted some type of independent source to be able to validate that remittance report was supported by all of the funds that borrowers had deposited to and paid to Kabbage.
Q And did you, indeed, get bank statements from Kabbage?
A We did.
Q Who sent them to you?
A Donna Evans.
Q Take a look, please, at the smaller binder that you've got there, Tab 3, please, Exhibit 3.
A Okay.
Q Is Exhibit 3 an email that you received late in the day on Friday, November 4th, from Donna Evans?
A Yes.
Q And what was contained, what was attached to Exhibit 3?
A There were three zip files containing the actual bank statements, as well as a reconciliation that Kabbage had done

of those bank statements, which tied to the remittance report.

Q Based on anything contained in the email that's Exhibit 3 or anything that anyone from Kabbage told you, did you understand that the information and data you were receiving was preliminary in any way?

A No.

Q Did you understand that you were not to rely on it?

A No.

Q One of the attachments that's noted on Exhibit 3 is something called "Synovus account analysis."

Do you see that?

A I do.

Q If you turn to what's Tab 4 in your binder of Exhibit 22 in evidence in this matter, do you see something called "KServicing-Synovus borrower repayment account analysis"?

A I do.

Q Is that something that you received from Ms. Evans attached to the email we were just looking at?

A Yes.

Q Toward the bottom of the page or middle of the page, it says, "Per CUBI remittance file" and then there's some -- it says, "borrower or repayments per remittance file" and then there's a $26.6-odd-million number?

A Yes.

Q What did you understand that number to represent?

A The actual payments that borrowers made to Kabbage into this bank account.

Q Did you understand that figure represented monies that had not been paid over yet to Customers Bank?

A Yes.

Q Did the remittance files, the Synovus bank remittance files that Kabbage sent to Customers Bank, reflect borrower payments of $26,608,962?

A Yes.

Q At the bottom of the page there's an entry called "remaining variance to be resolved."

Do you see that?

A I do.

Q Did you have an understanding of what that $497,900 number represented?

A My understanding was that was money that was deposited into the Synovus bank account and when they did the reconciliation amongst their remittance report, they did not have that reflected in the remittance report because they couldn't, at that time, identify what loans they were attributed to.

Q Did you understand that the reconciliation that you were jointly engaged in with Kabbage was of the Synovus bank account?

A Yes.

MR. SLACK: Objection, Your Honor; leading.

THE COURT: Overruled. I don't think that that question indicated the answer, so --

MR. SLACK: I would just say he could ask that as, What was your understanding, as opposed to, Did you understand and have --

THE COURT: I've overruled the objection.

You can proceed.

BY MR. STERNBERG:

Q What account, what bank account is identified at the top of the page on Exhibit 22 that's Tab 4 in your small binder?

A Synovus bank account.

Q During the reconciliation, did Kabbage provide you with any reconciliation information about a Wells Fargo account?

A No.

MR. SLACK: Objection, Your Honor; leading.

THE COURT: What's your response?

MR. STERNBERG: I can rephrase, Your Honor.

THE COURT: Okay.

BY MR. STERNBERG:

Q Ms. White, during the reconciliation process, what, if any, accounts, other than the Synovus account did Kabbage

provide you information on?
A They did not provide anything.
Q What do the two numbers at the bottom of Exhibit 22, Tab 4 in your small binder, add up to?
A $27,106,862.
Q Take a look at Exhibit 1 in evidence, it's also Tab 1 in your binder. Please tell us how you used that $27.1-million-dollar-and-change figure in the settlement account reconciliation summary that you've prepared.
A In that second section, we took the principal amount and the interest, as well as the 497,900 that we talked about, so that added up to the 27 million. That was the total amount that they had represented had been deposited into the Synovus bank account, which was, from my understanding, the only account that they had used once they stopped withholding funds from us to collect borrower payments. That amount represents the amount that they had told us that they had withheld from us and with which we verified, based on their information, was deposited into that Synovus account.
Q We were looking at a figure of $26.608 million, but the account -- the settlement reconciliation summary that you prepared that's Exhibit 1 has two different figures for borrower collections: there's an interest figure and a principal figure.

A Yeah, the combination, the 26 was a combination of the principal and interest.

Q Going back to Exhibit 22, Tab 4 in your binder, at the top of the page, the first maybe two-thirds of it is under a heading called "Per Synovus bank statement activity."

A Yes.

Q And then there's some calculations and entries there.

Do you see that?

A I do.

Q Did you or anyone on your team audit these entries?

A Other than the math that they did here, that was it.

Q In other words, you checked the math on the cover of the page, but did you go to the actual entries to verify or audit any of these entries?

A No.

Q Do you know any reason why a Synovus bank account analysis would contain information from a separate bank account at Wells Fargo?

A I do not.

Q Do you know why a Synovus bank account reconciliation would include information that predated the opening of that account?

A I do not.

Q Ms. White, you mentioned maybe five minutes ago that you had regular meetings with the Kabbage team about various

discrepancies and loan balances and the borrower payments and so on.
A Yes.
Q At one of the more recent meetings or one of the meetings that was close in time to the bankruptcy petition, approximately how many loans were there discrepant balances on?
A Our October month-end reconciliation, which was prior to all of this settlement analysis, there were 13,000 loans that had reconciliation errors, which represented $53 million. We're showing $53 million less on their trial balance than we had in our GL balance.
Q So, based on your experience with these frequent discrepancies, what did you do assure yourself that the reconciliation of the specific items called for by the settlement agreement also made sense on a total-portfolio basis?
A It was pretty simple math. We had agreed on the total --
Q Who's the "we" in that sentence? Sorry to interrupt you.
A "We," meaning Kabbage and Customers Bank, through the reconciliations that we -- that I discussed that we would typically do as part of our daily operations. We had agreed on a population of loans that were funded that were in the

portfolio. So, we knew the loans, loan-by-loan. We knew what had been disbursed, so that was our starting point.

What we were trying to do is kind of an independent validation of the settlement amount to make sure that we were accounting for all of the funds that Customers Bank had disbursed to borrowers was.

We looked at all the funds that we had received through the SBA and from Kabbage, prior to them holding funds back, which got us to our outstanding balance within the portfolio, compared that to their trial balance, which they provided to us as part of the settlement. The difference between those should be the amount of the holdbacks.

So, basically, we were saying, we show this much money outstanding in the portfolio. You're reporting to us that you see this money. You're seeing that they should be showing a lower balance because they've been collected remittances from the borrower that hadn't been provided to us, and that should help us back into the amount of remittance that they were holding.

So, we did that type of an analysis to validate the information and then we looked at the inverse of it and said, Well, if we looked at the trial balance that they're recording --

Q "They" being Kabbage?

A "They" being Kabbage, and we just plugged in the amount that they told us that they owed us, would we get to the same -- once we applied those payments, will our trial balance or our GL match with what they're reporting?

And we were able to, in both scenarios, reconcile within $1300. So, we felt that was, in addition to the bank account, all of that reconciliation, that supported all of the funds, that analysis to be able to account for our entire portfolio, we felt that that was a fair assessment and independent assessment to validate.

Q Ms. White, did you prepare a document that summarized the analysis that you just described?

A Yes.

Q Is that document Tab 13 in your binder?

A It is.

Q Is Tab 13 an analysis that --

A Yes.

Q -- you prepared as you just described?

A Yes.

MR. STERNBERG: Your Honor, subject to the protocols that you identified, I'll offer Exhibit 13.

THE COURT: Okay. So, I'm going to let you examine the witness about this and I'll reserve judgment about its admissibility when we get to the end.

BY MR. STERNBERG:

Q So, what does it mean, Ms. White, for the analysis that you just described and that you also depicted in Exhibit 13, to get within 1300 or so dollars on a total-portfolio basis?

A It means that at the aggregate level, not a loan-by-loan level, but at the aggregate level, starting from the top, Customers Bank disbursed $2.5 billion of funds. Less the funds that had been returned to us, we were showing an outstanding balance of $202 million. That is what we were showing as should be the outstanding balance, which should, in theory, equal the trial balance that Kabbage was responsible for maintaining on our behalf.

Because of this holdback, we obviously have this discrepancy. So, in the middle section are all of the amounts that in scenario one that Kabbage had provided to us as part of settlement of what they were saying they had been holding back to us --

Q I'm just going to pause you there for a moment.

You have six or eight entries that say, "KS provided." What does that mean?

A That means those are the reports that we received from Kabbage during settlement to calculate the settlement payment.

Q You got a series of emails from Donna Evans on November 4th --

A Yes.

Q -- Friday, November 4th, correct?

A Yes.
Q And you identified them by number here, Number 2, Number 5, Number 4, et cetera.
A That corresponds to the email subject that Donna had sent, or Ms. Evans had sent the material.
Q Just as an example, if we look at Exhibit 3, it says "KServicing Update #3."
A Correct, yeah.
Q So, you're at -- the numbers correspond to the subject line of different emails you got from Donna Evans on November 4th, 2022?
A Correct.
Q What would happen to this trial-balance analysis if Customers Bank had to pay an additional $1.5 million to Kabbage?
A It would mean there's $1.5 million missing on other loans.
Q What do you mean?
A So, if you reduce -- that would be, basically, saying you'd be reducing that $28.1 million total. They're saying, We didn't really owe you that; we owed you one and a half million less. If you take that out, now this reconciliation doesn't work, but it would tell me that they're missing a million and a half of our funds that we had disbursed that they were responsible for tracking.

So, just looking at five loans out of the 98,000 loan portfolio would not be an accurate analysis. You need to look at the entire -- you either need to look at all 98,000 loans to understand where the gives-and-takes, or you need to look at it at the aggregate level.

Q And you looked at it at the aggregate level?

A Correct.

Q Are you aware of whether anyone at Kabbage looked at it either at the 98,000-loan level or at the aggregate level?

A I don't believe that happened.

Q I want to make sure I understand one of the figures in Exhibit 13. Next to the words "remittance collected/not received" there's a figure of $25,578,634 -- let me say that again -- $25,578,634.

Do you see that?

A Yes.

Q Why have you used that figure and not the 26.6 million?

A This analysis is strictly on principal. We did not track interest. We relied solely on what Kabbage calculated at the interest level. So, just to be as clean as we possibly can, we wanted to just look strictly at a pure-principal analysis.

Q Have you had a chance to review Ms. Evans' declaration from about a week ago?

A I have.

Q In it there's a suggestion that you used a faulty American Express trial balance as the basis for your work that's depicted in Exhibit 13. Can you address that.

A I did not. The trial balance that we used was provided and it's indicated here, the KS loan trial 10/3/2022. We had various conversations with KServicing during the settlement, and when we had asked for an accurate trial balance, because we knew of these errors. They were aware of the errors. We had discussions around how can we get to the point where we have an accurate trial balance that we can use to get to closure on the settlement?

They had suggested they wanted to create a new trial balance that came directly from KServicing, using their data. They felt their data was more accurate, so they provided that report specifically for this analysis. There were adjustments that needed to be made to that trial. They weren't able to apply guaranty payments, which would have overstated the trial balance that we were aware of, so we made those adjustments once they sent that report to us.

And we did another validation where we could see they didn't apply forgiveness payments or other payments that would have come from the SBA at the loan-level detail, so we did that validation and applied those and that's indicated in the footnote that's on this document. But this document did not use the Amex trial balance.

Q Ms. White, during the reconciliation period, did anyone from KServicing explain anything to you about its position that there were five loans totaling $1.5 million that had been paid in October of 2020 that were in this notice account analysis?
A No.
Q Did anyone from KServicing ever present you or any one of your colleagues with an assertion of what the settlement payment should have been from Kabbage's perspective?
A No, they only provided the documents.
Q To this day, has KServicing presented to Customers Bank its view of how the settlement payment meshes with the total trial-balance analysis?
A No.
Q Why can't you look at five loans out of a portfolio of 99,000 or so and conclude that if there was a payment on those five loans in October 2020 and it shows up on a Synovus account reconciliation that Customers Bank has been paid twice?
A Well, I mean, it kind of goes back to the monthly reconciliations that I talked about earlier. I mean, we knew there were errors at the loan level of 13 -- of over 13,000 loans that equated to $53 million and at the net, $53 million that indicated they had collected, but didn't pay to us. Now, there were -- that was attributable to various root

causes, but the aggregate level showed $53 million.

Now, if you're going to say, Well, you owe us 1.5, well, then, there's going to be, I know of ones, I mean, we experienced them all the time, ones where there would be amounts that are due to us in the inverse. So, where that all nets out, you either got to do all 98,000 loans and figure out what are the gives-and-takes, or you've got to do it at the aggregate level. You can't just take a small, like, five loans that were, you know, to your advantage. That just wouldn't be an accurate assessment.

MR. STERNBERG: Your Honor, may I have a moment?

THE COURT: You may.

(Pause)

MR. STERNBERG: That's all the questions I had, Your Honor.

THE COURT: Okay. Mr. Slack, you would like to go into cross or is this a sensible time to break for lunch? Whatever the parties' reference is, in that regard.

MR. SLACK: This is probably a sensible time to break for lunch.

THE COURT: Okay. How long would folks like? It's about 12:30.

UNIDENTIFIED SPEAKER: 45 minutes.

MR. SLACK: What's that?

UNIDENTIFIED SPEAKER: 45 minutes.

MR. SLACK: Yeah, 45 minutes.

THE COURT: Okay. So, we'll come back at, say, 1:20; is that agreeable on your side?

MR. STERNBERG: It is, Your Honor. We're just as happy to press forward, but if that's the desire of the group --

MR. SLACK: And, Your Honor, I just want to make sure that everybody is aware that the rule is still in effect.

THE COURT: So, Ms. White, you remain on the stand, so you shouldn't discuss your testimony with anyone during lunch.

THE WITNESS: Yes, understood.

THE COURT: Mr. Slack, does that admonition satisfy your concern?

MR. SLACK: It does, indeed. Thank you.

THE COURT: Okay. So, we will break. We'll take 45 minutes and come back at 1:20. With that, we're in recess. Thank you.

(Recess taken at 12:35 p.m.)

(Proceedings resumed at 1:26 p.m.)

THE COURT: Be seated.

I want to start off by apologizing for running behind. I try to make a point of actually being on time, so sorry about that. I just -- I wish I had a better excuse; I just started working on something else and lost track of time. So, I wish I had a better excuse, but thank you for your patience.

And, Mr. Slack, I guess we should recall the witness to the stand.

ALYSSA WHITE, CUSTOMERS BANK'S WITNESS, PREVIOUSLY SWORN, RESUMES STAND

THE COURT: Okay. And you remain under oath.

And, Mr. Slack, you can proceed.

CROSS-EXAMINATION

BY MR. SLACK:

Q Ms. White, my name is Richard Slack. I'm from Weil Gotshal and I'm going to ask you a couple questions.

So, on your direct testimony, you indicated that you're familiar with the settlement agreement, correct?

A Correct.

Q And you understand that the settlement agreement defines the settlement payment as the settlement amount of 58 million, less the amount of what's referred to as the disputed KServicing holdbacks as of the petition date, right?

A Correct.

Q And the disputed KServicing holdbacks is the sum of two things: one, the disputed KServicing fee holdback and the disputed KServicing remittance holdback, correct?

A Yes, I think there was a third portion of canceled or returned loans.

Q Excuse me?

A I think there was a third portion of canceled or returned loans, as well.

Q And the point, though, is that the parties have agreed to the fee holdback, correct? The parties agreed to the eight million three hundred and seventeen amount of the fee holdback, correct?

A Oh, in the settlement, yes.

Q Yeah, in the settlement, that's right.

And so the only holdback category in dispute is the disputed KServicing remittance holdback amount, right?

A That's correct.

Q Now, borrower remittances, and I know you talked about this on your direct, are the funds collected from borrowers that KServicing is required to remit to Customers Bank under the parties' prepetition agreements, correct?

A Correct.

Q And so, the idea is that if KServicing collected money that it has already paid to Customers Bank, it shouldn't be on the remittance list, correct?

A Well, it depends on what you say, because KServicing is responsible for the entire trial balance of loans, and so if money is collected at an aggregate level, they're responsible for that, that whole balance, so accounting for it and then returning those funds to us.

Q So, let's try to take it on a granular level.

Certainly, the remittance list is a loan-by-loan list, correct? There's a remittance file that's a loan-by-loan file, correct?

A It's a transaction. It's a transaction-based list.

Q And that --

A And there could be multiple line items for loans and it's like a -- it's not a comprehensive list. It depends on the time and the scope that it's created.

Q And so what -- let's take a look at your calculation, maybe that'll help us here. So, your calculation, which is Exhibit 1, can you look at that.

A Yep.

Q And this sets forth Customers Bank's calculation of the settlement amount that have paid, correct?

A Yes.

Q And it sets forth the methodology that it used in calculating the settlement payment, correct?

A Yeah, the only thing I would just maybe tweak a little bit, I don't know that we set the methodology; the methodology was per the settlement agreement.

Q I'm sorry, the --

A You said we set forth the methodology that we used, but we didn't define the methodology. We went according to the settlement.

Q Okay. And so, for example, in your sheet, there's a section that's labeled "total borrower remittance payments"; do you see that?

A Yep.

Q And that's 27,106,862, correct?

A Correct.

Q And Customers Bank broke that up into three different figures, correct?

A Correct.

Q And the first one of those is the borrower principal payments and returns; do you see that?

A I do.

Q And Customers Bank's specifically said that was per the remittance file, correct?

A Correct.

Q And the next one was interest collected; do you see that?

A I do.

Q And even though it doesn't say it, isn't it a fact that the interest collected was also taken directly from the remittance file?

A Yes.

Q And then the third is the reported remittance account variance, correct?

A From the Synovus accountant analysis, yes.
Q Now, Customers Bank still stands by this calculation, correct?
A Yes, because we were able to reconcile it to the Synovus bank account. So this amount was, a portion of it was represented in the remittance report, but the total amount was validated with the Synovus bank statements and the reconciliation report that was provided by KServicing.
Q But the answer is yes, this is still your calculation, correct?
A It is, yes.
Q As set forth in that sheet, correct?
A In what sheet?
Q Exhibit 1 to -- Exhibit 1?
A Oh, Exhibit 1, yes.
Q And, in fact, the numbers in Exhibit 1 do not come from a trial-balance analysis, correct?
A They --
Q The actual numbers do not come there a trial-balance analysis, correct?
A They came from the Synovus bank account analysis reconciliation.
Q Well, they came from where they said; for example, the borrower principal repayment and returns came from the remittance file, correct?

A Which was in, also in the Synovus bank account analysis.
Q Could you determine the borrower principal repayment and returns and the interest collected without looking at the remittance file?
A With the Synovus bank account statements, yes.
Q And did you, in fact, do that? Did you look at the remittance file to get that or did you look at the Synovus bank account files to get that?
A We were at -- we relied mostly on the Synovus bank account because we had no way to validate the information that was provided in the remittance report and had concerns with the data integrity, so we really used the Synovus bank reconciliation account.
Q So, can you tell me how you went about taking the -- well, let's do this. Let's take a look at the Synovus borrower account, which is Exhibit 22.
A Is that Exhibit 3 or 4?
Q And it has all three tabs in it.
Can you take the Court through however you need to, to show how you calculated the borrower principal repayments and returns and the interest collected numbers in your settlement calculation from that sheet.
A Can you just tell me where you're looking -- where I should be looking at?

Q All right. So, Exhibit 22, that's the Synovus account analysis, right?
A I don't have an Exhibit 22.
Q Do you have --
A Is it in here?
Q It's in the big binder, not the small binder. I'm now talking about the KServicing exhibits.
A Okay.
Q All right. Do you have Exhibit 22?
A I do.
Q You've seen Exhibit 22 before, correct?
A I have.
Q That is the Synovus account analysis that you were referring to, correct?
A Correct.
Q So, can you walk the Court through, in whatever way you need to, to show the Court how you calculated the 25,578,633 borrower principal repayment and returns from that spreadsheet?
A So, the twenty-seven one oh six, which is Row 15 on Exhibit 22, ties to the, under Exhibit 1, the total borrower remittance payments P&I, twenty-seven one oh six eight sixty-two.
Q I'm sorry, tell me, again, where you're looking.
A On Exhibit 22 --

Q Yes.
A -- Row 15, you'll see twenty-seven one oh six eight sixty-two --
Q Yes.
A -- so, that's the total amount of the Synovus bank account --
Q Right.
A -- reconciliation of payments that have been collected.
Q Right.
A And then that was used on Exhibit 1, where it says, total borrower remittance payments P&I, twenty-seven one oh six eight sixty-two.
Q Right. So, I do -- I get that number, but I asked a different question. I asked the question, can you show me how you would calculate the actual borrower repayment number, which is 25,578,633 from that spreadsheet.
A So, the four-ninety -- so, on Exhibit 2, Row 20 less out the four-ninety seven nine hundred that's used in Exhibit 1, reported remittance account variance four-ninety seven nine hundred.
Q Yes.
A And then the twenty-five five seventy eight six thirty-three and the 1,030,328 was a breakdown of the P&I that came from the remittance report, but it all tied back to the twenty-seven one oh six. So, it all is -- it's all

reconciled to the Synovus bank account.

Q Right. So, the point is that the two numbers that I pointed out that you said, per the remittance file, the twenty-five five seventy eight six thirty-three came from the remittance file, not from the Synovus account, correct?

A It came, well, I mean it all starts with the Synovus bank account. A borrower makes one payment into the Synovus bank account and then that gets itemized.

MR. SLACK: Your Honor, I just wish I could get an answer to my question. I'm, you know, not really getting an answer, yes or no, to my question. And, obviously, if the witness needs to explain this, counsel can -- her counsel can cross or redirect.

MR. STERNBERG: Your Honor, my sense is Ms. White is answering the question; perhaps, not in a way Mr. Slack wants to hear it. She's engaging with his question and giving a response.

THE COURT: So, I don't think it's nonresponsive.

I'll let you continue cross --

MR. SLACK: Okay.

THE COURT: -- and we'll see where we go.

BY MR. SLACK:

Q So, the twenty-five five seventy eight six thirty-three could only be derived from the remittance file, correct?

A Yes.

Q And the interest collected, the 1,030,328 could only be calculated from the remittance file, correct?
A Yes.
Q Okay. Now, I'd like you to take a look at Debtors' Exhibit 8. It's also in the big binder. And this is a summary document of the five loans that KServicing contends had payments made by borrowers, but that the money was already paid back to Customers Bank.
Do you recognize those loans as the five loans that are at issue?
A I must be looking at the wrong thing. You said Exhibit 8? I'm seeing an email.
Q It's Exhibit 8 in the big binder.
A Yeah, I'm seeing an email.
Q There's a tab that says Exhibit 8. There's some tabs that just say 1 through 8, but there's Exhibit 8.
A Yeah, I'm on Exhibit 8 is a -- oh, wait. Yeah --
Q It should be a one-page exhibit.
A It's an email from November 14th from Donna Evans.
Q I'm sorry, just the one that's the number 8?
A Oh, just the number 8, okay. When I go to Tab 8, it shows me Exhibit 5.
Q I see.
A Okay.
Q I thought I had this --

A I see it. I think I'm on the right page.

UNIDENTIFIED SPEAKER: A lot of numbers are on the top.

THE WITNESS: Okay.

BY MR. SLACK:

Q All right. Do we have it now, the one page with the five loans?

A Yep.

Q Do you recognize these as the five loans that are at issue in this hearing?

A I suppose.

Q Well, I'm just asking whether you recognize those. I mean, after you got -- received KServicing's papers, did you look at the five loans that KServicing had said had payments that had been made by borrowers and then KServicing had already paid to CUBI?

A In Tamica Williams' declaration, she had four loans identified.

Q So, do you recognize these as the loans that are at issue?

A I don't recognize -- I mean, I don't recognize them.

Q Okay.

A I mean, I guess when you say "recognize" as --

Q Well, so, let me ask it --

A -- I'm not familiar with them.

Q Let me ask it a different way.

Putting aside whatever loans they are, after you received KServicing's papers, with respect to the loans that are at issue, did you go back and look to see whether, in fact, they were on the remittance file?

A Did I? No.

Q So, you did not go and look to see whether they were on the remittance file?

A I found four of them, I believe. I could not find of them.

Q So you found four of them.

Didn't one of them have two payments?

A That may be the case.

Q Okay.

A I didn't --

Q And did you also go to look to see whether -- and you don't deny as you sit here today, that those loans, in fact, were on the remittance file, correct?

A I can't say whether they were or not. I cannot.

Q I'm sorry, what?

A I can't say whether they were or not.

Q So, did you go back and actually -- you have the remittance file, right? You have the remittance file?

A I do.

Q And so, did you go back and check to see whether they

were on the remittance file?
A I looked at the four that were in Ms. Williams'. I could find those on the Synovus bank account trial reconciliation, but I did not look at the remittance report, no.
Q Okay. Did you go back to look and see whether those loans had payments that were made to CUBI?
A I did not.
Q Did anyone at Customers Bank, to your knowledge, go and look to see whether those loans were on the remittance file?
A Not to my knowledge.
Q So, you can't, as you sit here today, you don't deny that those loans were actually on the remittance file, correct?
A I cannot say whether they were or weren't.
Q And to your knowledge, nobody at Customers Bank has gone to look to see whether they're on the remittance file?
A No, because it was not a relevant piece of information. As I said before, looking at only five loans amongst 98,000 was not a relevant data point.
Q And you didn't -- and nobody at Customers Bank, to your knowledge, went to go look and see whether those loans that had money paid with respect to them, correct?
A I did not, not that I recall, that I am familiar with.
Q Now, if you -- now, earlier you, in your testimony, you

had said that the remittance report that you received was somehow related to the Synovus bank account.

Do you recall, generally, that testimony?

A Yes.

Q As you sit here today, is it your testimony that all of the loans that were contained in the remittance file were from transactions that were made in the Synovus bank account?

A That's my understanding.

Q Okay. Well, let's take a look. You received the remittance file from Ms. Evans, correct?

A Yes.

Q And that was on November 4th, correct?

A Yes.

Q All right. So, let's take a look at --

MR. SLACK: Your Honor, what I'd like to do because I think it's easier is to use a native file so that I can actually have any colleague just highlight some --

THE COURT: You may.

MR. SLACK: Thank you.

THE COURT: So, how do you propose to display it?

MR. SLACK: Well, what I was told is that we are going to do it by Zoom.

THE COURT: Perfect. Okay. And you'll share your screen -- your colleague will share their screen and --

MR. SLACK: Exactly. And hopefully, we'll have some coordination where this will work.

THE COURT: Okay.

MR. SLACK: I do need my glasses for this.

BY MR. SLACK:

Q So, let's take a look at some of the loans that are on the remittance file. The first thing --

MR. STERNBERG: What number of exhibit are we looking at?

MR. SLACK: Yes. So, I am looking at KServicing's Exhibit -- 28 is the native and the non-native is 22 -- not 22 -- 23.

BY MR. SLACK:

Q And you'd agree with me that the remittance file is, as you said, a transaction-by-transaction analysis, correct?

A Yes. Not necessarily comprehensive -- it changes month-to-month on what we get. I can't recall if this file just showed what they owed us or if it had -- I believe it did include everything that was returned.

Q I just asked for a moment, it is a transaction-by-transaction analysis, correct?

A Yes, but just to clarify, not every single transaction across the portfolio.

Q And you've seen -- you, again, you've seen this document before, correct?

A I have.

Q And if you look down, the first loan on the list of five is SBA loan ID 8634997301 and we see that in Row 18411. We'll get that in a second.
Do you see that loan there?
A I do.
Q And what is your understanding of the Column I, which has post time?
A I don't know. That's been one of the questions that we've had outstanding. It's not consistently used in the reporting that they've provided to us.
Q But this shows that this was posted on 9/18/2020, correct?
A Yes, and there's a lot -- but I mean those dates -- again, I don't know what that post time means, because if you look at it across the entire remittance report, you'll see post times for returns that happened months later. So, you'll see current transactions with a post time from the original amount.
Q But we can agree, at least right now, that that post time predates the beginning of the Synovus account, correct?
A Yeah, but I don't know what it means. It doesn't necessarily mean that that was a payment made on 9/18/2020.
Q But whatever it means, somebody wrote that this was -- had a post time prior to the Synovus account, correct?
A Somebody wrote that, but that is not a reliable data

point.

Q And that is one of the loans that's at issue in this hearing, correct?

A If you filter -- if you go to the right, there's a column that says "status"; it'll say "owed" and "returned." And if you filter on that, you can see all of the post times, that it doesn't necessarily -- is not an indicator that -- what account it came from.

Q All right. What I asked was slightly different. I asked whether this loan was one of the loans that's at issue in this hearing?

A It is on this list.

Q Okay. And it's showing in the remittance file that Customers Bank used when it said, "per remittance file," correct?

A Yes.

Q Okay. And do you have any doubt that if we went to the other loans that they would also be in the remittance file?

A I suspect you've checked it.

Q Have you taken a look at Ms. Williams' declaration, the second declaration?

A I have.

Q And Ms. Williams' declaration talks about how these loans are in the remittance file, correct?

A How they are, did you say that?

Q That the loans that are at issue today --
A Yes.
Q -- are in the remittance file, correct?
A Yes, that's my recollection.
Q And as you sit here today, you don't have any information that would say that those loans are not in the remittance file, correct?
A Correct.
Q Okay. Now, I'd also like you to take a look at, again, the summary page to the Synovus spreadsheet, which is Exhibit 22.
Do you see that?
A I do.
Q Now, do you have that first summary page of Exhibit 22 in front of you?
A I do.
Q And the first part that you're counsel asked you about was the per-Synovus bank statement activity.
Do you see that?
A I do.
Q And all the per-Synovus bank statement activity, and there's a number of columns, that has a subtotal of 25,438,210, correct?
A I see that.
Q And then there's a column that says, "researched items

resolved."

Do you see that?

A I do.

Q What was your understanding of what "researched items resolved" meant?

A I have no idea.

Q But you'd agree with me that the research items resolved was added to the Synovus bank statement activity to get to the 27,107,862, correct?

A It is a line item added, yes.

Q And you had to add, in other words, you took the Synovus account activity and then there was an addition of the money million six eight six five one that was the research items resolved, correct?

A I did not, no. This was --

Q But you see that that was there, correct?

A I can see it, but just to be clear, I didn't do this; this was done by KServicing and presented as a reconciliation of Synovus account.

Q Well, maybe it's better said that the number that you then took into your analysis was the 27,107,862, correct?

A Yes, it validated the Synovus account.

Q So, I'll ask it slightly different.

That was comprised of the subtotal of the Synovus bank account plus the researched items resolved, correct?

A I don't know what those researched items were in the Synovus account. My understanding was this is a representation of all of the money that was in the Synovus bank account. I don't know where that 1668 came from. I can't say whether it was, because I didn't do this, so I can't -- I couldn't accurately say that.

Q I'm asking just a slightly different question. So, I'll try again, because maybe I'm not being clear.

You used, did you not, in your calculation, the 27,106,862 number, correct?

A We did.

Q And that was comprised of the twenty-five four three eight two ten plus this one six six eight six five one as a mathematical matter, correct?

A As a mathematical; yes, that's accurate.

Q And so in order to get to the 27,106,862 number, you had to add this researched items resolved column as a matter of math, correct?

A That is what was presented, yes.

Q Okay. And have you ever gone and looked at what comprised the researched items resolved?

A You mean within the workbook that was presented? I have.

Q Have you looked at the workbook --

A Yes.

Q -- at the items that comprise the researched items resolved?
A I have.
Q Okay. And when's the last time you did that?
A Maybe a week or two ago.
Q Okay. And that was after KServicing had filed its papers, its reply papers, correct, and after KServicing had filed this motion, correct?
A I believe so.
Q And you were aware, were you not, of the five loans or the four loans with two payments that KServicing contends were already paid to Customers Bank, correct?
A You said that they contend that?
Q That's what I said.
A Yes, that's accurate.
Q That's for the judge to decide.

The -- so, let's take a look at, in Exhibit 22, let's take a look at the last tab. This is the tab that was left off the Customers Bank exhibit and is on our exhibit.

And if you take a look at the items there, there's a handful of items that are listed there. Do you see those?
A I do.
Q Isn't it true that the two biggest loans that are on this list are two of the loans that KServicing contends were already paid to Customers Bank, correct?

A I would have to do a comparison of those.
Q All right. Well, let's do that.
A Okay.
Q Let's, in particular, you know, whatever's easiest for you. It may be for you to go to that Exhibit 8 which has the summary of those and looking at the loan ID and the amounts.
So, for example, if you take a look at the loan that's a million two, five five one seven five, that's ID number 8634997301, correct?
A I see on Exhibit 22, the 1.255 is on the -- yes. Yes, I see it.
Q You can see it, right?
A Yes, I see it.
Q And take a look two down, the loan that has the ID 9351437302, that also is a loan that KServicing has now said was actually paid back to Customers Bank, correct?
A I see that, yes.
Q So, you would agree with me, would you not, that if those, just as a matter of math, if those loans were actually paid back to Customers Bank and you reduced, as a result, the 1668651 by those two loans, that would be approximately, just those two loans alone, would be a decrease in the Synovus bank statement activity on the summary page of about 1.5 million, correct?
A So, you're saying those weren't part of the Synovus

reconciliation? I'm sorry, I'm not following.
Can you just repeat that.
Q Well, we'll try this again. In other words, the 27,106,862, correct, was a number that you used in the calculation of the settlement payment, correct?
A Yes, per the --
Q And as a matter of math, it included the Synovus activity, plus this 1668651, correct?
A Yes.
Q And we just looked at that 16768651 is, in part, comprised of two loans that are at issue today of approximately $1.5 million, correct?
A Correct.
Q And so if those items were, in fact, improperly reviewed as being resolved at that time, when, in fact, they'd been paid to Customers Bank, this number, the 27,106,862 would be a million and a half less, correct?
A Correct.
Q Now, Ms. White, on October -- on November 14th, Customers Bank paid KServicing a settlement payment of approximately 19.47 million, correct?
A Yes.
Q And you agree that that 19.47 million number was in error, correct?
A I think you're referring to the interest that was later

added on.

Q What I'm saying is that number was incorrect, right?

A I'd have to go back and look at the (indiscernible). The only reason that it would be what the exact amount was, we later came back and added on interest, so I think that's what you're referring to.

Q Customers Bank paid a million thirty thousand more, correct?

A Later on for the interest.

Q So the initial number was wrong, correct?

A It was only principal, so we only factored in principal. We realized later that interest needed to be added in.

Q Was the 19.47 million number that was paid the correct number?

A Of principal, yes.

Q Was it the total correct number?

A It was the correct number of principal and then we later on added the interest.

Q So, it's your view that the 19.47 payment was the correct number. That's at final, that's the correct number?

A No, I think I said it was the correct principal amount and we later on added --

Q But I get to ask the questions.

A -- in interest.

Because you're framing it as incorrect and I don't think it was incorrect.

Q Okay.

A I think we later on realized that we didn't include interest.

Q Well, in fact, what you had done in your initial payment was you had double-counted the interest, correct?

A I would have to go back. I really don't recall all that detail. I do know that we initially did not include interest and when we realized that error, we made a payment later for that interest error.

MR. SLACK: Can I -- I have an exhibit. It's not on the exhibit list, but may I approach, Your Honor?

THE COURT: You may.

Thank you.

THE WITNESS: Thank you.

BY MR. SLACK:

Q Ms. White, do you recognize this email?

A Yes.

Q And this is an email sent by Mr. Sachs to KServicing on November 14th?

A Yes.

Q And if you look at the calculation of the settlement payment on page 2, do you see that?

A I do.

Q It has a calculation of 19.4, correct?
A Yes.
Q And that calculation was wrong, correct?
A That was accurate, but there was a missing interest amount that we later paid.
Q Well, let's try this. So, if you take a look at the -- it has an interest amount, right, if you look at interest collected, the 1030328?
A Yes.
Q That interest number is correct, isn't it?
A But that's on the interest, yes.
Q And what happened was the borrower principal repayments returns, per the remittance file, of 26,608,962, that number is incorrect, correct?
A I'm sorry, you're right; it double-counted the interest, yes. I knew it had something to do with interest.
Q Now, ultimately, Customers Bank used the correct number for the borrower principal repayments and returns per the remittance file, correct?

MR. STERNBERG: Your Honor, at this point, I object. We've been through this a number of times and it's wholly irrelevant to anything that's in dispute right now.

THE COURT: Mr. Slack?

MR. SLACK: I don't see how this is irrelevant in any way.

THE COURT: I'll let you continue. I think I -- I mean, there'll come a point when -- the issue isn't, to me, relevant as much as it is that I think much of this has been covered, but I'll let you continue. And bear in mind that I'm doing my best to keep track of what you've asked already and you don't need to do it repeatedly.

BY MR. SLACK:

Q All right. Now, your counsel asked you about what I'll call the "reconciliation process," correct?

A I'm sorry, could you repeat that?

Q Your counsel asked you questions and you talked about what your counsel talked about as a "reconciliation process" for the settlement payment, correct?

A Yes.

Q And you were personally involved in the reconciliation process, correct?

A I was.

Q And you agree that it was important for you to understand what the settlement agreement provided with respect to the reconciliation process for you to participate in that process, correct?

A Yes.

Q And under the settlement agreement, following the execution of the settlement agreement through the effective date, Customers Bank and KServicing were required to work

together in good faith to promptly reconcile the amounts of the disputed KServicing fee holdback and the disputed KServicing fee remittance holdback as of the petition date to determine the appropriate amount of the settlement payment, correct?
A Yes.
Q And so the agreement had a mandatory requirement under the settlement agreement for the parties to work cooperatively to reconcile the settlement payment calculation up through the effective date, correct?
A Yes.
Q And there's nothing in the settlement agreement, however, that presented the parties from working cooperatively in good faith after the effective date to continue to reconcile the settlement payment calculation, correct?

MR. STERNBERG: I object. We're now veering into legal conclusions and something that's -- that is actually, clearly, prohibited by the settlement agreement in the integration clause.

MR. SLACK: Your Honor, I don't think that's an appropriate objection with a question.

THE COURT: So given the testimony already elicited about the parties' understanding of what the expectations were, I'll permit the witness to answer the question to the extent it's focused on her understanding of the agreement at the time that she was engaged in the process.

So, with that, you can answer the question.

THE WITNESS: My understanding was that the settle -- the reconciliation was up until the settlement agreement date and then we were not going to continue to do that -- any further reconciliation of the payment.

BY MR. SLACK:

Q And what did you understand in the settlement agreement actually prevented the parties from continuing to work together cooperatively outside of the mandatory provision that was in the settlement agreement?

MR. STERNBERG: Same objection.

THE COURT: I'll overrule the objection, and she can answer to the extent of her understanding.

THE WITNESS: I could not make that analysis or interpretation.

BY MR. SLACK:

Q Now, if you take a look at the settlement agreement, which is KS -- which is our Exhibit 18 -- no, that's your declaration, sorry -- sorry, our Exhibit 1, it provides at paragraph 8, and I'll do the reading that:

Within three business days following the effective date, CB shall pay to KServicing in immediately available funds in an equal -- an amount equal to the settlement payment.

Do you see that?

A I do.

Q And then, of course, the settlement payment we went through is defined, in turn, correct?

A Yes.

Q And it was your understanding that there was nothing in the settlement agreement that made it so that Customers Bank could pay KServicing an inaccurate amount of the settlement payment, correct?

A I'm not sure I'm following what you're saying.

Q Well, in other words, the settlement agreement actually requires that the correct amount be paid to KServicing, correct?

A Of course.

Q And you don't -- just because the reconciliation period ended did absolve Customers Bank of the obligation to pay the accurate and correct amount of the settlement payment, correct?

A I don't know. I'm not a lawyer. I couldn't make that determination.

Q Now, you were, again, you said, personally involved in the communications with KServicing during this mandatory reconciliation period provided in the settlement agreement,

correct?
A Yes.
Q And you and your colleagues at Customers Bank exchanged numerous emails with KServicing during this mandatory reconciliation period, correct?
A Yes.
Q And isn't it the case that you also participated in virtual meetings with KServicing during this mandatory reconciliation period; is that correct?
A It is.
Q So, you I want to fast-forward during that time to November 9th, and November 9th was the effective date of the settlement agreement, correct?
A Yes.
Q And do you recall on that day that there was a telephone call between representatives of Customers Bank and KServicing regarding the settlement payment?
A I don't recall. I mean --
Q You don't recall that conversation?
A I have a lot of calls. I mean, I'm on calls constantly during the day. I can't remember what -- if you tell me what it was about, perhaps I could --
Q Well, do you recall a conversation in or around that time where Mr. Sachs informed representatives of KServicing that the parties would have, again, in substance, the ability

to continue reconciling through the weekend?
A Perhaps. I don't recall, though.
Q Did you take a look at Ms. Evans' declaration?
A I did.
Q Did you see that part of her testimony included a conversation where she testified that Mr. Sachs, on the effective date said, We can continue to reconcile through the weekend.
Do you recall that?
A Okay. Do I recall reading it? Yes.
Q And do you deny that that conversation took place?
A Again, I don't recall that exact conversation. I don't recall whether that was said or not.
Q But in your declaration, you certainly didn't deny that that conversation took place, correct?
A I -- if it was in -- perhaps. I don't know. It's all kind of muddy at this point.
Q And isn't it true that you also, at that time, on November 9th, were planning on continuing to reconcile past the effective date; isn't that correct?
A I don't believe so. I don't think that that was ever discussed.
Q Will so, let's take a look at KServicing Exhibit 12, which is an email, and if you look at page 4 of 5, depending how, I guess, depending how it's printed, but do you see that

you emailed Ms. Evans at 4:02 p.m.

Do you see that email?

A Yes. Yes.

Q And this is on November 9th, correct?

A It is.

Q And that's the effective date, correct?

A I guess. I'm really confused. I'd have to see, like, a timeline of all the dates and the settlement report, but I'm relying that you are accurate.

Q And what you tell Ms. Evans is, quote:

"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 the end of the day tomorrow."

Do you see that?

A I do.

Q And the "end of the day tomorrow" would have been after the effective date, correct?

A I guess.

Q And so it's fair to say that as of November 9th at 4:02, you were expecting to continue to reconcile past the effective date, correct?

A Well, the payment was made on November 14, so I'm just trying to, like, figure out the timeline here. So the effective date was the 9th and then we had to put together the payment, and it looks like the payment was sent on the 14th, so that makes sense.

Q Now, did there come a time, at or about this time, shortly after this email, where Customers Bank stopped communicating with KServicing concerning their reconciliation?

A I think that once we made the payment over, there were probably some (inaudible).

Q Before the payment, but after this time. After the time of your email that we just looked at, did there come a time when you stopped talking to KServicing about the reconciliation process?

A I don't know that it was intentional. I think at that point, we had all of the data that we needed and we were putting all of the bits and pieces together to be able to determine a payment amount. I don't think there was an intentional stop having any conversation with them, if that's what you're implying.

Q So, if your view, the reconciliation process could go past the effective date, correct?

A No. Again, I couldn't make that determination from, legally, what the settlement discussion was (indiscernible) that was not really something that I was involved in.

Q Did anyone ever tell you in words or substance to stop talking with KServicing about the settlement payment?

A No.
Q After November 9th, did you, in fact, stop talking with KServicing about the settlement payment?
A Again, I don't remember every conversation. I mean, we had -- we continued to interact with KServicing and whether this topic was brought up, but I do know that we -- again, I think going back, it sounds like we're referencing some holidays here, so we probably were trying to get all the information because we knew we had this deadline to make a payment. I do recall that it was a clear, we need to get the payment to them. We need to get the data. We need to do the reconciliation to be able to come together to agree on that analysis.
Q So prior to Customers Bank paying the amount that we showed Mr. Sachs, you know, sent in his email, which was incorrect, did Customers Bank provide KServicing with a draft calculation of the amounts it intended to pay?
A I was not involved in the conversations between (inaudible).
Q So, you're not aware of any communication where the amounts that Customers Bank was intending to pay were sent to KServicing?
A I was not involved in that.
Q And are you aware that, at any time, whether Customers Bank shared any kind of trial-balance analysis with

KServicing prior to paying the amounts that were due?
A We had a lot of discussion about the trial balance as part of the reconciliation process. That was a pretty heavy discussion, especially early on because that was one of the key data elements into determining the reconciliation amount, which we determined the remittance payments that were due without not factoring in (indiscernible) balance.
Q All right. So in your declaration, in paragraphs 23 and 24, you set out a, what you say is a trial-balance analysis.
Do you recall that testimony in your direct?
A Yes.
Q Did you disclose any of that at any time to KServicing prior to making the settlement payment?
A No.
Q So, Ms. White, I'd like to go through the half-page analysis, which is Customers Bank Exhibit 13, and Ms. White, did you personally create this one page?
A I did.
Q Did anyone at Customers Bank assist you in creating this one page?
A I mean, there were other resources that provided data inputs to it and yes.
Q And who else provided data inputs?
A Our accounting department.

Q And what data inputs were provided by the accounting department?
A The current balance, the -- I should say that also came from our data team. So, it was a compilation of reconciliation that we had done across on a monthly basis. It was pulling in what was our balance on our GL. What were we showing as the trial balance at the time. So, that was provided by both, our accounting, and then validated by our data team in what we have used on a monthly basis for our reconciliation.
Q Were those sent to you by email?
A Probably discussions over a call, but I mean those are somewhat items that we publish month over month and have discussed with Kabbage, like what our trial balance is versus what they have.
Q So, you had said just a minute ago that there were a number of people on the financial team that were doing a certain amount of reconciliation; do you recall that?
Can you explain what reconciliation they were doing.
A Yeah. Every month when we close our books, we use the trial balance from our servicers in conjunction with the remittance report to be able to tie out our financials and for reporting. So, it basically tells us, of this portfolio, here's how much is remaining, per the servicer, that needs to be paid back.

We compare that with the cash that has flowed in through the servicers to be able to say, Does our GL balance, which is really kind of a shadow trial balance reconcile and tie out to what the servicer has, and we do that every month and we would provide those results to Kabbage every month where there were discrepancies to work through and resolve those.

Q And that was work for this trial-balance analysis that you described in 23 and 24 of your declaration that was done by the financial team, correct?

A Financial and data team.

Q Yeah. And have you -- did you personally provide any of that information, any of the work that had been done by either the data team or the financial team to KServicing?

A Well, I mean, they've seen the results, but it's our GL balance. It's from our -- I mean, there's really not work to show. It's a GL balance.

Q Well, let's take that. If you look at the one-page worksheet --

A Uh-huh.

Q -- there's something that says "CBGL."

Do you see that?

A Yes, I do.

Q CB is Customers Bank?

A It is.

Q And GL is general ledger, right?
A Right, uh-huh.
Q And what you're saying is there's a bunch of reconciliation work that goes into that CB ledger, correct?
A Well, it's a running balance from our financial system of what is in a trial, but it's not like a loan-level detail that would have any meaning to provide to Kabbage.
Q Yeah. And you didn't provide that general ledger work or reconciliation to KServicing, correct?
A Well, no. I mean every month we would provide that information. We would say, Here's what we show the trial balance. Here's what we have in our trial balance or GL, which is really one in the same. Here's what you're showing. So, we -- they were very familiar with that information.
Q Right. But with respect to whatever you were using for this particular analysis, you didn't provide any of the work that had been done by your teams that did work for you with respect to the general ledger, correct?
A We did. Again, when we started the reconciliation, we discussed what the starting point of the loan portfolio because, initially, we wanted to set out to do a loan-by-loan reconciliation. So, we talked very early on about what is the original loan population, what are the balances. We provided to them where we saw inaccuracies in theirs based on what we were showing as the current balance. So, we

absolutely did have those conversations.

Q Right. And did you -- but did you show the work that you did and your teams did -- you said your teams did work and that they sent emails -- did you show any of that work or analysis to KServicing?

A Yes, I believe we did.

Q And when you say you did, you actually gave KServicing the emails that you got when you prepared this?

A So, again, just the line item here is just a GL balance. But we did on calls, walked through our, what we had seen as discrepancies. We showed them examples. We, literally, in meetings, in many a meetings, walked through those with them where we saw, this is what we're seeing and this is what you're seeing.

Q Right. So, there are a bunch of discrepancies. Did you actually share how you resolved those discrepancies for purposes of this particular analysis?

A No, we -- there are no -- the discrepancies were on their end. That is where we later on said, we realized we couldn't use any of the trial balances and that's where they said, Okay, well, we'll give you a new trial balance.

Q Well, in fact, what KServicing did is did a supplemental report, correct?

A They -- yes, they created a new report for us.

Q And then Customers Bank would take that supplemental report and somehow combine it with whatever it had in its own files, correct?

A No.

Q So, what did Customers Bank do with the supplemental report?

A The supplemental report that they created specifically for this settlement, when they handed it to us they said, It does not reflect guaranty payments. So, we said, Okay, we'll -- we can -- they wouldn't do it, so we said, Okay, we can do that math and we will adjust it for the guaranty payments. And then we also did a validation and found that there were some forgiveness payments that were missing.

Q And when you say you did a valuation -- a validation and there were payments that were missing, did you provide that to KServicing?

A No, because our analysis showed that we agreed with what their settlement payment was. So, at this point, there was really no value. We really weren't disputing what they were telling us was the amount of holdbacks.

Q So, let's take a look at the two scenarios that you have. You have scenario one and scenario two in this one page here.

Do you see that?

A I do.

Q And scenario one is what? How would you describe scenario one?

A It's hard to tell here, but the color-coding in the two scenarios, we started with our outstanding GL balance for the whole portfolio. And in scenario one, we plugged in the amount that Kabbage told us was the holdback. So, when you subtract what we had in our GL balance and then we reduced that balance by the 28 million that they told us that they owed us, that basically resulted in a trial balance of 174 million.

So, what we're trying to show here is in a much simpler term, if I gave them a hundred dollars and they gave me 50 back, do I see $50 remaining on my trial balance? So, we're just trying to do simple math at the aggregate level to account for all of those funds.

So, we plugged in the amount that they told us they owed us and we said, Okay, well, that means that our trial balance should be this. When we looked at the trial balance that they created for us we said, That's within $1300 of what they told us the trial balance is. That's pretty darn close. We felt comfortable with that.

We did the inverse in scenario two where we plugged in the trial balance amount and said, Okay, if this is the trial balance amount, how much would that mean you would owe us in holdbacks? And, again, when we did that math, it was within $1300. So, that was like a just a final data point since we didn't have any other validation, other than the Synovus accounts to ensure that all the funds were accurately transferred over to us and applied to the account balances.

Q In scenario two, there's a line that says, "total principal remittance returns due to Customers Bank." And there's, in scenario two, it's 28,154,347.

Do you see that?

A Yes.

Q What work had to be done to derive that number?

A If you take the 202 and you subtract the one fifty-four six forty-two and then you --

Q I'm sorry, you subtract -- what do you subtract from that?

A The 202.

And I don't have my spreadsheet in front of me to know the actual math in here so I'm at a little bit of a disadvantage, but, basically, the 202 minus their trial balance, which is the one seventy-four six forty-two, when you subtract that, you get the twenty-eight one fifty-four.

Q Okay. And so, how -- what did you have to do to reach the one seventy-four six four two?

A That was the trial balance that they had provided to us as part of settlement. And then, as I mentioned earlier, that guaranty payment needed to be removed from it.

Q So that's just a plug number?

A Yes. Yep. That is actually, literally what they provided us and then there's the footnote there.

Q And then the -- and then there's a footnote, right, down here that talks about excluding guaranty payments and then also, it says, Comparing the amount of forgiveness received at the loan level and compared to the balance change per Kabbage report at the level.

Did you provide KServicing with any of that analysis or backup that you did there?

A So, this is what I had mentioned earlier. So, when we -- they provided us this special trial report as part of settlement. When they gave it to us, they said, We can't remove the guaranty payment, so we know this is currently overstated, because it doesn't take into account guaranty payments. So, that was the best that they could do, so we used that, and we subtracted the guaranty payments from the trial, and that's what this footnote says on --

Q And how did you go about calculating the guaranty payments?

A That's data that comes directly from the SBA that --

Q I'm sorry, what's that?

A Data that comes directly from the SBA that both, we and KServicing has.

Q And did you have a separate calculation for that?

A For the amount of guaranty payments?

Q Yes.
A It's just a report that comes from the SBA. But, again, it's all information that KServicing has.
Q And the number in scenario one didn't include any interest, correct?
A This is strictly principal.
Q Strictly principal. So, it didn't include the interest in the payment at all, correct?
A That's correct.
Q And in this analysis that you did, did you start with the Synovus account or did you start with information that went earlier than that, that would be captured by the Wells Fargo account?
A We did not factor in any bank information here; this was strictly an accounting of all of the portfolio funds. This was looking at all of the funds. So, it doesn't matter whether it was Wells -- I mean, some of this would have been Wells Fargo.
So, we started with $2.5 billion and our outstanding balance was $202 million. So, some of that money that had been returned to us presumably was from Wells Fargo.
Q Now, I didn't ask this, but when did -- when was this spreadsheet that was provided, the one-page document, when was that created?
A As before we made the final payment, when we were doing

our just kind of a check to say, Okay, does this make sense? Do we feel like we are accounting for, financially? Are we doing the right thing and are we getting all the money? Can we account for all of those funds that were disbursed?

Q Were there any drafts of that or was this the first crack?

A I think there were drafts, I believe.

Q And what were the changes in the drafts that were done?

A We did the same analysis using the loan schedule RA. We used their supplemental. We looked at why their balances were different. We saw the loan scheduled RA, which we had talked to them previously. That's why we were saying there were errors in the trial balances and that's how we got to getting this accurate trial balance from them.

Q And none of those drafts, you didn't provide any of those drafts to KServicing, correct?

A We did -- well, we went back and talked to them about it, like, we said we needed an accurate trial balance. There were errors in those. So, we did talk about the errors, but we realized the guaranty --

Q Let's see if you got my question. You did drafts. Did you provide any of those drafts to KServicing?

A It wasn't a -- it was more of a we found the errors. I don't know that there was a final draft or anything that would be --

Q I didn't ask about final drafts. And, again, just, maybe it's me, I'm sorry, but did you provide any drafts of your trial-balance analysis to KServicing, yes or no?
A I would say, yeah, we provided those results to them, absolutely.
Q You did.
So, did you ever provide -- you testified you didn't even provide the trial balance to KServicing prior to making the payment. So, is it now your testimony that you provided the drafts of that analysis?
A So, just to be clear, they own the trial balance. We don't. It's their trial balance.
Q If -- you know, if you had done this analysis back at the time of making the payment, why didn't you put this in your declaration?
A I'm sorry, I'm not following what your point is.
Q This wasn't in your -- this one page wasn't in your declaration. Why wasn't this analysis, if it was done at the time that you made your payment, why didn't you put this in your testimony?
A For what? For today?
Q No. You remember putting in a declaration in this case in this matter?
A There were several. I'm sorry, I'm not clear what you're --

Q But in connection with this motion, you did a declaration, correct?
A Yes.
Q And you didn't include this one page here, correct?
A Okay.
Q Why not?
A I think the one that we submitted today, we did.
Q You believe that you put in a declaration today?
A Like, honestly, like, I'm not sure. I'm not sure what you're asking. I thought that we had provided this previously.
Q So, is your declaration in front of you?
A I actually don't think -- no, I have this one. Is this the one?
Q Okay. Is the one page here, do you include the one page in your declaration, yes or no?
A This one, originally, no.
Q Why not?
A I don't think it was -- it wasn't relevant, I guess, to the conversation. I'm not sure.

MR. SLACK: Can you give me a few minutes, Your Honor?

THE COURT: Certainly.

(Pause)

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BY MR. SLACK:

Q So I do have one last question for you. Do you remember the email that I showed you that wasn't an exhibit that was Mr. Sachs' email with the calculation of the first payment?

A Yes.

Q Do you have that in front of you?

A Yes.

Q And it shows a nineteen four six nine three five five payment; is that correct?

A Yes.

Q And you said that you had done the trial balance before the payment was made, correct?

A Done the trial balance?

Q You said you had done your trial-balance analysis, that's that one page here --

A The scenario.

Q -- prior to the time that you made -- that Customers Bank made the payment, correct?

A Yes.

Q And so, did the trial-balance analysis at that time show a deviation of more than a million dollars at that time from the settlement payment?

A Say that again. Did the --

Q So, you said you had done a trial-balance analysis at the time and the first payment that was made was nineteen four. You made -- ultimately, you paid a million dollars more than that, correct?

A Uh-huh.

Q So, did the trial-balance analysis that you originally did show a deviation of more than a million dollars at the time that you made the initial payment?

A No, it only showed the thirteen eighty-two.

Q And so even though that your payment here was a million dollars less, you're saying the trial balance stayed the same?

A Yeah, because we weren't factoring in interest.

Q Because, I'm sorry?

A We were just looking at principal.

Q And so the fact that you double-counted interest wouldn't have mattered?

A No.

MR. SLACK: All right. Thank you.

No more questions.

THE COURT: Okay. Redirect?

REDIRECT EXAMINATION

BY MR. STERNBERG:

Q Ms. White, you understood that the reconciliation period started on a date certain, the date the settlement agreement was signed, but ended on a date that was in flux, the date that this Court would enter the settlement agreement, correct?

A Yes.

Q And you didn't know exactly which date the Court would enter the settlement agreement, did you?

A No.

Q You did know that late in the day on Friday, November 4th, that there was a hearing in this court on Monday, November 7th where Kabbage was moving the Court to enter that settlement agreement, correct?

A That's my recollection.

Q And you also understood that there was some urgency once the settlement agreement was entered because then Customers Bank had three business days in order to make a payment?

A Yes, I did.

Q Did you know what time of day Judge Goldblatt entered the settlement agreement on November 9th?

A No, I just knew we had a deadline that we had to meet.

Q Do you have a recollection of what time of day on November 9th or when you found out that the settlement agreement had been entered?

A I don't.

Q But you do have a memory of there being some urgency to make the payment once you found out about the settlement agreement?

A Yes.

Q Mr. Slack asked you a couple of questions that began as a matter of math and then he would ask a question off of that. If you would open up your thin booklet to what is in evidence as Exhibit 22, and it's Tab 4 of your booklet.

As a matter of math, can we get to $27.1 million two different ways in this document --

A Yes.

Q -- both with the math at the top of the page and the math at the bottom of the page?

A Yes.

Q And from your perspective, did you use the bottom of the page for your analysis, the CUBI remittance file, plus the variance?

A We did.

MR. STERNBERG: That's all the questions I've got, Your Honor.

THE COURT: Okay.

MR. SLACK: I have nothing else.

THE COURT: Okay. Mr. Sternberg, any other evidence?

MR. STERNBERG: Not from Customers Bank.

THE COURT: Mr. Tsekerides?

MR. TSEKERIDES: Oh, the witness can be excused.

THE COURT: So thank you very much for your testimony. You can step down.

(Witness excused)

MR. TSEKERIDES: I didn't know if you wanted to take a short break, if you wanted to go to closing argument, if you wanted to hear argument.

THE COURT: So, I do want to hear argument. You'll be stunned to hear I have some questions for both of you.

MR. TSEKERIDES: Okay.

THE COURT: Would it be helpful to you to take five minutes before launching?

MR. TSEKERIDES: I mean, I'm ready to go now.

MR. STERNBERG: I wouldn't mind a short break, Your Honor.

THE COURT: All right. Why don't we take five minutes. We'll come back -- it's now about a quarter of -- we'll come back and this time I'll be on time, I promise. We'll be back on at 10 of, so just five minutes.

MR. STERNBERG: Great.

MR. TSEKERIDES: Thank you.

THE COURT: And we're in recess, thank you.

(Recess taken at 2:45 p.m.)

(Proceedings resumed at 2:51 p.m.)

THE COURT: Mr. Tsekerides, you can proceed.

MR. TSEKERIDES: So, Your Honor, first, I'd like to do the closing first for the debtors if that's all right. I have -- we can put up on the screen, but I'm kind of old school, so I do have a small handout, if I can hand that up?

THE COURT: That's fine. Whatever will help me get it right, I'll take it in any form.

MR. TSEKERIDES: So, if you look at the first page, you know, I think it lays out that we have a discrete issue here and I think you heard from both parties that there's a formula in the settlement agreement that had $58 million and then you're supposed to deduct certain things, and those things are the fee holdback, which you might have heard about, the $8.3 million, and then broken out, and I think this is what Ms. White was talking about when she said there are three components, there's the canceled loans, which we had a dispute about, but we don't anymore, and so it's just about the funds collected from borrowers. You take the 58, you minus those, you get the settlement payment.

The next page reflects what that calculation is from the debtors' perspective. On the left-hand side is what CUBI had originally and on the right-hand side, everything is held constant, except for the borrower remittances, and that's where the one five five comes in. And I think we've heard from everyone that the goal was to try to find the right number.

Now, you've heard testimony that, you know, there was a deadline or whatever, but at the end of the day, and even CUBI says in its papers, and I'll get to that at the back end, that they wanted to get to the right number. So, what went into the number? We've heard from all the witnesses, undisputed, that the remittance file was a key component for both parties and they both used it in their calculation. You've also heard that the remittance file had loans on it that had payments already made.

These weren't people going out to try to find some loans, you know, 90,000 loans and you isolated five. That's not what happened. What happened was there was a file that had loans on it that supposedly were money received from Kabbage from customers that were supposed to go to CUBI. That's what's on that file.

Ms. Williams discovered, after getting a file from Mr. Eidson the former CFO -- he left -- that there were five loans on that list, not some random loans they plucked out of thin air -- from that list that were already paid to CUBI. You didn't hear a word today that they didn't get that money. You didn't hear a word today, Oh, that came from a different bank account so it doesn't count. They got paid for loans that were on the list that they said were not already paid. Really, at the end of the day, that's what we're saying supports why we're entitled to the one five five.

Now, if you go through the next document that I put in the slide is the email from Mr. Eidson, October 21st, 2020, sent to Patricia Curtis. Now, presumably, whether she works there or not, I don't know, but they could have checked to see if they got paid the amounts that are reflected there. It's an easy checkable thing.

THE COURT: So, Mr. Tsekerides, can I stop you?

MR. TSEKERIDES: Yes, please.

THE COURT: So, the challenge of this motion is that we live in an imperfect world --

MR. TSEKERIDES: Agreed.

THE COURT: -- and it appears, and probably for good and sound reason, that no one has done a complete, forensic accounting of every penny of the history of the relationship. So, what we've got are what we've got and the task that I've got is to do the best I can to get it right, given information that's the best that we have. Okay. That's -- you know, you can complain about that if you want, but that's life.

MR. TSEKERIDES: I agree.

THE COURT: So, let's assume for this purpose that you persuaded me that there's a million and a half dollars that you had paid before that was not accounted for in the original remittance file, and if it had been accounted for, they would have owed you a million and a half dollars more, but let's assume that that is correct. Their argument is, like, I'm cartooning it, but it's sort of like, whatever, because we've looked at this and from a global perspective, it looks to us like the aggregate math of their revised calculation was correct, and so maybe you're right that there was a million and a half dollars wrong here, but it must necessarily follow, if that's true, there's an offsetting million-and-a-half-dollar mistake somewhere else.

MR. TSEKERIDES: I have two responses.

THE COURT: Okay.

MR. TSEKERIDES: So, the first response is, that's nice, but it's not "whatever." We agreed to a process and you used, for your calculation, you used the remittance file. That's what you used. I didn't make you use that. You asked for it, I sent it to you, you used it, and we found out later that you actually got paid before. I agree everything's imperfect, but we agreed that this remittance file --

THE COURT: Right. Can I ask a more specific question?

MR. TSEKERIDES: Sure, please.

THE COURT: In a world where you get to point to the one and a half million dollars and say, Look, I can show you five loans, it's a precise number. You were getting paid this amount twice this way, that's not right.

MR. TSEKERIDES: Okay.

THE COURT: Assume you're right about that, why do you also get to do that and collect this $497,000 remaining variance, you have to be resolved amount?

MR. TSEKERIDES: We're not collecting that, Your Honor. We're not collecting that.

If you look at this breakdown --

THE COURT: Uh-huh.

MR. TSEKERIDES: -- if you look at the breakdown, which is I think the second page, the one that has the calculation --

THE COURT: Right.

MR. TSEKERIDES: -- all of these are already accounted for. These are what everyone is agreeing to in terms of what the numbers are that are going in. We've all agreed to these except for the remittance payments. I'm not keeping anything extra. The parties have gone through and said, You know, there's some red, there's some blue on here, credits were given. This was the analysis that the parties agreed to.

And what we're saying is that number, the 27,106,862 should really be 25,551,205. That's all we're saying.

THE COURT: I see.

MR. TSEKERIDES: We're saying we paid you.

Everything else, we're taking from their calculation.

THE COURT: Okay.

MR. TSEKERIDES: The other point I think that I make, so you have a loan-by-loan analysis, using a file that everyone was using, and on the other side, you have, respectfully, a black box. When we heard about a shadow file, black boxes and shadow files are not substitutes for a loan-by-loan analysis, which is what we did. I still don't know exactly what they did. Maybe you do, but I don't.

What I do know is that we heard testimony from Ms. Williams that the remittance file, and even from CUBI, that the remittance file was for money not paid yet to CUBI. But we know that there were at least five loans that they were. At its basic core, that is our position. For the materials that the parties agreed to use, this is the outcome; that's why we think we're entitled to the one five five.

THE COURT: Okay.

MR. TSEKERIDES: I mean, that's really it in the nutshell, Judge.

THE COURT: I understand your position.

MR. TSEKERIDES: Okay.

THE COURT: Mr. Sternberg?

MR. STERNBERG: Your Honor, I'd like to start with a timing issue, because I think the timing really matters here in ways that are broader than perhaps what the witness testimony was. The reconciliation period was defined by two dates. The end date happened to be November 9th, because that's the date that you entered the settlement agreement.

THE COURT: So, can I ask you this question about that? So, your argument on this question, it's almost as if you're suggesting when we read the document, providing the information within the period is essentially like a condition precedent to being able to get credit for those payments.

Is that essentially what you're saying?

MR. STERNBERG: It's slightly different than that. Let me back up.

We were obligated to make a payment that was going to fund this bankruptcy --

THE COURT: Oh, I understand.

MR. STERNBERG: -- three days from the date you entered the settlement agreement.

THE COURT: Right.

MR. STERNBERG: The hearing was scheduled for Monday morning. Friday night, we're still waiting for information.

THE COURT: Right.

MR. STERNBERG: Important, critical information is coming in at 7:48 p.m. Friday night. The bank is intent on fulfilling its obligations under the settlement agreement. It has to rely on the information it's getting on the bank account.

THE COURT: So, I understand that, okay. I get there was a hurry and I get the parties agreed, you know, there's an urgency here. We need the cash -- I was here -- and so we set up a process in which you all need to kill yourselves to do the best you can to get it as ready as you can get it as quickly as you can do. That's what everyone committed to. Your position is, and if it turns out that in that rush there's something we got wrong, we're done.

And my question is, what in the documents says that?

MR. STERNBERG: The document doesn't specifically say that.

THE COURT: Right. Why should I draw that inference, particularly, because given all of the principles of contract law that would counsel against finding, essentially, a forfeiture of money to which you're actually entitled based on a foot fault, why would I read this to create, essentially, that consequence as a matter of ordinary contract interpretation?

MR. STERNBERG: Because the party in the bank's shoes here was obligated to make a 20-plus-million-dollar payment. It's got to do whatever it can to make sure that that's correct, and so it does two things. It begs and pleads for Kabbage to give it bank account information, remittance information -- it gets it late in the day Friday -- and then it does a belt-and-suspenders. It tries to look at the information it's gotten, and you described the world isn't perfect and I agree with you.

They do a total trial balance reconciliation and get within $1300. They're now comfortable that cutting a check for $20 and a half million is the right thing to do and they're obligated to do it on November 14th and they do it.

The principles of forfeiture I don't think really apply here because we're relying on information that we're entitled to rely on. They didn't tell us, Hang on, you don't have to pay us the money three days from the entry, because this is preliminary; we're still working on it. Let's amend the agreement and work it through.

None of that happened. They wanted the money in order to fund the bankruptcy and we were obliged to pay it. We did the best we could.

And you're right, no one -- we certainly couldn't, and they didn't go back and do a reconciliation of 99,365 loans. It is improper, incorrect, inappropriate to pluck five loans out of that portfolio, particularly when we've heard evidence that there were monthly meetings where there were 13,000 loans that had discrepancies in the amount of $53 million. You can't just look at one bank statement and say, Ah ha, later on we found out these five may have been overfunded.

THE COURT: But doesn't -- if that's true, and let's assume for this purpose that it is, right, that the information, there were all sorts of problems with the data -- it is what it is, right. We all wish we had perfect data and no one had it. Okay, so the data is imperfect.

They point, however, to one and a half million dollars in which it does seem like you're getting paid twice. How is it appropriate to respond to that by using these aggregate figures that are just a function of all of the original flaws that you've pointed to?

MR. STERNBERG: Because getting paid twice, there were billions of dollars that flowed through this relationship for months on end.

THE COURT: I understand. If anyone had -- look, I understand that doing a perfect accounting of this would have cost more than is at stake, so I'm not really faulting anyone for the decision to say, We're going to do the best we can in a world in which resources are finite.

But in a world in which you didn't undertake to do that, and, again, that could very well have been an eminently sensible judgment, but in a world in which they can show concretely, we're paying twice for this, and you haven't responded by saying, Yes, and here's where that countervailing error is, why isn't that -- why doesn't that mean that the consequence of the imperfection falls on you?

MR. STERNBERG: Because the consequence of the imperfection shouldn't fall on the party that has shown you that everything balances out. They've made no effort to do either of two things.

THE COURT: Well, first of all, you haven't shown me. You showed me that it comes close enough for government work, right, that's what, at best, you've shown me.

MR. STERNBERG: Thirteen-hundred dollars on a two-and-a-half-billion-dollar portfolio I'd submit is more than respectably close.

THE COURT: Okay. And the other side's opportunity to take discovery into the basis for that, into how you can make that judgment, you've not been as forthcoming as you might be, right?

MR. STERNBERG: I disagree. Every piece of information that goes into that analysis has been provided to them.

THE COURT: Okay.

MR. STERNBERG: So, you come back to the party seeking the money, the Movant, has done neither, a full reconciliation of everything that went into the Wells Fargo account and the Synovus account, nor a portfolio-wide analysis. We can't do a loan-by-loan analysis because we don't have the information. We could do, and did do, a portfolio-wide.

And it ought to matter that the information we got was not told to be preliminary, not said don't rely on it. It said Synovus account reconciliation. It was reasonable to rely on it and the bank did rely on it.

THE COURT: No, I understand you relied on it, but it turns out you relied on it -- I mean, if -- it seems to me that if you want to set up a system by contract in which you say, This day is the last day -- and contracts do this, right, like, any information provided hereafter will be ignored, where everyone is on notice. But this basically sets a formula for figuring out what's owed and it uses, sort of objective criteria, and if the evidence of what's provided is incorrect, it doesn't say, And if you discover later you made a mistake, too bad, you're stuck with what you sent us, right, it seems -- it would seem to me surprising that if there was -- we set up a process that was rushed. We did that on purpose. We did it for good reason.

The question is, what happens? What does the contract do if, despite everyone's best efforts, there's information that was incomplete? Do we get it right or do we say, Look, you're stuck with where we are?

MR. STERNBERG: I think there are two responses to that. One is the Movant hasn't shown that they've gotten it right. What they've pointed to are five loans that for some reason are sitting in this Synovus account reconciliation. Who knows why they're there? It seems highly improper that they are there. They're from a different account from before that Synovus account was even set up.

And it conflicts with the -- there are a bunch of numbers going on here. One is $26.6 million. That's what they said was the CUBI remittance file amount. And then there's this variance of half a million dollars. Those are their numbers. The best we can do to verify is what Ms. White testified to: get the bank statements and look at it. That's the independent evidence, and she did and then took it a step farther.

THE COURT: But it's not surprising, right, if there were loans on which payments were remitted earlier and that were also in those statements, it's not surprising, then, that what is in the bank statements would therefore be incorrect.

MR. STERNBERG: It would be odd for a Synovus bank statement to have a Wells Fargo payment in it.

THE COURT: It doesn't. It has the loan in it as to which the payment was made earlier, so it should have been reduced from what was reflected.

MR. STERNBERG: Yes, and it appears that on those five loans, there were payments made back in October, but who knows on the other 99,360, whether there was a million five missing from those.

THE COURT: Oh, I understand that your argument, but you haven't shown me where that million five -- they've shown me where this million five is and you haven't shown me where the other million five is. That's where I think I am.

MR. STERNBERG: We've shown you that if we're ordered to pay them a million five, we're out a million five. We're missing a million five in our trial balance. It's a net loss to the bank.

And this reconciliation process was bounded by time. It was bounded by time, as you point out, for good reasons and it shouldn't be the bank that holds the risk for getting suspect information that it didn't have time to go back and check out on a loan-by-loan basis, or even the ability to check out, when it then made a prompt payment on time to fund the bankruptcy.

There is -- if we had said, Okay, let's -- we're going to take our time. We're going to have an effective date of February 1st, the company -- there wouldn't be -- we wouldn't be here.

THE COURT: Oh, I understand that.

MR. STERNBERG: And that might have given us the time to do a loan-by-loan lookback analysis, but we wouldn't be here now. We'd be all fighting about other things.

THE COURT: No, I understand that, but in the period between the time you made the payment and the time we're here to adjudicate the question of who owes what under the contract, there's no longer an emergency.

MR. STERNBERG: There's no longer an emergency, but how do we go back and do that? We don't have the Wells Fargo --

THE COURT: You have access to the discovery.

MR. STERNBERG: We do have access to discovery, that is true. But it's, as the Movant, it's their obligation to show you that --

THE COURT: No, I understand, but they've shown me the 1.5.

MR. STERNBERG: And we've shown you that if we have to pay a million five, we're short.

THE COURT: You've shown me that you think that based on the trial loan balance, which is, you know, less than crystal clear exactly what that is -- and I'm not saying it's nothing. I'm not saying -- and, look, you might be right. The problem is that's the question on which I think we've got uncertainty.

And that's -- look, I'm not -- I'm, to some extent, struggling because I do feel like in a perfect world, we'd, you know, boil the ocean and get all of it perfect. It understand that that game isn't worth a candle and the question is, how do we do the best we can, given finite resources, and I find that to be candidly challenging. And I think the answer is, I've got to do the best I can with the record I've got in front of me.

MR. STERNBERG: Fair enough.

I think the record in front of you is one that shows five loans out of a massive population that are in a remittance file. The record in front of you also shows a total trial balance that makes sense from two directions. Ms. White testified she plugged one number in and did it with the trial balance figure and then plugged the payment and got it the opposite way.

In the context of a relationship that was fraught with discrepancies, errors, miscalculations, misapplications on the Kabbage side, it would be unfair to the bank to reward that in a sense by this *post hoc* seeking of a million five when the total trial balance balances out as of today.

THE COURT: Okay. I understand your position.

Mr. Tsekerides? And let me ask you when you get to the podium to respond to --

MR. TSEKERIDES: Why don't you go first.

THE COURT: -- respond to the fair point that -- look, let me say this, as someone who's spent 27 years involved in bankruptcy cases, this isn't the first or last time I've had a case in which the debtors' financial information has been imperfect, okay. That's -- there are --

that's sort of the nature of the beast.

And part of the problem we have is we're all doing the best we can, right. By the time, you know, anyone in this room got involved, it was what it was, okay. Here we are. But the information is imperfect.

And how do you respond to the point that, essentially, the debtor arguably is essentially taking advantage of this because it pointed to these particular errors that count against it when it's certainly possible that in the, you know, enormity of the data here, there could very well be countervailing errors.

MR. TSEKERIDES: Yeah, I understand.

THE COURT: It's sort of cherry-picking in a world of imperfections.

MR. TSEKERIDES: I understand that's their position and my response to that is it's not cherry-picking. I'll go back to what I said before. There was a file, a remittance file that both parties agreed -- it doesn't have 90,000 loans on it; it has a finite number of loans on it -- the parties agreed to use that.

When Ms. Williams got Mr. Eidson's file to see what was paid, five of those loans -- she looked, she compared the two lists. It wasn't like she was looking for a specific thing. She looked at the two lists. Oh, there's something on here on this remittance file that we already paid, okay.

And it's important enough to break out. They like to say the Synovus bank account. The remittance file is not the Synovus bank account. That has other things in it. The Synovus bank account is the Synovus bank account. So, the remittance file and the Synovus account -- two different things.

So, my response is, Hey, look, we agreed to a process and we agreed to these numbers in terms of the, like, the remittance file. It's in their calculation. In it's our calculation. We found out, and they should know. My response is, I'm not pulling one over on you. You got paid already. You got paid in October 2020. I'm not pulling one over on you; you're pulling one over on me, is my response.

THE COURT: And what is your response to the testimony that -- and I understand the evidentiary point, which I'll sort out in connection with resolving this -- but just from a rough justice perspective, what's your response to the point that they say, Look, we got comfortable with this because it kind of all made sense. It came awfully darn close to the numbers that we were using at a macro level and what we know for sure is that if we pay you another million and a half dollars, then our -- from our macro analysis, it looks like it's now wrong when it was before right.

MR. TSEKERIDES: Ultimately, your job. My response to that is, I didn't hear anything that would tell me. Other than a black box, I don't know exactly what they did. Maybe the million five, there's some other numbers in there that are wrong for other reasons, I don't know, but I really don't care. We agreed to a process that had a file, okay. So, the fact that there might be some other loans someplace else of 90,000, I don't know what you did.

THE COURT: So, can I ask you about that answer?

MR. TSEKERIDES: Yeah.

THE COURT: When I look at the actual contract, right --

MR. TSEKERIDES: Which contract?

THE COURT: If you look at the actual agreement and the obligation to pay the settlement amount --

MR. TSEKERIDES: Are we talking about the settlement agreement?

THE COURT: Yeah, the settlement agreement, I'm sorry.

The actual obligation to make -- so in paragraph, I guess it is paragraph -- it's actually paragraph 8, it says:

Within three business days following the effective date, CB shall pay KServicing in immediately available funds, an amount equal to the settlement payment.

Right?

MR. TSEKERIDES: Okay.

THE COURT: Settlement payment is a defined term.

MR. TSEKERIDES: Right.

THE COURT: And what settlement payment is, is it's the amount of a settlement amount, less the KServicing holdbacks. That, itself, is a defined term.

MR. TSEKERIDES: It's that box that I showed you earlier.

THE COURT: Right, that's got those different components. And the relevant issue here is that KServicing's remittance holdback, which means the amount that constituted the funds collected from borrowers that KServicing is required to remit to Customers Bank under the original agreements.

So, nothing in that contract that defines what it was that they were required to pay you is an agreement to follow any particular process to getting to the number.

MR. TSEKERIDES: And what I'm saying is the parties followed a process. We have their -- it was Exhibit 1, I think it was their Exhibit 1 that showed they took it from the remittance file, right. They did agree to the process (indiscernible) the borrow of remittances, that is clear 58 million minus these three things. One of those three things is borrower remittances.

They used the remittance file that we had --

THE COURT: But their argument is, We agreed to do it that way because when we looked at what you've done, it all kind of made sense to us and now you're coming back in a way in which it no longer makes any sense to us, so why don't we get to go back and just enforce the agreement, as written?

MR. TSEKERIDES: Well, where does it say in what they did, they used the trial balance in what they sent us --

THE COURT: Oh, it doesn't.

MR. TSEKERIDES: They can't change. I mean, I would say, then they're trying to snooker us by putting one over on us later when they gave us something.

And, look, they made a payment of $19 million. I know they said they were rushed. Well, a few days later, or next day, they paid 20 or another million.

THE COURT: Oh, I understand that.

MR. TSEKERIDES: Okay.

THE COURT: I mean, this doesn't give anything away, I'm not overly moved by any of the arguments that hold anyone forever to what they did when they were rushed. Everyone was rushed and was doing the best they can. And I don't read this agreement to say where, like sometimes you'll do in an arbitration where it's like, Look, this is what we're going to do and we're going to do it quickly and we're going to do our best, and if we get it wrong, too bad, so sad, this is what we've agreed to. I don't read this document that way, so --

MR. TSEKERIDES: And the other point I would leave the Court with --

THE COURT: No, go ahead.

MR. TSEKERIDES: You know, I wasn't involved in the 9019, but it's not like this was a charity, like counsel said that they funded the case. I mean, we thought they owed her $65 million, right, so this wasn't a charitable, you know --

THE COURT: And, look, we are where we are.

MR. TSEKERIDES: Yeah, exactly.

THE COURT: These are sophisticated parties. They agreed to this document. They wrote it down and it's on paper, and to me, my job is to read it and enforce it. And I'm stuck with, I think, notwithstanding the terrific work everyone has done, look, if this was a dispute over $1.5 billion, instead of $1.5 million, we might have done the accounting and bottomed it out, but I'm not faulting -- again, it's good that you didn't. But the question, then, is, okay, now what do I do when I've got information that is what it is?

MR. TSEKERIDES: No, you wear the robe.

THE COURT: Yeah, so it appears.

Okay. So, look, this has been very helpful. I think I understand where folks are. You've all given me things to think about. I don't -- I want to -- I know that I'm not going to get it perfect, because I've got what I've got, but what I propose to do is at least give it a little bit of thought and, perhaps, gather folks by Zoom to read something into the record on where I'm landing. What I propose to do is to do that.

It appears that your Wednesday afternoon hearing has gone away, so --

MR. TSEKERIDES: That's my understanding.

THE COURT: -- why don't we just take that time, that 1 o'clock on Wednesday and I will -- and if there's anyone who can't make it, like, there's no reason why people need to listen to me read.

MR. TSEKERIDES: I might be able to meet an astronaut that day, so if you don't mind --

(Laughter)

THE COURT: You should do that instead of listening to me read. You know, there'll be a transcript, you all will see what I said. You'll have every opportunity to tell the Court across the street I got it wrong, but I will do my best to get it right and to come on the bench at 1 o'clock on Wednesday and give a ruling.

MR. TSEKERIDES: Great. Very good. Thank you, Your Honor.

THE COURT: Thanks to all the counsel.

Is there anything else that I can do to be helpful to the parties while we're here?

(No verbal response)

THE COURT: Okay. If not, thank you all and we're adjourned. Thank you.

(Proceedings concluded at 3:20 p.m.)

CERTIFICATION

We 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 our knowledge and ability.

/s/ William J. Garling March 21, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand March 21, 2023

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