

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

In re: KABBAGE, INC. d/b/a KSERVICING, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 22-10951 (CTG) (Jointly Administered) Obj. Deadline: August 3, 2023 at 4:00 p.m. (ET) Hearing Date: August 22, 2023 at 1:00 p.m. (ET)
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**MOTION OF THE POST-CONFIRMATION DEBTORS FOR ENTRY OF
AN ORDER AMENDING CASE CAPTION**

The post-confirmation Debtors (the “Post-Confirmation Debtors”), operating as the Wind Down Estates as defined in, and under terms of, the *Amended Joint Chapter 11 Plan of Liquidation of Kabbage, Inc. (d/b/a KServicing) and Its Affiliated Debtors*, dated March 9, 2023 [Docket No. 627] (as amended, modified, or supplemented in accordance with its terms), file this motion (the “Motion”) for the entry of an order, substantially in the form attached to this Motion as **Exhibit A** (the “Proposed Order”), pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), rules 1005 and 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9004-1 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 Post-Confirmation Debtors to amend the caption used in these jointly administered chapter 11 cases. In support of this Motion, the Post-Confirmation Debtors respectfully represent as follows:

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). The Debtors’ mailing and service address is 925B Peachtree Street NE, Suite 383, Atlanta, GA 30309.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over 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)(2). The Debtors confirm their consent, pursuant to Rule 7008 of the Bankruptcy Rules and Rule 9013-1(f) of the Local Rules, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are section 105(a) of the Bankruptcy Code, Bankruptcy Rules 1005 and 2002, and Local Rule 9004-1.

BACKGROUND

4. On October 3, 2022 (the “Petition Date”), the above-captioned debtors (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court.

5. On March 9, 2023, the Debtors filed the *Amended Joint Chapter 11 Plan of Liquidation of Kabbage, Inc., (d/b/a KServicing) and Its Affiliated Debtors* (the “Plan”) [Docket No. 627].

6. On March 15, 2023, this Court entered the *Order Confirming Amended Joint Chapter 11 Plan of Liquidation of Kabbage, Inc. (d/b/a KServicing) and its Affiliated Debtors* [Docket No. 680].

7. On June 20, 2023 the Plan became effective, *See* Docket No. 870, *Notice of (I) Entry of Order Confirming Amended Joint Chapter 11 Plan of Liquidation of Kabbage, Inc. (d/b/a KServicing) and its Affiliated Debtors and (II) Effective Date.*

8. Under the Plan, the Post-Confirmation Debtors may change their corporate name. Specifically, Section 5.5 of the Plan provides that:

Upon the Effective Date, by virtue of entry of the Confirmation Order, all actions contemplated by this Plan (including any action to be undertaken by the Wind Down Officer) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in this Plan involving the corporate structure of the Debtors, and any corporate action required by the Debtors in connection therewith, shall be deemed to have occurred and shall be in effect as of the Effective Date, without any requirement of further action by the Debtors or the Estates.

Plan, § 5.5.

9. Following the Plan's Effective Date, the Debtors filed the necessary documentation with the appropriate division of the Delaware Secretary of State to change each of their corporate names as follows: the corporate names of (i) Kabbage Inc., (ii) Kabbage Canada Holdings LLC, (iii) Kabbage Asset Securitization LLC, (iv) Kabbage Assest Funding 2017-A LLC, (v) Kabbage Asset Funding 2019-A LLC, and (vi) Kabbage Asset Diameter LLC have been amended to (a) KServicing Wind Down Corp., (b) KServicing Wind Down Canada Holdings LLC, (c) KServicing Wind Down Asset Securitization LLC, (d) KServicing Wind Down Asset Funding 2017-A LLC, (e) KServicing Wind Down Asset Funding 2019-A LLC, and (f) KServicing Wind Down Diameter LLC, respectively.

RELIEF REQUESTED

10. By this Motion, the Post-Confirmation Debtors request that the Court enter the Proposed Order authorizing the Post-Confirmation Debtors to amend the caption used in these jointly administered chapter 11 cases. Additionally, the Post-Confirmation Debtors request that this Court authorize the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Clerk of Court”) and other parties in interest to take whatever actions are necessary to update the ECF filing system and their respective records to reflect the name changes, including the insertion of a docket entry in these jointly administered chapter 11 cases announcing the change of corporate names of the Debtors.

BASIS FOR RELIEF REQUESTED

11. Bankruptcy Rules 1005 and 2002 and Local Rule 9004-1 set forth the information required to be contained in the caption of all Court filings. This information includes the name of the debtor. *See* Bankruptcy Rules 1005, 2002(n); Local Rule 9004-1. Local Rule 9004-1(c) further provides that the case caption may only be modified by order entered by the Court on a separate motion filed and served in accordance with the Local Rules. *See* Local Rule 9004-1(c). Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code 11 U.S.C. § 105(a). The purpose of section 105 of the Bankruptcy Code is to ensure the bankruptcy court has the power “to take whatever action is appropriate or necessary in aid of the exercise of [its] jurisdiction.” 2 Collier on Bankruptcy 105.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2019).

12. Amendment of the case caption as set forth herein is necessary and appropriate under the circumstances. As noted above, under Section 5.5 of the Plan the Post-Confirmation Debtors were authorized to change their corporate name, *See* Plan § 5.5. Following the Plan’s

Effective Date, the Post- Confirmation Debtors filed the necessary documentation with the appropriate division of the Delaware Secretary of State to change each of their corporate names as follows: the corporate names of (i) Kabbage Inc., (ii) Kabbage Canada Holdings LLC, (iii) Kabbage Asset Securitization LLC, (iv) Kabbage Assest Funding 2017-A LLC, (v) Kabbage Asset Funding 2019-A LLC, and (vi) Kabbage Asset Diameter LLC have been amended to (a) KServicing Wind Down Corp., (b) KServicing Wind Down Canada Holdings LLC, (c) KServicing Wind Down Asset Securitization LLC, (d) KServicing Wind Down Asset Funding 2017-A LLC, (e) KServicing Wind Down Asset Funding 2019-A LLC, and (f) KServicing Wind Down Diameter LLC, respectively. However, the Post-Confirmation Debtors require entry of the Proposed Order to amend the case caption used in these jointly administered chapter 11 cases to reflect these name changes. Accordingly, the relief requested in this motion is consistent with implementation of the Plan.

13. In light of the foregoing, the Post-Confirmation Debtors respectfully request that the Court approve an amended case caption in the form set forth below to reflect the Debtors' new corporate names in accordance with the provisions of the Plan and the Local Rules:

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

In re: KServicing Wind Down Corp., <i>et al.</i> , Post-Confirmation Debtors	Chapter 11 Case No. 22-10951 (CTG) (Jointly Administered)
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- 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: KServicing Wind Down Corp. (f/k/a Kabbage, Inc. d/b/a KServicing) (3937); KServicing Wind Down Canada Holdings LLC (f/k/a Kabbage Canada Holdings, LLC) (N/A); KServicing Wind Down Asset Securitization LLC (f/k/a Kabbage Asset Securitization LLC) (N/A); KServicing Wind Down Asset Funding 2017-A LLC (f/k/a Kabbage Asset Funding 2017-A LLC) (4803); KServicing Wind Down Asset Funding 2019-A LLC (f/k/a Kabbage Asset Funding 2019-A LLC) (8973); and KServicing Wind Down Diameter LLC (f/k/a Kabbage Diameter, LLC) (N/A). The Debtors' mailing and service address is 925B Peachtree Street NE, Suite 383, Atlanta, GA 30309.

NOTICE

14. Notice of this Motion has been or will be provided to: (a) the Office of the U.S. Trustee; (b) the United States Attorney's Office for the District of Delaware; (c) the Internal Revenue Service; (d) the state attorneys general for all states in which the Debtors conduct business or have conducted business; and (e) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

15. No previous request for the relief requested herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, the Post-Confirmation Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached here as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: July 20, 2023

MORRIS JAMES LLP

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