UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	**Chapter 11**
KABBAGE, INC. d/b/a KSERVICING, *et al.*,	:	**Case No. 22-10951 (CTG)**
Debtors.[1]	:	**(Jointly Administered)**
	:	**Re: Docket No. 449**

MOTION OF DEBTORS FOR LEAVE TO FILE REPLY IN SUPPORT OF DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES MOTION

Kabbage, Inc. d/b/a KServicing and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), respectfully represent as follows in support of this motion for leave (the "**Motion for Leave**"):

Relief Requested

1. By this Motion for Leave, the Debtors seek entry of an order, pursuant to Rule 9006-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), authorizing the Debtors to file the reply (the "**Reply**"), filed contemporaneously herewith, in support of the Disclosure Statement (as defined herein) and the Solicitation Procedures Motion (as defined herein).

2. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the "**Proposed Order**").

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable are: Kabbage, Inc. d/b/a KServicing (3937); Kabbage Canada Holdings, LLC (N/A); Kabbage Asset Securitization LLC (N/A); Kabbage Asset Funding 2017-A LLC (4803); Kabbage Asset Funding 2019-A LLC (8973); and Kabbage Diameter, LLC (N/A). Kabbage is a trademark of American Express used under license; Kabbage, Inc. d/b/a KServicing is not affiliated with American Express. The Debtors' mailing and service address is 925B Peachtree Street NE, Suite 383, Atlanta, GA 30309.

Jurisdiction and Venue

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of a final order by the Court in connection with this Motion for Leave to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

4. On October 3, 2022 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "C**hapter 11 Cases**"). The Debtors are authorized to continue to operate their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

5. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

6. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Deborah Rieger-Paganis in Support of Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 13].

B. Specific Background

7. On October 3, 2022, the Debtors filed the *Joint Chapter 11 Plan of Liquidation Kabbage, Inc. (d/b/a KServicing) and its Affiliated Debtors* [Docket No. 14] (as may be amended, modified, or supplemented, the "**Plan**"). On October 5, 2022, the Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of Liquidation Kabbage, Inc. (d/b/a KServicing) and its Affiliated Debtors* [Docket No. 63] (as may be amended, modified, or supplemented, the "**Disclosure Statement**").[2]

8. On October 31, 2022, the Debtors filed the *Motion of Debtors for Entry of Order (I) Approving the Disclosure Statement of the Debtors, (II) Establishing Solicitation, Voting, and Related Procedures, (III) Scheduling Confirmation Hearing, (IV) Establishing Notice and Objection Procedures for Confirmation of Plan, (V) Approving Special Electronic Noticing Procedures, (VI) Approving Debtors' Proposed Cure Procedures for Unexpired Leases and Executory Contracts, and (VII) Granting Related Relief* [Docket No. 176] (the "**Solicitation Procedures Motion**") seeking, among other things, approval of the Disclosure Statement and related Plan solicitation procedures.

9. The deadline to object to the adequacy of the Disclosure Statement and relief requested in the Solicitation Procedures Motion was set for January 6, 2023, at 4:00 p.m. (prevailing Eastern Time) (the "**Objection Deadline**"). The hearing to consider approval of the Disclosure Statement and the Solicitation Procedures Motion is scheduled for January 19, 2023, at 10:00 a.m. (prevailing Eastern Time) (the "**Hearing**").

[2] Amended versions of the Plan, Disclosure Statement, and proposed order approving the Solicitation Procedures Motion were filed on December 30, 2022, reflecting negotiations between the Debtors and their key stakeholders. *See* Docket Nos. 395, 396, and 398.

10. The Objection Deadline was extended for (i) (a) the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"), (b) the Federal Reserve Bank of San Francisco (the "**Reserve Bank**"), (c) the United States of America on behalf of itself and the Small Business Administration (the "**United States of America**"), and (d) Fortis Advisors, LLC, as the agent of the Target Company Securityholders (as such term is defined in that certain Agreement and Plan of Merger, dated as of August 16, 2020), as well as certain former directors and officers of the Debtors in the Kabbage Inc. d/b/a/ KServicing Chapter 11 Cases ("**Fortis**"), to 4:00 p.m. (prevailing Eastern Time) on January 11, 2023, and (ii) Cross River Bank ("**CRB**" and collectively with the U.S. Trustee, Reserve Bank, the United States of America, and Fortis, the "**Responding Parties**") to 12:00 p.m. (prevailing Eastern Time) on January 12, 2023.

11. The Debtors received certain formal objections to the adequacy of the Disclosure Statement and the relief requested in the Solicitation Procedures Motion (collectively, the "**Objections**") filed by: (i) the U.S. Trustee [Docket No. 431], (ii) the United States of America [Docket No. 433], and (iii) CRB [Docket No. 437].

Basis for Relief Requested

12. Pursuant to Local Rule 9006-1(d), "[r]eply papers may be filed and, if filed, shall be served so as to be received by 4:00 p.m. prevailing Eastern Time the day prior to the deadline for filing the agenda." *See* Del. Bankr. L.R. 9006-1(d). The agenda for the Hearing was due, and in fact was filed, by 12:00 p.m. (prevailing Eastern Time) on January 17, 2023. Accordingly, pursuant to Local Rule 9006-1(d), and because of the intervening Court holiday on January 16, 2023, the deadline to file the reply was 4:00 p.m. (prevailing Eastern Time) on January 13, 2023 (the "**Reply Deadline**"). Absent leave of Court, the Debtors will be unable to file and serve the Reply, and the Court would be denied the opportunity to review the Reply in advance of the Hearing.

13. The Debtors submit that sufficient cause exists to grant the relief requested in this Motion for Leave. The Debtors provided extensions to the Objection Deadline, in part, to facilitate the potential resolution of certain issues on a consensual basis. The Debtors' opportunity to file the Reply should not be foreclosed as a result of the Debtors' willingness to give parties additional time to negotiate certain issues in the hopes that a consensual agreement may be reached. In addition, the Reply will provide the Court with critical information and arguments to consider when ruling on the Disclosure Statement, and the Court's consideration of the Reply will streamline oral argument at the Hearing.

14. Further, due to the intervening Court holiday on January 16, 2023, the Reply Deadline was only one (1) day after the latest extended Objection Deadline, and the Debtors were unable to review and sufficiently respond to the Objections prior to the Reply Deadline. Additionally, the Responding Parties have each consented to the Debtors filing the Reply on or before January 17, 2022 at 4:00 p.m. (prevailing Eastern Time). Accordingly, the Debtors submit the relief requested herein is reasonable under the circumstances and should be approved. Finally, permitting the Debtors to file their Reply on or before January 17, 2022, at 4:00 p.m. does not prejudice any parties in interest, as parties will have an opportunity to review the Reply in advance of the Hearing rather than learning of the arguments at the Hearing for the first time.

Notice

15. Notice of this Motion for Leave will be provided to (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (c) the Federal Reserve Bank; (d) Customers Bank; (e) Cross River Bank; (f) the United States Department of Justice; (g) the Federal Trade Commission; (h) the Small Business Administration; (i) the Internal Revenue Service; (j) the

Securities and Exchange Commission; (k) the United States Attorney's Office for the District of Delaware; and (l) any party that is entitled to notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). The Debtors believe that no further notice is required.

WHEREFORE, for the reasons set forth above, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 17, 2023
Wilmington, Delaware

/s/ Matthew P. Milana

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